

Practical Considerations for Using Executive Sessions Effectively

By **Matthew K. Doonan, Esq.**, General Counsel, *Inspira Health*

When properly used, executive sessions are an effective way to create intentional opportunities for a board (or committee) to have open and frank dialogue and exchange ideas on topics that are of particular importance or sensitivity. Unfortunately,

some organizations may lack a full understanding of the purposes of an executive session and how to hold one. They may also have negative connotations arising from the types of topics generally reserved for executive sessions. As a result, organizations sometimes disfavor the use of executive sessions, only use them in rare circumstances, or stop using them altogether.

Executive sessions can be especially helpful in driving board engagement. Often, board or committee members may hesitate to speak their minds on a topic while management is present or while minutes are being taken. Instead of sharing their thoughts while deliberations occur during the meeting, they might only feel comfortable sharing their opinions outside the meeting, often after the board has already taken action. This dynamic deprives the board of that individual's point of view and contributions while deliberating on a decision. Effective use of executive sessions can eliminate that dynamic.

This article highlights the purpose of executive sessions and provides tips governance support professionals can use to ensure their boards are properly utilizing executive sessions.

Reasons for Executive Sessions

Executive sessions are especially useful when the board is discussing items of a sensitive or confidential nature, such as:

- CEO or C-suite personnel decisions
- The CEO's annual evaluation or compensation

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- Removal of a board member
- Meeting with the organization's independent accountant or auditor
- Discussion about highly sensitive strategic decisions (a potential merger, purchase, closure, etc.)

Discussing these kinds of topics in executive session serves many purposes. For example, it:

- Underscores the sensitive nature of the discussion
- Ensures the information is provided only to a limited number of individuals
- Allows board members to ask questions and share their points of view without concern about any direct attribution (depending on how the organization memorializes executive session in the minutes)

→ Special Note

If an organization's bylaws require a specific set of parliamentary procedures to apply to its meetings, then those should be followed when the board or committee holds an executive session. In addition, if an organization is subject to any open public meeting laws (so-called "Sunshine Act" laws) then those laws should be followed when the board holds an executive session as well. Other laws or standards may also apply to the organization that require the board to meet in executive session in certain instances. In those cases, organizations may feel the applicable laws or standards provide sufficient guidance with respect to how to hold and document any executive session. The tips provided in this article do not necessarily comply with those standards, however, and those should be followed when applicable.

Holding Executive Sessions

Being intentional about holding executive sessions can help eliminate negative connotations and confusion as to their proper use. One way to do this is for the board to adopt a policy to provide guidance as to when executive sessions should be used and how they should be conducted. Whether an organization has a policy on the use of executive sessions or not, they should, to the extent possible, be scheduled as part of a meeting's agenda. Approaches vary, but in general, especially for meetings that may occur via videoconferencing, logistical considerations suggest the executive session be the first agenda item as opposed to the last. Consideration should be given

to having executive sessions be scheduled to occur with some periodic frequency. In The Governance Institute's 2021 Biennial Survey of Hospitals and Healthcare Systems, 59 percent of boards reported having scheduled executive sessions, with 66 percent of those respondents saying they are scheduled for all or alternating board meetings.¹

If during a meeting, the need for an unscheduled or *ad hoc* executive session becomes evident, the chair must proceed carefully to ensure it is properly undertaken and memorialized. If there is a desire to move the discussion to an *ad hoc* executive session, the chair should first poll the board to ask if there are any objections to doing so. If there are none, the chair could either move the meeting directly into the executive session or wait until after the last agenda item to enter executive session.

→ Key Takeaways for Governance Support Professionals

Governance support professionals whose boards utilize executive sessions, should consider the following:

- Do we have a policy statement regarding the use of executive sessions in our bylaws or board charter? Having a policy can provide guidance and clarity around when executive sessions should be used and how they should be conducted.
- Are we holding executive sessions for the right reasons, and how do we ensure that discussions stay on topic during these sessions (e.g., do we have a set agenda)? It's important that issues discussed at these meetings are limited to the topic at hand.
- How are minutes handled for executive sessions? It is usually unnecessary to take detailed minutes of executive sessions as long as some written record is kept confirming the session was held, its participants, the general topic, and the date, time, location, and duration of the meeting.
- Who attends executive sessions other than board members? What are the expectations of the CEO and the board with respect to whether the CEO attends executive sessions? The board's guidelines for executive sessions should spell out when only board members should be present versus when the CEO (and possibly other staff) can attend.

1 Kathryn Peisert and Kayla Wagner, *Advancing Governance for a New Future of Healthcare*, The Governance Institute's 2021 Biennial Survey of Hospitals and Healthcare Systems.

Whether scheduled or unscheduled, the chair begins the executive session the same way—by asking all of those in the meeting who are not members of the board to excuse themselves so the board can move to executive session. While approaches vary, including the CEO in the executive session, unless there is a good reason for excluding him/her, will help dispel any negative connotations about the use of executive sessions, and will foster their use and acceptance within an organization. Once in executive session, the discussions can take place. When they are concluded, the chair should poll the board to ask if there is any objection to leaving the executive session and returning to the regular meeting. Once the board leaves executive session, the chair will call the regular meeting back to order. The meeting is back “on the record” and the minute-taker resumes taking minutes.

→ Recommended Resources:

- [Guidelines for Effective Board Executive Sessions](#)
- [Sample Policy on the Use of Executive Sessions](#)

Last, while approaches vary on this topic, if the intent of the executive session is to give board members the opportunity to have open and frank discussion, taking minutes during executive session or otherwise documenting the specifics of conversation may be contrary to that goal. Thought should be given to having the minutes only reflect that the board entered executive session, the topic or topics it deliberated, and that it then left the session to resume the regular meeting. If the intent of the executive session is to deliberate on an action, the deliberation should occur in executive session, and if action is needed, the board should first leave executive session, invite the minute-taker back, come back on the record, call for a motion, and then vote. The minutes would reflect that the board deliberated on the matter being voted upon in executive session, that a motion was made, a vote taken, and whether the motion passed or not. If the board feels it necessary to hold a vote in executive session, consideration must be given to how to have the minutes reflect such, while balancing the need for confidentiality on the given topic, and how to maintain those minutes in a confidential manner afterward.

With some advance planning and intentional effort, an organization can eliminate concern and confusion around the appropriate use of executive sessions and more effectively use executive session to drive board engagement on important topics of discussion.

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Best Practices for Optimal Board Meeting Participation

By **Tracy Warner**, CEO, *Board Business LLC*

The business of a board is conducted during board meetings. So, it makes sense that the limited time spent in meetings should be optimized to ensure all board members are engaged in meaningful conversations and decision making to advance the mission of the organization. Getting a board together is also expensive when taking into consideration the cost of time to assemble materials and prepare for the meeting; the board's time to prepare for, travel to, and attend; and all the individuals who support the effort to coordinate the details. Given these costs, planning and executing an effective board meeting strategy for optimal participation by all members is particularly important. This article highlights best practices the board chair, individual board members, the CEO, and board support liaisons can all implement to achieve meeting excellence.

Meeting Materials

Materials need to be in the hands of board members (either electronically or in a paper version) at least a week prior to the meeting. If meeting materials are consistently late or incomplete, it is incumbent upon the board chair to discuss the timeline with the CEO and board support liaison to deliver the expectations for timelier delivery.

All board members should fully prepare for each meeting to fulfill the due diligence requirements of their fiduciary duties. Setting the expectation for board members to read the meeting materials in advance allows more time for dialogue at the meeting so it becomes an active session focused on strategy and the future rather than a regurgitation of past activities. Board members will be re-energized by the fact that they are spending less time passively listening to informational reports and more time truly contributing to the organization.

Seating Arrangements

The physical setup of the meeting plays an important part in maximum participation. Ideally, the room should be set with a conference table that seats all board members and the CEO. Members of senior leadership should also attend and, if possible, be seated at the board table. Interacting with directors on a regular basis gives the

executive team the opportunity to understand the board’s perspective and to directly hear board discussion and rationale for decision making. The board benefits from senior leadership presence when questions arise regarding specific areas of expertise and assures them of knowledgeable and confident leadership.

Too frequently board members sit in the same location at every meeting. This action often results in the development of stronger relationships with adjacent members. To ensure this doesn’t happen, have the board support liaison place name cards at different seats at each meeting. By changing the seating, directors are randomly placed next to other people, which can bring new perspectives stemming from a wider variety of interactions.

Meeting Agenda

The adoption of a timed agenda is a governance best practice. Adding times, along with a statement indicating the schedule is approximate, informs all individuals of the time to be dedicated to an item. It is incumbent on the board chair to keep items within the allotted timeframe. To accomplish this task, the chairperson controls the meeting in a way that allows for fairness in the discussion so that no one person dominates. This approach requires all board members to understand the rules of engagement previously decided upon, such as no interruptions and no inappropriate remarks to add to the length of the discussion. Further, the board chair does not allow a director to speak a second time until all members have spoken. The chairperson calls on each member to share their perspective and to draw out those individuals that are traditionally silent. To support quieter board members, the chairperson can contact less vocal members prior to a meeting asking them to be prepared to speak about a particular agenda item. This practice allows time to study an issue, formulate input, and prepare a response without being placed “on the spot.”

The CEO and board leadership should work collaboratively to develop agendas that are engaging while still meeting the board’s duty of oversight. A consent agenda can be used to approve multiple items with one motion. The board will need a policy that identifies the specific items to be collectively approved and the process for moving items out of the consent agenda for additional discussion if requested by any director. Information-only items on the agenda should be limited. Other methods of communicating updates and reports not requiring board action should be utilized. A good best practice is regular CEO communication between meetings to inform directors about activities and events, general updates, and success toward achievement of strategic objectives.

Finally, the agenda must clearly indicate if an item is for discussion or requires action. Major initiatives can be introduced at one meeting, followed by questions to board members after framing the issue, and presentation of alternatives and the pros and cons of each potential solution. Active deliberation, debate, and action, if any, is taken at the following meeting. This approach allows board members to process the implications of major organizational decisions and gives them the ability to actively discuss strategic issues after contemplation, resulting in a much more rewarding governance experience.

Virtual Meetings

While in-person meetings are preferred, some boards are still offering a virtual option due to board members' locations, preferences, or comfort levels. To ensure productive interactions and guarantee optimal meeting operations take the following actions when joining virtually:

- Before joining a meeting, verify you have the most recent version of the software. Test your system before the meeting begins.
- Mute the sound and turn off the camera when entering a meeting room.
- Adjust the camera to ensure your face is proportioned on the screen. Eyes should be in the top third of the picture.
- Look at the camera when speaking so viewers get the impression that you are looking them in the eye, like a face-to-face conversation. When other participants talk, look at them on the screen.
- Use a headset or ear buds to achieve optimal sound quality—for both talking and hearing others.
- Use the platform's chat box to comment on the discussion or the raise hand feature to signal to the board chair that you would like to speak.

Meeting Time

It is worth emphasizing that boards make critical decisions about a hospital's future affecting the lives of the community it serves and the livelihood of its employees and their families. All board members must stay focused on the business of the meeting and be fully present. This means avoiding checking email and using a cell phone or being distracted by any other activity not critical to the discussion.

The planning of meeting time, frequency, and length are key factors in optimal participation by directors. Poll the group to determine the best options for the board. A board with a higher percentage of working members may want to meet early in the morning or during the lunch hour. Members with children may want to avoid evening meetings. According to The Governance Institute's 2021 Biennial Survey of Hospitals and Healthcare Systems, most boards (54 percent) meet from 10 to 12 times per year. Meeting duration tends to be less than four hours—54 percent of respondents meet for two to four hours and 37 percent meet for less than two hours.¹ Meetings that are too long, too frequent, and at inopportune times lead to less participation and diminished

→ Key Takeaways for Governance Support Professionals

- Send meeting materials to the board at least a week prior to the meeting so they have enough time to prepare.
- Set an expectation that board members thoroughly read all materials ahead of time and come to meetings ready for discussion; meeting materials should not be rehashed and time listening to informational reports should be limited.
- Ensure that board seating is optimal at board meetings, with all board members and the CEO (and ideally the members of senior leadership who are in attendance) at one table. Place name cards at different seats each meeting to increase their interaction with a variety of directors.
- Work with the CEO and board chair to create meaningful agendas that have time limits for each topic, clearly indicate if an item is for discussion or requires action, and allow for robust, strategic conversations.
- Reevaluate what meeting length and time is best for the board. If needed, poll the group to help determine the best options. Meetings that are too long, too frequent, and at inopportune times lead to less participation and diminished engagement by directors.
- Plan social time before or after some of the meetings so that the board and senior leaders in attendance can get to know and better understand each other.
- Conduct post-meeting evaluations so everyone has a chance to provide feedback. Use the information gathered to make adjustments and improve future meetings.

1 Kathryn Peisert and Kayla Wagner, *Advancing Governance for a New Future of Healthcare*, The Governance Institute's 2021 Biennial Survey of Hospitals and Healthcare Systems.

engagement by directors. On the flip side, meetings that are too short do not allow for enough time for deep, strategic-level discussions.

It is a good idea to build in social time when directors come together for a meeting. Adding a meal before or after allows informal interaction among board members and with senior leaders and medical staff. These conversations create and build valuable bonds and allow directors to learn the decision-making styles of fellow board members.

After the Meeting

The CEO can reinforce optimal board participation by recognizing individual directors for their input. A personal note to a board member following a meeting highlighting a specific contribution goes a long way towards repeat behavior.

Use a post-meeting evaluation to collect immediate perception from board members about the meeting value and how the time was used. The results of the brief survey, including questions about meeting preparation, quality of discussion, meeting leadership, and board–staff interaction, are reviewed by the board chair/governance committee and the CEO to make future meeting adjustments. Incorporating feedback from directors relays the message that their opinion is important, which also helps optimize participation.

Incorporating these techniques into practice brings a more efficient and effective meeting structure to engage directors who will in turn respond with increased engagement. The outcome of this change is greater use of board members' knowledge and perspective to make more optimal decisions for the sustainability of the organization.

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