Governance Notes

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What's Inside:

Minimizing Governance Disruptions Due to a New CEO

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When a new CEO takes charge, a new dynamic inevitably will replace the one that existed between the board and the previous CEO. A new leader from outside the organization likely will have had a different working relationship with his or her board than that of the outgoing CEO and the board of your health system. As both parties seek to build a strong working relationship, longstanding governance processes may be challenged or require modification. How can governance support professionals help to minimize unproductive disruptions in board processes during the transition?

"An ounce of prevention is worth a pound of cure" applies here. By planning ahead, many potential governance disruptions can be avoided, minimized, or mitigated. Seemingly small actions taken prior to and during both the recruiting process and CEO onboarding can yield positive results over the next 12–18 months.

Before and During the CEO Recruiting Process

A smooth, successful CEO transition with limited governance disruption starts before the recruiting process commences. At this point the board should:

- **Make sure it is already "the best it can be."** Build on the results of a recent board self-assessment and/or compare your board to established governance best practices to identify changes that can be implemented even before the search for a new CEO begins. Consider the question, "If we could make only one or two changes to improve our board's effectiveness, what would they be?"
- **Before recruiting, clarify what the board is looking for in its relationship with a new CEO.** Being as specific as possible, consider:

» What do we need from a CEO to help us be as effective as possible in governing?
» What do we as a board bring of value to the organization that we need a new CEO to value?
» What are the three most important things we want the new CEO to accomplish in his/her first year?
» Are we (really) open to changes in our governance structure or processes a new CEO might suggest—and why or why not? And if "yes," when?

During the formal CEO interview process, ensure that you integrate questions specifically related to the board–CEO relationship:

- **Ask candidates about their preferred working relationship with the board.** For example, what information does the CEO need from the board to do the best job he/she can, or what behavior from the board would best enable a trusting relationship at board meetings, between board meeting, and in one-on-one meetings?[1]

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During the CEO Onboarding Process

Governance support professionals, the board chair, and the overall board each can and should play a critical role in facilitating a CEO transition with minimum disruption to governance processes.

Governance support can play a uniquely helpful role:

- You can serve as a historian and cultural translator for the new CEO. All governance evolves and understanding why the board operates as it does is as helpful to a new CEO as understanding how it operates today.
- As a facilitator of activities between the board and management and as someone who knows the styles and personalities of individual directors, you may be able to identify early warning signs of discomfort within the board that should be addressed before they become magnified.
- Ensure that the CEO is aware of what communication approaches have worked best with the board and with specific committee chairs in the past (e.g., preferred communication between meetings, level of detail in the CEO report, regular convenings of the committee chairs, and soliciting input for the board agenda).

The board chair should be the primary board contact for the new CEO and be prepared to devote considerable time to CEO onboarding. With governance support, the chair should:

1 Dan Ciampa, "After the Handshake: Inside One CEO's Transition," *Harvard Business Review*, December 2016; pages 66–68.

- Encourage and welcome feedback about the CEO transition during board meeting executive sessions or one-on-ones with the chair, while reminding board members of the confidentiality of board-related discussions.
- Provide regular, candid feedback to the CEO regarding how the board is experiencing this leadership transition. Work collaboratively with the CEO to identify any changes to help achieve a board–management relationship characterized by mutual respect, trust, and open communication.
- Remind the board that the new CEO—despite his or her many talents—is not a mind reader. The board must clearly communicate its expectations to the CEO. While the board may have developed an effective shorthand communication style with its former CEO, this style is likely too cryptic to work well at the outset with a new CEO.
- Identify any proposed changes in governance processes that may need to be accelerated or slowed down.
- Arrange for the CEO, along with key board leaders as appropriate, to meet and develop strategically important connections, both internally (e.g., staff and physicians) and externally (e.g., community leaders).

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The board as a whole plays key roles in minimizing governance disruptions during the CEO transition. Specifically, the board should:

- Avoid burdening the new CEO with baggage from the prior CEO. Even if members had lost confidence in the last CEO, the board must not micromanage or second-guess every decision or change the new CEO makes.
- Be clear on the protocol for board members interacting with senior managers. While board committee chairs typically work directly with senior management (e.g., the finance committee chair with the CFO), whether, when, and how individual board members should contact senior management directly varies by CEO and board, with most organizations expecting that, outside that for committee work, regular board member communications with managers go through the CEO.
- Adhere to existing governance processes and policies and when the board believes a change is needed, request through the chair that the governance committee review and recommend any changes.

Recruiting, hiring, evaluating, and—when warranted—firing a CEO are among the primary responsibilities of any board. Planning for thoughtful CEO recruiting and onboarding processes can help organizations enhance board functioning and identify potential roadblocks to success. Governance support professionals can play pivotal roles, both by anticipating potential disruptions in governance processes well in advance and by helping board leaders identify strategies to mitigate and manage these distractions. Working together, the board chair, governance support staff, and the CEO can make this transition a smoother and less stressful one for the board.

Key Takeaways

- Many potential governance disruptions can be avoided or mitigated if identified early—even before formal recruiting starts.
- Governance support professionals can play a unique role in serving as a board historian and cultural translator for the new CEO and identifying "early warning signs" of potential disruptions to governance processes.
- The board chair will need to spend more time than usual during new CEO onboarding and should provide regular, candid feedback to the CEO regarding how the board is experiencing the leadership transition.
- It is critical that the board not burden the new CEO with any baggage from its relationship with a prior CEO.

TGI thanks Marian C. Jennings, M.B.A., President, M. Jennings Consulting, and Governance Institute Advisor, for contributing this article. She can be reached at mjennings@mjenningsconsulting.com.

Practical Guidance Regarding Conflict-of-Interest Oversight

By Anne M. Murphy, Partner, *ArentFox Schiff, LLP*

There is no shortage of literature as to the fiduciary underpinnings for actual and potential conflicts of interest (COI) in the healthcare sector. Less prevalent, however, is practical guidance for hospital and health system governing boards, and the professionals that support them, regarding a concrete strategy for the board to work with staff to create an effective governance system for COI oversight. This article provides an overview of one such strategy.

Invest in Detailed COI Policies and Robust Staffing to Support the Board's Oversight Responsibilities

Healthcare organizations face potential and actual COI among varying constituency groups of individuals, including directors, senior management, significant donors, clinicians, researchers, vendors, and faculty members. Moreover, the board must be attuned to situations in which the organization itself is at risk of acting contrary to its mission or purpose, through investment strategy, potential affiliation, or contractual relationships. And, of course, in a complex healthcare system environment, various entities within the system, such as parent entities, hospital entities, accountable care organization entities, physician entities, and others—and their respective boards—may have actual or potential conflicts with each other that need to be managed.

In this climate, it is wise to assume that a hospital or health system board will be able to responsibly oversee an effective COI program, only with development of detailed and customized draft COI and related disclosure policies by staff, combined with significant staff support for the disclosure and review process. With limited time to devote to the wide array of governance tasks requiring the board's attention, a well-defined partnership between staff and the board is essential to facilitating the board's COI oversight.

In covering essential compliance and board support functions such as effective COI management, it is imperative to have ample staff resources.

Identify a staff team responsible for supporting COI management. It goes without saying that hospital administrative staff are stretched thin. In covering essential compliance and board support functions such as effective COI management, however, it is imperative to have ample staff resources. The following strategies may prove helpful:

- Identify a core team of staff, including board office and compliance professionals, to lead the staffing of COI management (a "COI staff team"), with input or direct participation from the Office of General Counsel and, possibly, the CEO.

- Charge the COI staff team with development and updating of draft COI policies covering various constituencies within the system, for eventual presentation to and approval by the board (see discussion below).
- Afford the COI staff team the ability to evaluate tools for improved COI management efficiency, such as software-based COI reporting and monitoring, and formation of staff-driven committees to evaluate certain forms of COI. These staff-driven committees, for example, can be especially useful in vetting and resolving management of certain COI categories involving clinicians, subject to board oversight.
- Through the CEO, make clear throughout the enterprise that the COI staff team is empowered to assume these responsibilities.

Create a strong interface between the COI staff team and the board. The COI staff team should be thought of as enhancing the effectiveness of the organization, under the board's direction, as to COI management. As a result, the COI staff team needs to have a clear means of interfacing directly with the board, likely through the board committee charged with COI oversight. The COI staff team should periodically meet directly with this board committee to discuss matters such as adequacy of current COI policies, effectiveness of COI oversight and disclosures, perceived need for additional COI staffing and resources, and particular COI concerns that staff or the board may be experiencing. Within this, it would be appropriate to discuss periodic auditing of the COI process, and those actual or potential COI situations that the board should directly assess in detail.

Carefully Consider How Governance Oversight of the COI Process Will Be Deployed

As summarized above, one piece of the equation for effective board oversight of the COI management process is sufficient staffing, which should be well-organized and funded to carry out clearly defined COI responsibilities under the direction of the board or one of its committees. Using the COI staff team approach, a board should be prepared to have a committee that is clearly charged with robust and well-organized COI oversight that is conveyed to the COI staff team. In regular meetings with the COI staff team (or the team's leadership), the board committee could provide direction around COI matters, including the following:

- **Board approval of draft COI policies, including disclosure schedules and forms.** Working with the COI staff team, the board should assess whether additional COI policies should be developed or whether current policies need to be amended.[1] Within this, confirm that the organization is using the Open Payments Web site developed by the Centers for Medicare & Medicaid Services.[2]

1 A number of resources are publicly available to assist in this effort. See, for example, Mayo Clinic Governance Resources at www.mayoclinic.org/about-mayo-clinic/governance/conflict-of-interest.

2 See https://openpaymentsdata.cms.gov.

- **Clear assignment of COI oversight to a board committee.** A standing committee of the board, with authority to act on behalf of the board, should be charged with COI oversight. In some organizations, this is the compliance committee; in others, it is a dedicated COI committee. This board committee will be responsible for bringing certain critical COI matters before the entire board.
- **Action through the board committee to directly oversee COI management.** The board committee should give clear direction to the COI staff team as to which actual or potential conflicts can be addressed and managed by the COI staff team under the board's written direction via policies (which may entail staff committees), and which such conflicts must be brought directly to the board for discussion and resolution. Those COI situations likely requiring direct board input and resolution would include directors, senior management team members, major donors, key clinicians or researchers, and organizational conflicts.
- **Board assurance of adequate COI resources and reporting.** The board and committee responsible for COI oversight should ensure that the COI staff team has adequate staff, software, and financial resources, and that this team has clear direction from the board as to COI policy development, COI vetting and resolution at the staff level, those COI situations that must come to the board for direct board resolution, and the preferred board approach to auditing COI compliance.

Conclusion

Boards, and the staff that supports them, should have a very clear and detailed understanding as to COI management for the organization. One strategy for COI management is to create a COI staff team that is empowered to act on behalf of the board, under the board's oversight and direction, in very concrete ways. Within this structure, the board can give clear direction as to when, and how, certain identified COI matters must be brought directly to the board for resolution.

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