

Governance during an Era of Political and Cultural Polarization

By Anne M. Murphy, ArentFox Schiff, LLP

The United States, as it heads into the 2024 presidential election cycle, is experiencing an unprecedented degree of political and cultural polarization. For hospitals and health systems, this polarization impacts numerous organizational levels, including community relations, workforce management, policy and advocacy, executive management, and governing board process. At the governance level, health sector provider organizations inevitably must address hot-button issues such as reproductive and gender orientation healthcare services, vaccination policy and COVID mitigation strategies, treatment of undocumented individuals, extent of involvement in entitlement programs and delivery of healthcare to uninsured individuals, the extent to

There should be agreement that external politics and partisanship should be kept out of board dynamics and decision making, but with an awareness that hot-button issues will require board and management attention and consideration.

which diversity, equity, and inclusion (DE&I) considerations are embedded within the organization's culture, and potentially gun safety considerations related to worker and patient safety concerns. While these issues are inherently challenging, governing boards will be well served to focus on objective, mission-driven approaches that diligently avoid partisanship in the boardroom.

External Political and Cultural Issues That Create Potential Polarization Concerns

As a hospital or health system governing board evaluates best practices during the upcoming presidential election cycle and, more generally, during an era of political and cultural polarization, it should acknowledge and assess those highly charged issues that inevitably must be addressed, including:

- **Reproductive healthcare services:** It almost goes without saying that, in

a post *Roe v. Wade* era and with varied state legislative and legal actions and continued uncertainty as to federal law and policy, hospitals must grapple with complex legal and policy questions as to scope of permitted reproductive health services. These services potentially include abortion, birth control, and assistive reproductive services such as IVF and related embryo storage and policy. Boards must provide diligent, competent, objective, and nuanced oversight, taking into consideration the organization's best interest, purpose, and relevant law. For a religious-sponsored organization, purpose and mission factors will be different than for a non-secular organization. Because the law on this topic is rapidly evolving, the board should regularly revisit it and receive competent legal advice.

- **Gender confirmation and LGBTQ services and policy:** Organizations providing gender confirmation services and surgery may experience enhanced external and internal criticism and scrutiny. Similarly, issues related to healthcare services, and cultural inclusiveness, for LGBTQ patients and employees may serve as a flash point. As with the case for reproductive healthcare services, the board should keep its focus on mission-driven and objective organizational criteria, perhaps with ancillary attention as to the proper extent of focus on DE&I initiatives within the enterprise.
- **End-of-life care:** As the U.S. population ages, end-of-life care continues to evolve. More widespread use of hospice services and hospital-in-the-home care, for example, has increased acceptance of palliative care at end of life. While perhaps less of a hot-button issue currently than reproductive, gender confirmation, and LGBTQ-focused healthcare, boards nevertheless should be aware of innovations in end-of-life care being deployed by the organization and be prepared to address any community or other external questions that may arise.
- **Communicable disease management and vaccination policy:** As the last several years have made clear, one area of political and cultural polarization impacting healthcare delivery is hospital vaccination, masking, and other communicable disease management policies affecting patients, visitors, and employees. Governing boards, management, and clinical leadership

KEY BOARD TAKEAWAYS

- **Consider application of fiduciary duties** during the presidential election cycle and related political and cultural polarization. Senior board and management leadership should meet on this topic and consider meetings with the broader governance and management teams to heighten awareness regarding possible issues that might arise.
- **Take measures to ensure that partisanship does not impact governance** or senior management in overseeing the mission and operations of the healthcare enterprise.
- **Spend time addressing "hot button" issues** in healthcare delivery that may require attention in this climate, such as reproductive healthcare, gender confirmation and LGBTQ services and policies, end-of-life care, communicable disease management policies, and application of security and violence prevention measures designed to protect patients, visitors, and employees.

should have principled dialogue regarding these issues as circumstances warrant, taking into consideration a variety of factors such as clinical data, government policy mandates and recommendations, and prevailing practice.

- **Patient and employee security considerations, including violence prevention:** An unfortunate fact of life in public spaces such as hospitals is the potential for violence. In recent years, there have been numerous instances of violence impacting clinicians, patients, and employees in hospitals and other healthcare settings. Many hospitals have policies prohibiting guns and other weapons on hospital grounds, and other security protocols are commonplace. Governing boards should have a thorough understanding of violence prevention strategies deployed by the healthcare facilities they oversee, recognizing that the potential for gun and other violence may be increasing in certain communities and in relation to the delivery of polarizing services such as in the area of reproductive healthcare.
- **Extent of service delivery to uninsured and Medicaid patients:** For non-profit hospitals and health systems, a key mission focus, and purpose mandate, has been delivery of

healthcare to medically underserved populations, including uninsured individuals without ample resources and Medicaid beneficiaries. At the governance and senior management level, these issues demand continued attention across reimbursement, financial, and policy metrics, keeping in mind legal and mission mandates. Within this, it is important to recognize external political and cultural polarization around illegal and undocumented immigrants, particularly heading into the presidential election cycle.

- **Government stance on competition in healthcare:** While perhaps less of a widespread cultural concern, federal and state efforts to prioritize competition in healthcare services, particularly among hospitals, has impeded hospital consolidation efforts in a number of cases over the last several years. As health policy issues are brought into higher relief during the presidential election cycle, boards should monitor this issue for trends and possible opportunities.

Recommended Governing Board Actions

The north star for any governing board is the exercise of its fiduciary duties in accordance with the entity's mission and purpose as expressed in its organizational documents. Pursuant to the duties of diligence, loyalty, and obedience, the board is charged with diligently addressing difficult issues, including those challenging considerations outlined above, with diligence, adherence to the organization's purpose and best interest, and without the influence of individual board member personal interests. Considering this, boards should

contemplate the following steps:

- **Board and management leadership meeting:** Board and management leadership should consider meeting to discuss election cycle and polarization issues, likely as a precursor to follow-up meetings with the board and the management teams. At a high level, there should be agreement that external politics and partisanship should be kept out of board dynamics and decision making, but with an awareness that hot-button issues will require board and management attention and consideration. Similarly, there should be a candid discussion as to whether there are any problematic partisanship issues at the executive level that are adversely impacting organizational policy or decision making.
- **Board and management team meetings:** After leadership alignment, a dedicated discussion at the governing board, and with hospital management, should be considered. Ample time for these meetings should be allotted, in order to explain the issues that may arise and the preferred enterprise approach for handling them. The topics that might be discussed include:
 - » Fiduciary expectations including expectations that partisan politics will not be part of governance or management decision making or discussion.
 - » Acknowledgement of hot-button polarizing issues affecting governance and operations with an opportunity for questions and concerns to be expressed.
 - » A refresher on external communications policy, and constraints on political activity by directors and executives, to ensure a shared understanding of protocol.

- » Agreement on policy topics to be monitored closely in light of the volatile external climate, and any adjustment to strategic planning efforts precipitated by that volatility.
- » Consider requesting that the communications team be prepared to address any emergent issues that may arise.
- » Consider requesting that executive leadership formulate a plan for addressing any workforce relationship issues that may be raised by the hot-button issues identified above, especially DE&I initiatives, workforce safety and security concerns, vaccination policy, and delivery of reproductive and gender confirmation health services. If the organization has union employees, this should be factored into the strategy.

Conclusion

Governing boards, with involvement from executive leadership, should consider the impact that the presidential election cycle and volatile external political and cultural climate may have on hospital strategy and operations. It is important that leadership be oriented to proper governance and management decision-making priorities that are insulated from partisan politics and be prepared for hot-button challenges that may arise in areas such as scope of healthcare service delivery, DE&I implementation, violence prevention, infectious disease management, and workforce concerns.

The Governance Institute thanks Anne M. Murphy, Partner, ArentFox Schiff, LLP, for contributing this article. She can be reached at anne.murphy@afslaw.com.