



Striking a Balance

Is your board too aggressive? Not active enough? We look at potential problems with both and how to get board governance just right.

Healthcare facilities struggle when their boards are too active or too passive. Striking the appropriate balance between the extremes is an ongoing challenge, but management can play a key role in educating trustees of their role. The following principles of board governance should provide a guide.

The board is the ultimate authority in the organization – it defines the organization’s mission and approves major decisions. With that authority comes accountability and a duty to act in good faith. Therefore, being a trustee is not a passive position – it requires action.

Passive boards, with perfunctory meetings are not uncommon. One extreme example is a board that reads committee reports word for word without holding discussions; the board simply approved all minutes as presented. The meetings became social events and the hospital ultimately failed when serious problems arose, problems a properly functioning board would have addressed.

A board that is too involved in daily activities is no better. The board should not be directly engaged in active management roles. The board selects the CEO, who in turn selects the management team. The board then holds management accountable for the facility’s operations, and management is empowered to make changes when needed. This needs to be distinguished from board members who involve themselves in the daily operations of the organization.

In a recent hospital turnaround, the immediate issue that needed to be addressed was the inappropriate role that board members had taken in the operations of the facility. For one, they reviewed all contracts and virtually every decision made by the CEO. Another problem, referred to as the “walking-the-halls syndrome,” involved trustees interacting directly with employees at all levels.

They routinely walked the halls and talked to employees after meetings. The employees knew they had the ear of the board members and turned to trustees instead of their supervisors to express grievances. This undermined management’s authority and resulted in board members resolving problems outside the boardroom and in a manner inconsistent with hospital policies.

Initially, a decision was made to invoke a rule that trustees were prohibited from walking through the hospital unless they were accompanied by the hospital CEO or a designee. Ultimately, it was decided not to denigrate

the entire board by imposing such a rule, but to educate trustees of their proper role.

Of course, there are always outliers, and failure to effectively deal with them exacerbates the problem. The best approach is to have a meeting between the chairman, the “problem child” and at least one other person. It drives home the point that the board and management take the matter seriously and avoids any he said/she said problems if the outlier claims hearing a different message. If that is unsuccessful, the next step could be to bring the person in front of a committee. If that doesn’t work, corrective action should be taken.

Obviously, there are political considerations at times. The trustee might be a large donor or a person who was brought on the board for their expertise or connections. While this may require delicate handling, it doesn’t mean bad behavior should be tolerated. A board should never assume the role of enabler for bad behavior of its board members, no matter who they are.

The problem with most healthcare facility bylaws when it comes to disciplinary action against trustees is that there are no remedial steps between the identification of a problem and a vote to remove the trustee. There is a real need for intermediary steps. For example, when a problem is identified, it should be referred to a committee for review. If the trustee needs to be spoken to, it begins with the chairman and another officer. If that doesn’t work, the individual could be brought before the executive committee. If further action is required, the governance committee should make a recommendation to the board such as remedial education, suspension, or termination.

The organizational bylaws need to clearly define the process of intervention and education so that a trustee has the opportunity to change before the “nuclear option” is exercised. For healthcare facilities to succeed, they need proper education for their boards on a regular basis. Most board members who act outside their role do so innocently; they were never taught the proper role of a trustee. The same generally holds true for passive trustees; they generally do not understand their role and responsibilities. With proper education, a board will find that delicate balance necessary for success. +

Todd Brower is a member of the health law practice at Brach Eichler LLC, based in Roseland, NJ. Contact him at tbrower@bracheichler.com.