



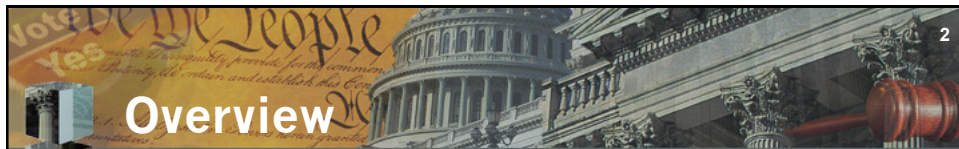
The Buck Stops With The Board: What Your Board Needs To Know About Quality Of Care

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Overview

- The Legal Responsibilities of the Board of Directors
- The OIG/AHLA Publication, "Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards"
- Recommendations Regarding Quality in the Context of Corporate Compliance

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Legal Responsibilities of Board Members

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The Legal Responsibilities of the Board

Background

- In healthcare, membership on nonprofit boards brings with it the responsibility for board members to oversee the operations of the organization they serve to safeguard its mission, values and assets
- Corporate scandals, such as Enron, WorldCom, and Allegheny Health and Educational Research Foundation (AHERF) have raised the public awareness of the role of corporate boards for both nonprofit and for-profit corporations
- Enactment of Sarbanes-Oxley in 2002 has added to the long-standing legal principals guiding the actions of nonprofit boards
- The complexities of the healthcare industry increases the oversight responsibilities of nonprofit healthcare governance

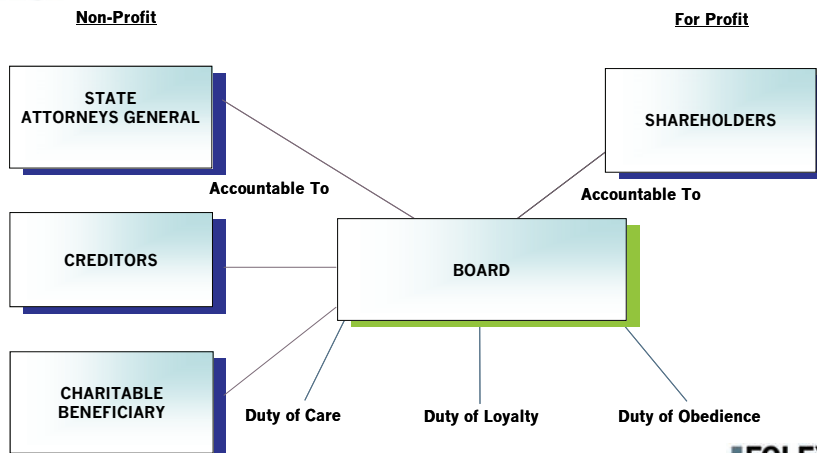
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The Legal Responsibilities of the Board (cont'd)

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Accountabilities of Non-Profit Boards of Directors



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The Legal Responsibilities of the Board (cont'd)

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Duty of Care

- Make Responsible Decisions
- Due Inquiry
- Provide Appropriate Oversight

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The Legal Responsibilities of the Board (cont'd)

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Duty of Loyalty

- Avoid Conflicts of Interest
- Avoid Self-Interest

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The Legal Responsibilities of the Board (cont'd)

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Duty of Obedience

- Honor the corporate mission and purpose
- Comply with the corporate charter and the law

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The OIG/AHLA Publication “Corporate Responsibility & Health Care Quality: a Resource for Health Care Boards”

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The OIG/AHLA Guidance

- Third joint publication addressing the obligations of health care boards
- Addresses the importance of boards overseeing quality as core duty
- 5 substantive areas of discussion; 10 questions for Boards to answer

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The OIG/AHCA Guidance (cont'd)

Board Fiduciary Duty and Quality in the Health Care Setting

Duty of Care

- Decision-making function (ex. medical staff credentialing)
- Oversight function (ex. assessing emerging issues of quality of care, quality data reporting, reimbursement changes)
- Compliance function (“data mining”, pay for performance, enforcement of quality)

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The OIG/AHCA Guidance (cont'd)


Board Fiduciary Duty and Quality in the Health Care Setting (cont'd)

Duty of Obedience

- Quality is core to the corporate mission and purpose
- Organization and function of medical staff is required by law. Legal requirements related to quality are increasing (Example: “Never Events,” COP compliance, etc.)

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The OIG/AHLA Guidance (cont'd)

Defining Quality of Care and the Critical Need to Implement Quality Initiative

- Since the 1999 IOM report "To Err is Human," there has been an increased national focus on quality
- "Crossing the Quality Chasm" -- defined 6 aims for healthcare quality (safe, effective, patient-centered, timely, efficient and equitable)
- The number of quality initiatives in both the private and public sector is increasing exponentially (ex. IHI, Leapfrog, Joint Commission, CMS)
- Quality is also related to cost efficiency
- Strategies to work with physicians around quality are fraught with legal risk

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The OIG/AHLA Guidance (cont'd)

The Government's Role in Enforcing Health Care Quality

- COPs specify that the medical staff is accountable to the Board to monitor quality
- OIG, DOJ and state Attorneys General are working together to enforce quality
- "Data mining"
- The predominant legal theories of enforcement -- medical necessity and "failure of care"
- Penalties can be exorbitant fines, criminal sanctions, exclusion
- Use of CIAs

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The OIG/AHLA Guidance (cont'd)

Health Care Board Fiduciary Duty and Quality

- Health care quality is a key component of mission
- Elevate quality to the same level of fiduciary obligation that financial viability and regulatory compliance currently constitute

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Recommendations

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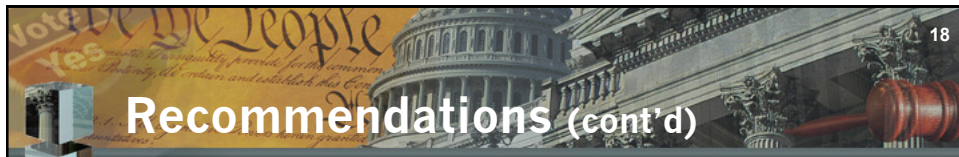
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Recommendations

Quality and Enforcement

- Has there been a systemic failure by management and the Board to address quality issues?
- Has the organization made false reports about quality, or failed to make mandated reports?
- Has the organization profited from ignoring poor quality, or ignoring providers of poor quality?
- Have patients been harmed by poor quality, or given false information?

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Recommendations (cont'd)

Old Structuring Are Not Effective

- Peer review ineffective to drive quality
- Silo approach to quality, peer review and compliance

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Recommendations (cont'd)

Hospital Peer Review and Quality Management

- Historical process is retrospective and based on incidents
- Peer review processes may be lengthy, biased (friends or competitors), and ineffective
- Delays can lead to evidence of a pattern of poor quality or unnecessary care

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Recommendations (cont'd)

What's Needed for the Future?

- Move from case-by-case evaluation ("bad apples") to analysis and use of data
- Structural change
- Process change

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Recommendations (cont'd)

Old Structures – SILO Approach

PEER
REVIEW

QUALITY

RISK

UTILIZATION
REVIEW

COMPLIANCE

BILLING

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Recommendations (cont'd)

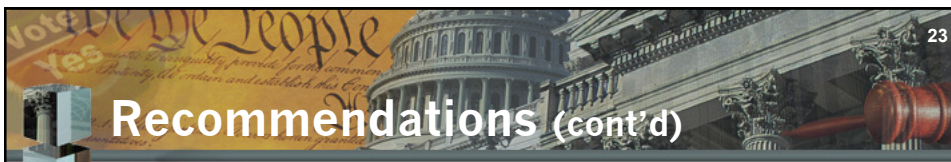
New Structure Needed



- Quality
- Risk
- Utilization Review
- Billing
- Compliance
- Peer Review

Be careful to keep the Privilege!

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Recommendations (cont'd)

Compliance Starts with the Board

- “Getting the Board on Board: Engaging Patient Boards in Quality and Patient Safety” in 32 Joint Commission Journal on Quality and Patient Safety 179-187 (April 2006)
- Interviews conducted with CEOs and Board Chairs at 30 hospitals in 14 states
- “The level of knowledge of landmark IOM quality reports among CEOs and board chairs was remarkably low. . . There were significant differences between the CEOs’ perception of the knowledge of board chairs and the board chairs’ self-perception

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Recommendations (cont'd)

Compliance Starts with the Board (cont'd)

- Governance responsibility for quality-measures and goals
- Increasing board education on quality-part of orientation and board needs to receive regular reports (errors, outcomes)
- Recruiting one or more board members with expertise on quality
- The Board needs to frame an agenda for quality –IHI campaign, Joint Commission quality measures
- Quality planning, cooperation between board and medical staff
- Re-Vamp Peer Review in light of Joint Commission – 2007 Ongoing Professional Practice Evaluation Requirements

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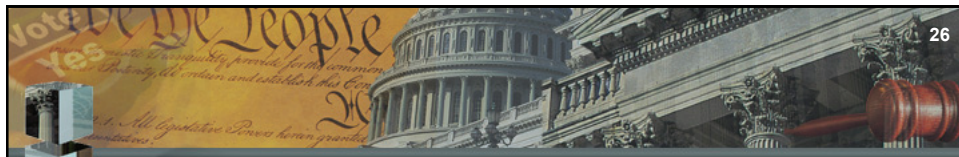
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Recommendations (cont'd)

Compliance Starts with the Board (cont'd)

- Restructure to integrate quality throughout organization and with compliance
- Get a handle on medical necessity
 - Where does compliance come in?

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QUESTIONS?

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