

ACCOUNTABILITY AND TRANSPARENCY

Are Your Corporate Governance Practices Putting You at Risk?

Nonprofit Entity Corporate Governance

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Nonprofit Entity Corporate Governance

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Panelists

- **Susan Short Jones**
Hospital Corporation of America
- **Robert Lepofsky**
Westcliff Capital Group
- **Margaret McKenna**
Experienced director
- **Rick Walsh**
Knob Hill Companies
- **Mark Waxman**
Foley & Lardner LLP

Fiduciary Duties of Nonprofit Directors

- Historic Role of Directors
 - Time, Talent, Treasure
- Statutory Duties of Directors
 - Duty of Care
 - Duty of Loyalty
 - Duty of Obedience
- Evolving Role of Directors

Fiduciary Duties of Nonprofit Directors

- Duty of Care
 - Act in good faith, with the care that a person in a like position would reasonably believe appropriate under similar circumstances, and with a reasonable belief the action is in the best interests of the non-profit
 - Can reasonably rely upon officers, committees, external counsel or consultants
 - Protected from personal liability under the “Business Judgment Rule”

Fiduciary Duties of Nonprofit Directors

- **Duty of Loyalty**
 - Put the best interests of the corporation ahead of personal interests
 - Refrain from acting in bad faith or engaging in self-dealing
 - Disclose conflicts of interest
 - Not disclose confidential information

Fiduciary Duties of Nonprofit Directors

- **Duty of Obedience**
 - Ensure the non-profit seeks to comply with all reporting and regulatory requirements
 - Follow the governing documents of the organization
 - Follow restrictions imposed by donors
 - Faithful to the non-profit's mission

Fiduciary Duties of Nonprofit Directors

- Evolving requirements of boards
 - Engage in strategic planning
 - Oversee financial well-being of non-profit
 - Create and oversee compliance program, including whistleblower protection
 - Provide oversight of CEO, committees, consultants
 - May not rely upon officers, committees, external counsel and consultants if insufficient oversight

Fiduciary Duties of Nonprofit Directors

- Evolving requirements of boards (cont'd)
 - Proper use and oversight of grant funds
 - May lose protection of “Business Judgment Rule” if substantial breach of fiduciary duties
 - Requires a level of recklessness or wilful misconduct

Fiduciary Duties of Nonprofit Directors

How has the evolving role and the evolving fiduciary duty requirements of non-profit directors changed the approach of non-profit directors?

Fiduciary Duties of Nonprofit Directors

- What is the value of joining a non-profit board for directors and management of for-profit entities?

Fiduciary Duties of Nonprofit Directors

- What questions should a potential director ask in evaluating whether to go on a non-profit board?

Fiduciary Duties of Nonprofit Directors

- What are the biggest challenges a non-profit director will face and what are the key elements in reaching a successful outcome?

Fiduciary Duties of Nonprofit Directors

- Examples of challenges
 - Evaluating, contracting with, and exercising oversight of the CEO
 - Ensuring sustainability of the enterprise
 - Overseeing financial performance
 - Forcing a climate of compliance

Fiduciary Duties of Nonprofit Directors

- Examples of challenges (cont'd)
 - Creating board strength
 - Addressing diversity (or the lack thereof) on the board
 - Addressing the role of the community the non-profit serves
 - When is it time to “go to plan B”?
 - Dissolution, affiliation, merger, consolidation

Fiduciary Duties of Nonprofit Directors

- Given the changes in role and commitment of non-profit directors, should they be compensated?

Fiduciary Duties of Nonprofit Directors

Other evolving issues?