

Insights and Commentary from Dentons

The combination of Dentons US and McKenna Long & Aldridge offers our clients access to 1,100 lawyers and professionals in 21 US locations. Clients inside the US benefit from unrivaled access to markets around the world, and international clients benefit from increased strength and reach across the US.

This document was authored by representatives of McKenna Long & Aldridge prior to our combination's launch and continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

Moving Beyond Quality

Growing regulations and enforcement are expanding trustees' oversight responsibilities

By Bill Ide

The environment in which health care boards function has changed dramatically. There is growing scrutiny around reform and a corresponding increase in regulation and enforcement. Amplified distrust in the marketplace and continued governance failings in public companies have led to shifting governance expectations for public and nonprofit entities alike. And with the Internal Revenue Service's Form 990—through which the agency is becoming a regulator of nonprofit entities—nonprofit boards are facing more burdensome demands.

Moreover, health care regulators expect board members to have working knowledge of the complex regulatory schemes in which their entities operate. These reasons highlight why boards must focus on much more than quality of care—maintaining proper governance is an essential obligation of all health care board members today.

To execute their duties effectively, boards must engage in proper oversight of critical areas. The primary oversight responsibilities can be grouped into the following five functional categories:

Talent. Interactive, full-board discussions around succession and talent-development planning for the CEO and senior management are emerging best practices. Boards must demonstrate independence in executive compensa-

tion and evaluation decisions.

Strategy. As oversight duties increase, trustees are taking a more active role in assuring that their entity has a strategic plan that is jointly owned with management. Involvement in this process is achieved best through a meeting or retreat devoted to strategy that not only educates on strategic issues, but also permits trustees to have social time together to build trust and promote collaboration. Such meetings allow boards and management to mutually develop their respective macro and micro roles, which is an invaluable asset when quick decisions must be made by management in response to emerging matters.

Effective strategic plans will take into account the impact of the Affordable Care Act and other statutes that reflect increased industry regulation. While strategic initiatives will vary, effective boards also will make compliance a major component of their strategy.

Compliance. Complying with laws and regulations while simultaneously assuring the highest ethical conduct largely is dependent on a board's commitment to compliance best practices. Further, the government places additional requirements related to compliance on health care entities and expects their boards to be aware of the complex regulatory structures that govern their industry. To maintain a successful com-

pliance program, the board must continually monitor the entity's compliance risk assessments, education and prevention, and detection to ensure that all are working well on an integrated basis.

Risk. As responsibilities increase for trustees, they are expanding their oversight of risk management. The Office of Inspector General specifically requires health care entities to conduct ongoing risk assessment. Best practice is to establish and maintain an enterprise risk-management program with clear allocation of accountability. The board's oversight should ensure that ERM receives appropriate attention from all levels of the entity. The board also should make certain that remedying major risks is discussed by the full board and adopted as a component of the entity's strategic plan.

Governance. Boards should be large enough to accommodate the need for diverse skill sets, resources and experience, and small enough to promote collegiality, flexibility and participation. Some nonprofit boards are decreasing the size of the board and creating a separate board of visitors or advisors. Thus, the board operates more effectively while still involving well-respected advisors who provide access to experience, resources and networking. To this end, it is a best practice for a nominating and governance committee to create a template of needed skills, character attributes and geographic considerations for full-board input and approval. The template then is used to ensure that searches are based on needed skills and required attributes.

Successful implementation of these processes requires that top leaders embrace good governance. Upon joining a board, trustees must be educated on their duties, board processes and obligations, as well as the regulatory environment. Without clear, independent oversight by trustees, good governance cannot exist. **T**

Bill Ide (bide@mckennalong.com) is chairman of The Conference Board Governance Center Advisory Board and serves as independent counsel to boards as part of the McKenna Long & Aldridge Governance Center, Atlanta.