

Ethics in Healthcare Governance

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ETHICS IN HEALTHCARE GOVERNANCE

- Importance of ethics for healthcare trustees
- US Sentencing Guidelines: “the board of directors and executives – set the tone for the rest of the company... [and should have] clearly articulated the company’s ethical standards, conveyed and disseminated them in clear and unambiguous terms, and demonstrated rigorous adherence by example.”
- “The organization’s governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.”



ETHICS IN HEALTHCARE GOVERNANCE

- Legal sources of ethics for trustees:
 - Gov't Boards – state conflict statutes, common law
 - Nonprofit Boards – IRS rules; Tx AG
 - Fiduciary Duties



ETHICS IN HEALTHCARE GOVERNANCE

- Conflicts of Interest (gov't boards):
 - Loc. Gov't Code Ch. 171
 - Loc. Gov't Code Ch. 176
 - Gov't Code Ch. 2252 – disclosure of interested persons
 - Interest in Property
 - Nepotism
 - Incompatibility



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- Conflicts of Interest (nonprofit board):
 - Conflict of Interest policy - protect the exempt organization's interest in transactions or arrangements that may also benefit an officer's or director's private interest



ETHICS IN HEALTHCARE GOVERNANCE

- Fiduciary Duties:
 - Healthcare board members/trustees have a fiduciary or “trust” relationship with the organization
 - Fiduciary duties: Duty of Care, Duty of Loyalty, Duty of Obedience



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“The responsibility of directors is to provide oversight, not manage day to day affairs.” –
US DHHS OIG



ETHICS IN HEALTHCARE GOVERNANCE

- “Decisions made by governmental bodies must be made by the body as a whole.”
Fielding v. Anderson, 911 S.W.2d 858, 864 (Tex. App.—Eastland 1995, writ denied).



ETHICS IN HEALTHCARE GOVERNANCE

- BOARD OVERSIGHT/LIABILITY
- Qualified Immunity/Business Judgment Rule – provides liability protection for boards, when acting within “scope of authority/official duties”
 - "Public officials acting within the scope of their official duties are shielded from civil liability by the qualified immunity doctrine." *Kipps v. Caillier*, 197 F.3d 765 (5th Cir. 1999)
 - “Directors were protected by the business judgment rule unless they... knowingly committed acts outside the scope of their authority.” *Biren v. Equality Emerg. Med. Group* (CA 2002)
 - Scope of authority; Board role v. management role; Bd. v. individual



ETHICS IN HEALTHCARE GOVERNANCE

- BOARD OVERSIGHT/LIABILITY
- Tort Claims Act definition of “employee”
- D&O insurance
- Key areas of potential liability: personnel, medical staff, open meetings



ETHICS IN HEALTHCARE GOVERNANCE

- Public official/public repr.
(community board) -v- fiduciary
obligations
 - How do you reconcile?



ETHICS IN HEALTHCARE GOVERNANCE

- Board member participation
 - Parliamentary procedure
 - First Amendment considerations
 - Public input



ETHICS IN HEALTHCARE GOVERNANCE

- Board's role in personnel matters:
 - Supervising/evaluating CEO
 - Setting executive compensation
 - IRC Section 4958 rebuttable presumption
 - IRS rules on excise tax on executive compensation
 - Compensation surveys
 - Executive session



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- Board's role in personnel matters:
 - Staffing issues
 - Types, amounts of compensation
 - Levels



ETHICS IN HEALTHCARE GOVERNANCE

- Board's role in personnel matters:
 - Individual non-CEO employees
 - Hiring, firing, promoting
 - Complaints, from staff, public



ETHICS IN HEALTHCARE GOVERNANCE

- Board's role in personnel matters:
 - New sexual harassment laws
 - Suits against individuals
 - Settlement with public funds
 - Arbitration
 - Dress code issues



ETHICS IN HEALTHCARE GOVERNANCE

- Gun carry:
 - Employees, others
 - Signage



ETHICS IN HEALTHCARE GOVERNANCE

- Issues after Dobbs decision



ETHICS IN HEALTHCARE GOVERNANCE

- Medical Staff/physician matters
 - MS Bylaws
 - Credentialing
 - Physician contracts/compensation



ETHICS IN HEALTHCARE GOVERNANCE

- Boards and HIPAA
 - Discussing PHI in meetings
 - Responding to complaints/allegations
 - Social Media posts (Shasta)

