

# **New Board Member Recruitment, Orientation and Training**

Wyoming Hospital Association Trustee Education Conference

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# Agenda

- **Recruitment Considerations**
- **Orientation**
  - Basics of service on your board
- **Compliance Training**
  - Key legal topics for new board members

# Recruitment

*I don't want to belong to any club that would accept me as one of its members.*

- Groucho Marx, 1949

# Recruitment

- **Statutory qualifications**
- **Incompatible employment**
- **Competencies**
- **Qualitative characteristics**

# Qualifications of Board Members

- **Hospital Districts:**
  - “Any qualified elector resident in a hospital district” (W.S. 35-2-404(b))
    - Qualified elector – citizen of U.S., bona fide resident of Wyoming, registered to vote, 18 YOA, and not a felon or mentally incompetent (W.S. 22-1-102(a)(xxvi))
  - If divided into trustee districts, candidate must be resident or property owner from the applicable district (W.S. 35-2-437)

# Qualifications of Board Members

- **Memorial Hospitals:**
  - “competent and responsible citizens of the county” appointed by the county commissioners (W.S. 18-8-104(a))
  - No definition of “responsible”
- **Profit/Nonprofit Corporation**
  - Corporate bylaws and articles of incorporation

# Incompatible Employment

- Different than a conflict of interest, which is episodic and remedied through abstention
- Employment by hospital may be inconsistent with trustee office
  - Hospital district employees cannot be trustees (W.S. 35-2-404(b))
  - *Thomas v. Dremmel*, 868 P.2d 263 (1994)
- Employees have right to be a candidate (W.S. 22-26-116) but not the right to serve in both roles

# Board Member Competencies

- Financial analysis and planning
- Community awareness and affiliations
- Board governance
- Human resources
- Customer service and satisfaction
- Clinical knowledge and experience
- Executive leadership and supervision
- Legal and compliance awareness
- Architecture and construction

# Qualitative Characteristics

- **Accountable**
- **Achievement oriented**
- **Change leader**
- **Collaborative**
- **Oriented to community**
- **Influential**
- **Information seeking**
- **Innovative**

# Qualitative Characteristics

- **Manages complexity**
- **Professional**
- **Relational**
- **Strategic**
- **Perceptive of talents of others**
- **Dedicated to growth of the team**
- **Aware of role in the organization**
  - *Competency-Based Governance Tool Kit, AHA Center for Healthcare Governance, 2010*

# Orientation

*In return for their service, board members should expect . . . a proper orientation . . .*

Don L. Arnwine

# “Inside the House” Orientation

- **Mission, Vision and Values**
- **Strategic Plan**
- **Bylaws**
- **Code of Conduct**
- **Board committee roles**
- **Meeting agenda and reports**

# “Inside the House” Orientation

- **Organizational chart and roles**
  - Board supervision of CEO/CEO supervision of staff
- **Compliance**
  - Compliance officer role
  - Reporting mechanisms
- **Quality**
  - Quality officer role
  - Incident reporting to board

# Legal Orientation

- **Board member duties**
- **Board member authority and restriction**
- **Ethics and conflicts of interest**
- **Public meetings**
- **Public documents**

# Board Member Duties

*“ . . . members of the board . . . are fiduciaries and trustees of the public interest . . . ”*

**- Wyoming Supreme Court**

# Fiduciary Duties



- **“Trustee”**
  - Holds or cares for property for benefit of others.
  - One in whom trust is placed.
- **“Fiduciary”**
  - Holds or cares for property of another.
  - Faithful, loyal, true, e.g., fidelity.

# Duty of Care

- **Board members must act –**
  - In good faith
  - With the care that a person in a like position would reasonably believe appropriate under similar circumstances.
    - Take reasonable steps to become informed
    - Make reasonable inquiry where appropriate
    - May rely on officers, committees, or outside professionals if reliance is reasonable.



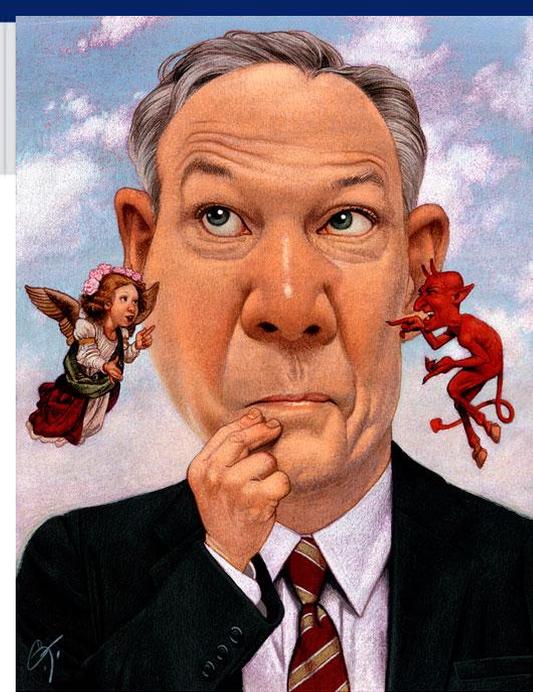
# Duty of Care

- Do not abdicate responsibilities.
- Prepare for meetings.
- Attend and participate in meetings.
- Review relevant info before making decision.
- Ask questions.
- Seek advice from experts, consultants or advisors.
- Document efforts and information in board minutes.
- Exercise independent judgment; do not “rubber stamp” decisions.
- Vote no when necessary.
- Do not act in haste.
- Establish process for requiring and then review periodic reports.
- Establish appropriate committees to address key areas.



# Duty of Loyalty

- Board member must act in a manner the member reasonably believes to be in the best interests of the hospital.
  - Do not use position to gain secret profit or compete with hospital.
  - Do not usurp hospital opportunity.
  - Beware conflict of interest...





# Duty of Obedience

- Board members must act consistent with goals and mission of hospital and in compliance with:
  - Applicable laws.
  - Bylaws.
  - Delegation by board.
- Board members may be liable for *ultra vires* acts, i.e., “beyond powers” or outside scope of authority.
  - Breach of fiduciary duty.
  - Loss of statutory immunity.
  - Loss of directors and officers insurance.

# Duty of Confidentiality

- Do not use or disclose confidential, non-public info obtained in capacity as board member without authorization
- Peer review privilege applies to many board functions, e.g.,
  - Credentialing and peer review
  - Quality improvement
- May waive privilege if make improper disclosures
- May be liable for improper disclosures, e.g., HIPAA penalties, peer review statute, breach of fiduciary duties
- Public entities: just because you can say it doesn't necessarily mean you should...



# Board Member Authority

- Authority to participate in discussion and vote on proposed actions at proper meetings of board or board committees
- No authority outside of a proper meeting
- No authority to speak for/bind entity
- No authority to direct hospital employees
- No authority to intercede on behalf of patients, vendors, employees, etc.

# Conflict of Interest

- **Conflict of Interest = board member (or related person) has a financial interest in matter such that it would reasonably be expected to exert an influence on the member's judgment.**
- **Board members must—**
  - **Avoid conflicts of interest**
  - **Disclose conflict of interest to the Board**
  - **Abstain from participating in any discussion or voting regarding any matter in which member (or related party) has a conflict of interest**

# Conflict of Interest

- **Examples: Board is considering—**
  - Contract with entity owned by member, member’s family, or other related person
  - New service that may affect member or related person for good or bad
  - Credentialing or corrective action against physician who is a partner or competitor
  - Rules or policies that may result in material financial impact on member or related person
- *Test: Is interest such that it would reasonably influence member’s judgment?*

# Ethics and Conflicts

- **“No trustee shall be directly interested financially in any contract, work done or property purchased by the district unless he has made full public disclosure and the board has unanimously approved his financial interest.” (W.S. 22-29-119)**
- **No public official shall use his office or position for private benefit, meaning the receipt of a gift which resulted from holding office (W.S. 9-13-103)**

# Ethics and Conflicts

- **Public official, acting in official capacity, shall not participate regarding a matter relating to the employment or discipline of a family member (W.S. 9-13-104(b))**
- **No use of public funds, time, personnel, facilities or equipment for private benefit unless authorized by law (W.S. 9-13-105(a))**
- **Shall not disseminate official information unless available to general public or otherwise authorized by law (W.S. 9-13-105(c))**

# Ethics and Conflicts

- **Public official shall not make an official decision or vote on an official decision if they have a personal or private interest in the matter, but should abstain only in clear cases when he has:**
  - **An interest which is direct and immediate, not speculative and remote; and,**
  - **Provides a greater benefit or lesser detriment than for a large or substantial group of similarly situated persons**

- W.S. 9-13-106

# Public Records

- **Hospital's process for information requests**
  - Official custodian
- **Need for written request**
- **Breadth of definition “public record” and exclusions**
- **Appropriate use of emails and text messages**

# Public Meetings

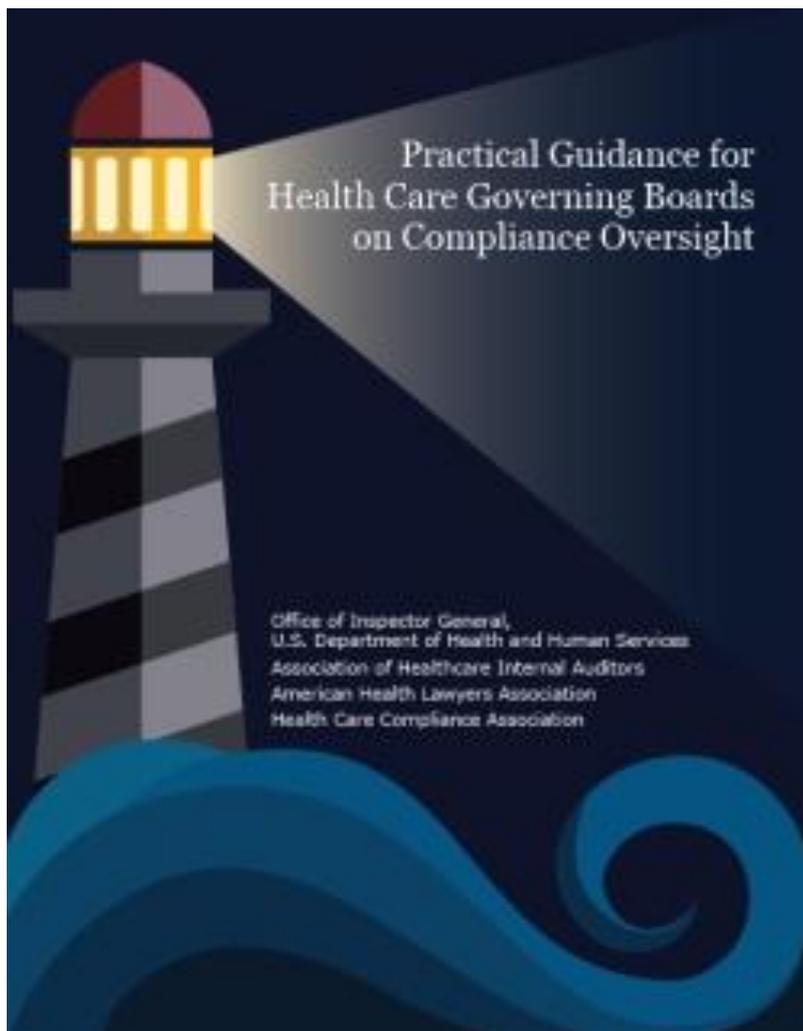
- **Public meeting**
- **Limitations on actions outside of meeting**
- **Prohibition on “sequential” communications in place of meeting**
- **Proper subjects of executive session**
- **Purpose of minutes**

# Compliance Training

*Every effective compliance program necessarily begins with a formal commitment to compliance by the hospital's governing body and senior management.*

- **OIG Supplemental Compliance Program Guidance  
For Hospitals, 1/31/2005**

# Board's Obligation for Compliance



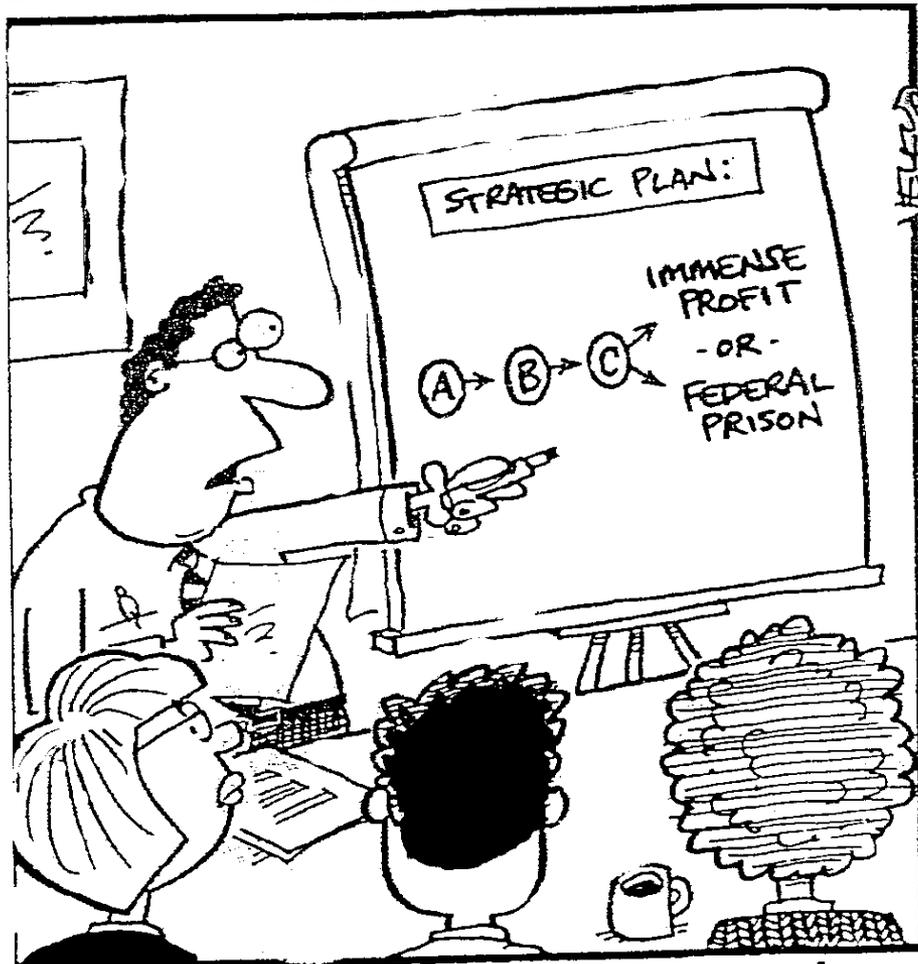
- Published 4/20/15
- Available at <https://oig.hhs.gov/newsroom/news-releases/2015/guidance-release2015.asp>

# Board Compliance Resources

- **OIG Compliance Program Guidance for Hospitals**
  - Original, 63 FR 8987 (2/23/98)
  - Supplemental, 70 FR 4058 (1/27/05)

<http://oig.hhs.gov/fraud/complianceguidance.asp>
- **OIG, *A Toolkit for Health Care Boards* (2012)**
- **OIG/AHLA, *Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors* (2003)**
- **OIG/AHLA, *An Integrated Approach to Corporate Compliance: A Resource for Health Care Board of Directors* (2004)**
- **OIG/AHLA, *Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors* (2007)**
- **OIG/AHLA, *Practical Guidance for Health Care Governance Boards on Compliance Oversight* (2015)**

# Fraud and Abuse Laws



“Stay with me now, people, because in step C, things get a bit delicate.”

- False Claims Act
- Anti-Kickback Statute
- Ethics in Patient Referrals Act (“Stark”)
- Civil Monetary Penalties Law

# Wyoming Fraud and Abuse Laws

- **WY Medical Assistance and Services Act (W.S. 42-4-101 *et seq.*)**
  - False statements of, or failure to disclose, a material fact in providing or obtaining Medicaid services
- **WY Medicaid False Claims Act (W.S. 42-4-301 *et seq.*)**
  - Presentation of false claims, false records, repayment
- **WY criminal statutes for public health law violation**

# Wyoming Fraud and Abuse Laws

- **WY DOH Medicaid Program Integrity Regulations**
  - Fraud, theft or abuse of services
  - Recovery of overpayments
  - Sanctions for violations
- **Hospital employee retaliation protection**
  - WY DOH reporting and investigation
  - Common law retaliatory discharge claim

# Health Insurance Portability and Accountability Act ("HIPAA") (42 CFR part 164)



# HIPAA Privacy and Security Rules

- Health care providers and their business associates must:
  - Protect the privacy of protected health info (“PHI”).
  - Secure patient’s electronic PHI by adopting specified safeguards.
  - Give patients certain rights concerning their PHI.
  - Report breaches of unsecured info within 60 days to:
    - The affected individual.
    - HHS.
    - Local media if breach involves > 500 persons.

# Emergency Treatment and Active Labor Act ("EMTALA") (42 USC 1395dd)



# EMTALA

**Applies to hospitals that participate in Medicare.**

- **If hospital has an emergency dept, hospital must provide emergency care appropriate to patient's condition regardless of patient's ability to pay.**
- **Must maintain list of on-call physicians to provide emergency care.**
- **If hospital has specialized capabilities, hospital must accept transfer of unstabilized person.**
- **Cannot delay exam or treatment to inquire about payment.**
- **Must post signage and retain required documents.**

**Thank You**

**QUESTIONS?**

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