

Compliance Today – March 2020

Training and education: The role that compliance officers play with governing boards

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Not long ago, compliance education for the board wasn't a priority for board members to be considered effective. However, the constant changes within the healthcare industry have created risks and placed governing boards under scrutiny.^[1] Having compliance officers involved in training governing boards and senior executive leaders has become a key principle to reduce risk while improving corporate social responsibility.^[2]

Fiduciary duties

Corporate social responsibility includes educating and training staff and the board in order to provide exceptional healthcare to the community through social purpose. The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) and the American Health Lawyers Association (AHLA), the leading health law educational organization, have developed a resource to assist board directors in carrying out their oversight responsibilities. Typically, the corporate stakeholders lay expectations for the board members on what their fiduciary duties are regarding oversight of the organization.^[3] The attorney general is the enforcer that can take action against a board on their fiduciary shortcomings. All boards have three fiduciary duties.

Duty of care

The directors must take care in allocating the right amount of time in the board's decision-making process. That process includes acting in "good faith with the level of care that an ordinarily prudent person would exercise in like circumstances, and in a manner that they reasonably believe is in the best interest of the corporation."^[4] The board can exercise the duty of care by, for example, making inquiries to management in key roles about the topic under review. The board is not expected to know everything; however, they are expected to seek advisement from key players such as legal counsel, the compliance officer, auditors, and outside advisory councils to make the best decision for the organization. The board also has the responsibility to be educated on high-risk areas and to keep abreast on industry news.

Duty of loyalty

The board members must put the interests of the organization before their own interests. Board members, along with the appropriate executive team, should establish a written conflict-of-interest policy.^[5] The board must disclose all conflicts of interest and maintain the confidentiality and proprietary information of the organization. In addition, nonprofits should have a policy related to vendor relationships and acceptance of gifts by directors, officers, and employees. Such policies are to protect the organization from claims of inducement.

Duty of obedience

The board has a duty of obedience, which means that it needs to understand and follow the organization's Articles of Incorporation, bylaws, the exempt status filed with the Internal Revenue Service, and company policies.¹⁶¹ The board must ensure that the organization is abiding by all applicable laws and regulations and doesn't engage in illegal or unethical activities. The compliance officer should be aware of the governance requirements and keep a checklist to help the board remain knowledgeable and in compliance.

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