

BOARD DUTIES AND BEST PRACTICES



**PRESENTATION –JUNE 26, 20187
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AGENDA

- Role of the Board and Fiduciary Duties
- Basic Functions of a Board
- Common Guiding Principles for Effective Boards



APPLICABLE LAW

Not-for-Profit Corporation Law (“N-PCL”)

- sets out rules for governance of NY NFP organizations
- authorizes NFP’s to implement certain organizational structures/procedures
- articulates the rights and responsibilities of officers, directors and members



THREE DUTIES OF THE DIRECTOR



Responsibility

DUTY OF CARE

“Directors and officers shall discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”

N-PCL Section 717



DUTY OF CARE

- Adopted from for-profit, corporate law
- Corporate standard defers to directors' good faith judgments
- Allows delegation to committees
- Definitive judicial authority applying “business judgment terms rule” to decisions of directors



DIRECTORS MUST:

- Be familiar with important corporate documents
- Monitor finances, directly or through standing committees
- Review corporate books and records
- Regularly attend Board and committee meetings
- Review any written materials disseminated in advance of meetings
- Delegate to qualified professionals tasks requiring specialized expertise

DUTY OF LOYALTY

- Director required to pursue the interests and mission of the organization with undivided allegiance
- Generally, no statutory formulation of duty



DUTY OF OBEDIENCE

Board members must “be faithful to the purposes and goals of the corporation” because “perpetuation of particular activities are central to the raison d’être of the organization.”

The Manhattan Eye, Ear & Throat Hospital v. Spitzer (New York)



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BASIC FUNCTIONS OF A BOARD

- CEO selection, monitoring, compensation
- Long-term strategy
- Budgets and financial plans
- Balancing constituency interests consistent with mission
- Compliance with applicable laws, regulations, policies and ethical standards
- Obtaining resources for operations

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GUIDING PRINCIPLES FOR EFFECTIVE BOARDS

- Stated Goals
 - Understand mission
 - Develop strategy (with management) to carry out mission
 - Monitor and assess management's efforts
- Clear delineation of responsibility between management and board
- Monitoring and measuring performance
- Following the Money
- Determining Board Focus & Information Needs



GUIDING PRINCIPLES FOR EFFECTIVE BOARDS

- Board Size and Composition
- Board Independence
- Board Leadership
- Policies and Guidelines
- Committee Structure and Operations
- Board Health and Evaluation

QUESTIONS



THANK YOU.

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