

Governance Notes

Designed for governance support professionals in the healthcare industry.

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By Marian C. Jennings, M.B.A., President, and Jennifer Swartz, Consultant, M. Jennings Consulting, Inc.

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Enhancing Communication between the Board and Management

By Marian C. Jennings, M.B.A., President, and Jennifer Swartz, Consultant, M. Jennings Consulting, Inc.

Chances are that you've heard the advice many times before: "a key to any relationship is good communication." In a hospital or health system, the relationship between the board and management is no exception. Ideally, this relationship is characterized by trust, mutual respect, and candor. Yet, sometimes this relationship, like any other, can become strained. This article provides three key approaches for building a trusting partnership and enhancing communication between an organization's board and management.

1. Set Clear Expectations

The starting point for fostering effective communication between the board and management is to set clear expectations for the relationship at the outset. While the board has a legal obligation to oversee the CEO's and the hospital/health system's performance, the board should exercise its fiduciary oversight role while working collaboratively with the CEO.

Trust is built brick by brick, and a good starting point is for the board and management to articulate what they want and need from one another. To codify expectations further, consider creating a "compact" between the board and management in which each party "commits" to what it will do to support the other. This can be a natural outcome of the communication mentioned above—once both parties have expressed their wants and needs, they can agree on "what we each commit to" one another. For example, typical board *commitments from management* might include:

- Respect and recognize my right to be heard.
- Respond in a straightforward fashion to questions that I feel are necessary to carry out my fiscal, legal, and moral responsibilities to this organization.
- Work in good faith with me towards achievement of the organization's strategic objectives and goals.
- Provide me information about issues in the industry and field in which we are working, pertinent to the scope of the board's/committee's work.

In turn, management may ask for the following *commitments from board members*:

- Review materials provided to me in advance and come to meetings ready for discussions.



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Communication Do's and Don'ts for the Board

Do's

- Create a board/management “compact” that codifies expectations for and commitments to the other party.
- Use the CEO's performance evaluation as a critical communications link between the board and CEO.
- Use board and committee meetings as effectively as possible by setting agendas before the meeting and providing members with *meaningful* pre-meeting materials well in advance.
- Hold regular telephone meetings between key parties (CEO, board, committee chairs) to open communication channels and focus future meeting discussions.
- Build time for generative discussion (forward-thinking, strategic discussion about the future of the organization) into meeting agendas.
- Incorporate “process checks” at the close of each meeting to ensure that the needs of attendees have been met.
- Cultivate a “culture of communication” throughout the organization.

Don'ts

- Don't encourage board members to bypass the CEO and go directly to other executives (exception: committee chairs who work directly with an executive lead should establish good relationships like that between the chair and CEO).
- Don't hold frequent executive sessions that exclude the CEO where “we can talk freely” unless there is a specific issue about CEO performance/evaluation or a legal issue directly involving the CEO. If there is a specific problem, the chair should solicit input and address it with the CEO, including agreeing on changes or a corrective plan of action and then monitoring progress.
- Don't encourage the game of telephone, with board members calling each other to complain about something. Instead, if a board member has an issue or complaint, he/she should bring it to the chair and ask that the chair address this directly with the CEO—and the board member should get feedback on the resolution.
- Don't expect the CEO/management team to be mind-readers.
- Don't punish the new CEO for a poor/failed relationship with the prior CEO.

- Stay informed about what's going on in the organization and the healthcare industry.
- Ask questions and request information when needed.
- Participate in and take responsibility for making decisions on issues, policies, and other board/committee matters.
- Work in good faith with staff and other directors/committee members as partners towards achievement of our strategic objectives and goals.

In keeping with the board's important oversight role, a primary oversight tool is the CEO performance evaluation process. The CEO's performance evaluation serves as a critical communications link, as it provides the CEO with clarity on what the board expects. This process entails articulating a compensation philosophy, quantifying annual CEO expectations

consistent with the board's long-term vision, regularly monitoring CEO performance and providing feedback at least quarterly, and conducting an annual formal review. Importantly, the performance evaluation—like other communication—should be ongoing, not a “once a year” process.

When setting expectations for the CEO, also remember that both the board and the CEO should be working from the same set of goals as outlined in the organization's strategic plan. Goal alignment must be based upon a solid plan that the board understands and endorses.

2. Maintain Open, Frequent Lines of Communication

Effective organizations take a disciplined approach to opening and maintaining lines of communication between the

board and management. The following are some primary vehicles organizations use to maintain effective communication in their organizations.

First, board and committee meetings should serve as the key communications vehicle. The board meeting is the center of communications and the key to the relationship's success or failure. To make sure meetings support a positive relationship, ensure agendas are well planned—based upon board, committee chair, and management dialogue and structured around discussions, *not* endless presentations. In addition, send pre-meeting information in a format desired to the board or committee at least a week in advance.

Second, hold regularly scheduled calls between the chair and

CEO. These should be one-on-one meetings that go beyond planning the next meeting agenda or discussing an issue that has arisen. This creates the opportunity for ongoing communications and feedback.

Third, it is also helpful to conduct a regular (e.g., quarterly) conference call with the CEO, the board chair, and the committee chairs (five to six people total) to review how effectively committees are running and provide an opportunity for the committee chair to share with the CEO any suggestions he/she has about improvements in how the committee's executive lead could better support the committee. These meetings also will inform the agenda for future board meetings and will allow the CEO to initiate and take corrective action, as needed.

A fourth vehicle for maintaining effective communication is generative, strategic discussion at board meetings. Generative thinking addresses existential questions about the organization; challenges assumptions and conventional wisdom; and is courageous and focused on a future that may be very different from the current environment. In a generative discussion, the organization might ask: Do we agree on what we want our organization to look like in five years? How will we be different? How will we be the same? What does our organization value above all else? Make sure time for generative

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discussion is built into the agenda for all meetings.

Finally, the board and management should incorporate a process check at the end of each meeting asking whether they focused on the right issues, if all members participated, if they provided the right background information, and what additional information/education might help the board better understand the issues. This feedback will help ensure that meetings have met the needs of all attendees and allow all parties to "fine-tune" materials and discussions for future meetings.

3. Create a Culture of Communication

Both the board and management can play fundamental roles in creating and maintaining a culture of communication throughout the organization. In addition to the ideas above, board and management should commit to standards of behavior that enhance the organization's mutual trust and communication.

For instance, agree that neither the board chair nor management will let issues fester. Instead, if something is bothering either party, they will bring up the issue for discussion—rather

than avoid the issue or "hide" behind email.

In addition, board members should agree not to complain to other board members when issues arise but instead to express their concerns to the chair and let him/her communicate with the CEO when warranted. Agree to communicate even when to do so might cause some discomfort; avoiding confrontation may only cause a bigger problem later.

Last, the chair and CEO should create an environment in which it is safe to disagree (e.g., at a board meeting, committee meeting, etc.). Respectful disagreement or requests for additional information should be encouraged, especially around complex issues. Consensus at all points is not the goal.

Communication between any two parties is sometimes difficult and requires discipline. By setting clear expectations, implementing processes that facilitate effective communication, and committing to create a culture of communication, organizations can build and maintain board and management relationships characterized by trust, respect, and candor.

The Governance Institute thanks Marian C. Jennings, President, M. Jennings Consulting, Inc., and Governance Institute Advisor, and Jennifer Swartz, Consultant, M. Jennings Consulting, Inc., for contributing this article. They can be reached at mjennings@mjenningsconsulting.com and jswartz@mjenningsconsulting.com.



Top 10 Governance Trends for Hospitals and Health Systems in 2019

By Michael W. Peregrine, Esq., Partner, McDermott Will & Emery LLP

This article provides governance trends for the remainder of 2019 based on current developments in the healthcare industry:

- 1. Greater engagement:** The incredible pace of industry change will test the capacity and effectiveness of the governing board. Healthcare directors will face increasing board service demands (e.g., preparation, education, attendance, and participation in board activities and oversight). To improve director concentration, boards may limit directors' outside board service, reduce their assignments within the organization, or dismiss oversubscribed directors.
- 2. Enhanced decision-making:** Fiduciary engagement and the need for enhanced decision-making by the board are closely intertwined. The seismic forces currently roiling healthcare present profoundly consequential strategic options that involve significant risk, major mission shifts, and short windows of opportunity. In this environment, a more aggressive decision-making process, still grounded in duty of care principles and satisfying the business judgment rule, merits serious consideration.
- 3. Mission drift:** As hospitals and health systems adjust their operational portfolio away from the "inpatient bed tower" model to a more diversified platform of care, the board will need to be alert to suggestions of "mission drift." This term refers to when a non-profit corporation's business affairs begin to shift from its stated purposes to some alteration or derivative thereof,

Key Takeaways

As governance support professionals reflect on these trends, they should consider the following questions:

- What are we doing to ensure that directors are engaged and have the time necessary to focus on strategic issues?
- Does the board have an aggressive decision-making process that allows it to respond in a quick, yet thorough, manner? If not, do we need to restructure board policies and procedures to support this?
- Do we have a boardroom environment that encourages respect, cooperation, generative discussions, increased participation, and vigorous oversight?
- Are there members with diverse representation (including gender, race, age, experience, and thought) on the board?
- What are the current director refreshment protocols (board self-assessments, recruitment goals, board renewal tools, etc.)? Do these need to be updated to ensure the board is able to fulfill its increased fiduciary expectations?

without proper regulatory/judicial approval.¹

- 4. Boardroom civility:** It will be increasingly incumbent on governance to assure comity and cooperation in boardroom functions to enhance constructive skepticism, self-reflection, and open discussion between directors. An expectation of civility will support the board's efforts to achieve informed decision-making, vigorous oversight, and increased participation in boardroom discourse, while discouraging director complacency, excessive deference, and disruptive behavior.
- 5. Oversight of culture:** The board should expand its oversight of workforce culture to include gender equity concerns. The recent McKinsey/LeanIn.org report identifies a dramatic power

imbalance in the workplace that can negatively impact organizational performance and reputation.² The fundamental message to corporate boards is that sexual discrimination and harassment, and gender parity issues, are intertwined.

- 6. Conflicts of interest:** The seismic evolution in healthcare—and the new transactions and business relationships it generates—has the potential to render the organization's existing conflicts identification and resolution process obsolete. Complicating factors include the diversification of health system portfolios, officers' and directors' interest in investing along with the health system, the rapid consolidation of the inpatient healthcare market, and the evolving determination of who is a "competitor."
- 7. Individual accountability:** Boards will be expected to

¹ For more information on "mission drift," see Michael Peregrine, "Emerging Health System Structural Issues," System Focus, The Governance Institute, January 2019.

² LeanIn.Org and McKinsey, *Women in the Workplace*, 2018.

The incredible pace of industry change will test the capacity and effectiveness of the governing board.

address material concerns arising from recent revisions to DOJ's Individual Accountability for Corporate Wrongdoing Memorandum (Yates Memo). The audit and compliance committee will need to re-emphasize accountability and communicate the government's focus on managerial levels within the corporate hierarchy. Board leadership will want to address with management the tension between the benefits of pursuing, and requirements for obtaining, cooperation credit. It should also discuss how individual leaders' conduct may be evaluated for accountability.

8. Expand focus on diversity: New

state laws, legislative initiatives, and governance best practices will prompt expanded board and committee diversification efforts. As candidates are considered for each open board seat, boards should embrace the perspective that diversity across all dimensions—gender, race, age, experience, and thought—is fundamental to well-performing governance and long-term economic value.

9. Director refreshment: Increased fiduciary expectations of hospital/health system governance demand more rigorous, efficient, and thoughtfully managed director refreshment protocols, including vigorous annual board

and director evaluations, director recruitment goals that address long-term corporate needs and the competitive environment, and the judicious application of board renewal tools (e.g., term limits, retirement age, and "fitness to serve" requirements).

10. Preservation of tax-exempt status: Themes arising from the Tax Cuts and Jobs Act, as well as Senator Charles Grassley's decision to reassume Chairmanship of the Senate Finance Committee, are likely to increase scrutiny on the tax-exempt status of healthcare organizations. The Strategic Planning Committee will be called to extend greater effort in preserving charitable status, and promoting the unique benefits of healthcare services delivery through the non-profit corporate model, as opposed to the for-profit model.

The Governance Institute thanks Michael W. Peregrine, Esq., Partner, McDermott Will & Emery LLP, for contributing this article. He can be reached at mperegrine@mwe.com.



Finding the Right Talent: A Competency-Based Approach to Board Recruitment

Getting the right directors on the board has become increasingly important as hospitals and health systems face a multitude of challenges in a transforming industry. A board is only as good as its directors and the starting point for this is board recruitment. In order to ensure the board has the skills it needs, it's critical to have a plan in place for building a competency-based board. This article provides simple steps for board recruitment with the ultimate goal of developing a formal plan for building a competency-based board to address current and future board needs.

Step 1. Articulate desired future board member competencies. When planning for future board members, start by considering both the board's needs and the underlying healthcare organization's needs for leadership talent. Then identify a set of competencies that will be critical for the future success of your hospital or health system. During this process, it is important to a) use your strategic plan as the context to identify needed competencies, and b) recognize the future roles and responsibilities of your board.

Examples of Second-Curve Board Competencies

Boards need more diverse skills, talents, and perspectives than they may have needed in years past in order to become agile and change in a smart manner to place the organization in a competitive position. Some of the new skillsets cutting-edge boards are recruiting for today include:

- Population health and chronic disease management
- Change management (including Lean/Kaizen-type culture implementation and continuous quality improvement)
- Technology (especially “small” such as e-health and wearables, and social media)
- Innovation (both small company and corporate)
- Banking (change management and strategic cost management; investment bankers with healthcare expertise)
- National healthcare experts (vision and expertise on a national scale)
- Corporate governance (national expertise in for-profit corporations)
- Systems management: experts on systems of care and reliability processes, and people who can move and change systems quickly
- Strategy and strategic planning (healthcare and national)
- Actuaries/risk-management
- Healthcare entrepreneurs
- Visionaries
- Medication management
- Team builders: people who can build board and management teams

Once you have a long list of needed competencies, start refining it by the skills and experience that is most important to the success of the organization. Below is a sample list of competencies and qualifications to help guide you in these efforts.

Sample Governing Board Member Competencies and Qualifications

Recommendation: Your board would create its own “starting” list of future competencies, using this list as a starting point for setting priorities and honing the list down to a manageable number relevant to your needs.

Knowledge & Expertise (“hard skill”)

- Healthcare industry knowledge
- Understanding of the entire delivery system
- Governance/management distinction awareness
- Business/financial knowledge
- Human resources/organizational development knowledge
- Change management/innovation and transformation expertise
- Knowledge of reliability science for improving quality and patient safety
- Knowledge of customer service process improvement
- Expertise in public policy or community health planning

Personal/Professional Experience

- Service on board of large organization
- Experience in managing complexity or governing in a complex organization
- Experience in successfully navigating an organization during a period of rapid change

Personal Attributes (behaviors, “core competencies”)

- Integrity
- Analytical thinking
- Strategic thinking
- Collaborative leadership style
- Ability to promote teamwork and build consensus
- Good listening and communication skills
- Ability to influence others
- Appreciation for perspectives of all stakeholders
- Appreciation for benefits from diversity on the board
- Ability to hold self and others accountable for achieving goals
- Interest in continuous learning/curiosity

Adapted by M. Jennings Consulting from *Planning for Future Board Leadership*, Elements of Governance, The Governance Institute, 2011.

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Step 2. Identify the “competency gaps.” Compare your desired competencies with the skillsets and expertise currently on the board ([download a Sample Board Skills Matrix here](#)). If more details are needed around the competencies demonstrated by current board members, the nominating or

governance committee can help develop a survey around the board-approved competencies created in the step above. Then have each board member complete the assessment of whether/how well he or she demonstrates each competency. This can also include a confidential peer review where each board member

answers the same questions about every other board member.

Step 3. Develop a multi-year board recruitment and development plan. Board recruitment and development should be an ongoing process. Creating a board talent management matrix is a great way to ensure that the board will have the competencies it needs going forward. This matrix can be the basis of any board recruitment and development plan.

Board Talent Management Matrix

Board Talent Risk Assessment	# Vacancies: _____ Skills lost: 1. _____ 2. _____ 3. _____ 4. _____	Satisfaction Survey: _____% directors satisfied _____% directors agree board is effective	Problems identified in one-on-one meetings with board chair: 1. _____ 2. _____ 3. _____ 4. _____	Employ search firm? Pros: _____ Cons: _____	Actions/deadlines: 1. _____ 2. _____ 3. _____ 4. _____
Talent Needs Based on Strategic Plan	Mission statement (updated?): _____ _____ _____	Strategic goals (short term): 1. _____ 2. _____ 3. _____		Strategic goals (long term): 1. _____ 2. _____ 3. _____	
Board Member Competencies & Gaps	Skills needed based on strategic plan: 1. _____ 2. _____ 3. _____ 4. _____	Other/new skills/attributes needed: 1. _____ 2. _____ 3. _____ 4. _____	# of current directors with strategic skills: 1. _____ 2. _____ 3. _____ 4. _____	# of current directors with other/new skills: 1. _____ 2. _____ 3. _____ 4. _____	Talent gaps: 1. _____ 2. _____ 3. _____ 4. _____
Talent Pool	# of directors needed for immediate gaps: 1. _____ 2. _____ 3. _____ 4. _____	Names/skills in current candidate pool (if applicable): 1. Name: _____ Skills: 1. _____ 2. _____ 3. _____ 2. Name: _____ Skills: 1. _____ 2. _____ 3. _____ 3. Name: _____ Skills: 1. _____ 2. _____ 3. _____		Decisions to make: How many people do we need to add to the candidate pool? What skills are missing in the pool? Where/how to find candidates?	Plan Implementation: Actions/deadlines: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____

Note: To receive a copy of this matrix in spreadsheet format, please download it at www.governanceinstitute.com/templates, or contact The Governance Institute at info@governanceinstitute.com or (877) 712-8778.

For recruitment to be successful in closing the competency gaps, the organization must carefully review each board member at the end of his or her term to determine whether and how that individual contributes to the desired mix of board competencies. This may require making difficult decisions about individuals who have been “good” board members but whose competencies either are duplicated by others on the board or are not those needed for the future. Unless you are able to take this courageous step, you may need five or more years even to begin to see your desired board mix of competencies emerge—and given the dynamic changes in the industry, waiting this long is not an option.

It is also critical that the plan looks beyond board recruitment to focus on engaging and retaining board members through:

- **Board satisfaction:** Some boards are working with consultants to construct specially designed “board satisfaction surveys” (including individual director interviews) to help board leaders and the CEO get a better sense of the board’s strengths and weaknesses, including director satisfaction. Most boards that go through this exercise not only learn a lot about their boards and governance responsibilities, but also find it helpful for the governing board to then build a multi-year board education and development plan. Further,

Responding to the Demand for Board Talent

If your organization is experiencing a “board talent shortage,” below are a few examples of how other organizations are responding:

- **Create a board talent pool:** Many healthcare organizations are generating “board talent pools,” often in the form of advisory boards, and also populating board committees with non-board members. This can be a source to develop talent—the organization benefits from their talent and skills and the non-director becomes familiar with the organization and how it conducts business. Some healthcare organizations invite advisory board members to attend certain board meetings (sometimes on a monthly rotating basis). Some also encourage former board members (some of whom had to leave due to term limits) to stay on the advisory board so that the organization can continue to keep seasoned, valuable former board members engaged. Finally, a board talent pool may provide another important valuable benefit: to act as a “community bridge” as hospitals and health systems shift focus to value-based, patient-centered care across the population.
- **Look beyond traditional borders:** Several organizations are now more actively going outside and beyond their “traditional service areas” to recruit talent. Almost 30 percent of healthcare boards are going, or are planning to go, outside their service area to recruit new board talent. Just like recruiting for executive management, it can be beneficial to look beyond the local region to find the best directors.
- **Seek professional help:** Another trend is for hospitals and health systems to engage professional search firms to vet candidates and recruit people with the board’s needed skills and competencies.
- **Compensate directors:** Another slow but consistent trend is director compensation. Once almost unheard of, more organizations today are able to make the argument that the combined shortage of directors and increased demands on the board (legal and otherwise) help justify the decision to compensate hospital and health system board members for their time and efforts. (Note: hospitals and health systems that are considering board compensation should work with trained consultants and legal counsel to remain legally compliant.)

this is an important tool to help preempt dissatisfied directors and implement changes that can make meetings more valuable and engaging.

- **Education:** High-performing

governing boards are continually learning, asking questions, and obtaining information not merely on their own organization, but also on industry trends and developments. To do this

Key Takeaways

- Do we have a comprehensive, multi-year board recruitment and development plan? Does it need updating?
- What competencies are missing on the board that are needed to successfully carry out the strategic plan?
- Do we have the board talent necessary to compete with others that are entering or already in the population health market?
- Are there members with diverse community representation on the board?
- Is there a shortage of people willing to serve on the board in our area? If so, what needs to be done to get the right board talent?
- What are we doing to ensure board members are satisfied with their role and receiving the education needed to enhance their performance?

successfully requires having formalized board education and development programs/processes, as well as personal development plans for each board member.

Additional Resources on Board Recruitment:

- [Board Recruitment](#) (Intentional Governance Guide)
- [Board Recruitment and Retention: Building Better Boards, Now...and for Our Future](#) (White Paper)
- [“Competency-Based Board Recruitment: How to Get the Right People on the Board”](#) (Governance Notes article)

This article is an excerpt from The Governance Institute’s Board Basics Toolkit, which will be available soon. This publication includes information on understanding fiduciary duties and oversight responsibilities, clarifying roles, planning for orientation and continuing education, preparing for and effectively executing meetings, taking board self-assessments, getting the right directors on the board, and accomplishing board goals.

