AHLA Leadership & Career Development Program (2026)

Fundamentals of Governance

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Learning Objectives

- Goals
    - Corporate Governance Fundamentals
    - Board and Management Roles
    - Board Recruitment and Orientation
    - Board Operations
    - Board Education
    - Board Committees and their oversight responsibilities

Background/Board of Directors

Function of Board of Directors

- Definition: Corporate Governance is the system of rules, practices and processes by which an organization is directed and controlled.

- Examples
  - Strategic Oversight
  - Leadership Oversight
  - Internal Controls/Monitoring (Responsible for adequacy of compliance system)
  - Risk Governance

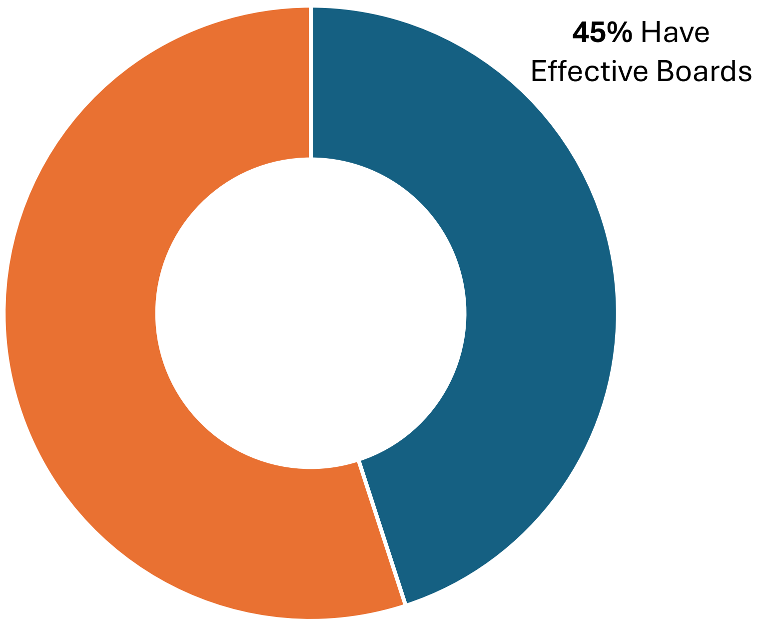
Key Issues Facing Boards

- Financial distress
  - The economy
  - Closure of units, hospitals
  - Consolidation
- Workforce
  - Staffing shortages
  - Skyrocketing costs
- Clinical Quality
- Emerging Issues (e.g. Artificial intelligence)
- Enterprise Risk

Sources of Standards

- Sarbanes-Oxley
  - intended to protect investors from corporate accounting fraud by strengthening the accuracy and reliability of financial disclosures.
  - Chief executive officers (CEOs) and chief financial officers (CFOs) personally certify the accuracy of the information contained in financial reports, and to confirm that controls and procedures were in place to assess and verify that accuracy.
  - Failure to do so could result in fines of up to $15 million and prison terms of up to 20 years.
- Dodd-Frank Act of 2010
  - Meant primarily to reduce risk in the financial system by more closely regulating big banks and financial institutions.
  - But, it does have provisions that strengthen shareholder rights and it has disclosure requirements.
- SEC Rules
- State Laws
- ABA Model Rules
- Voluntary Associations (e.g. NACD)

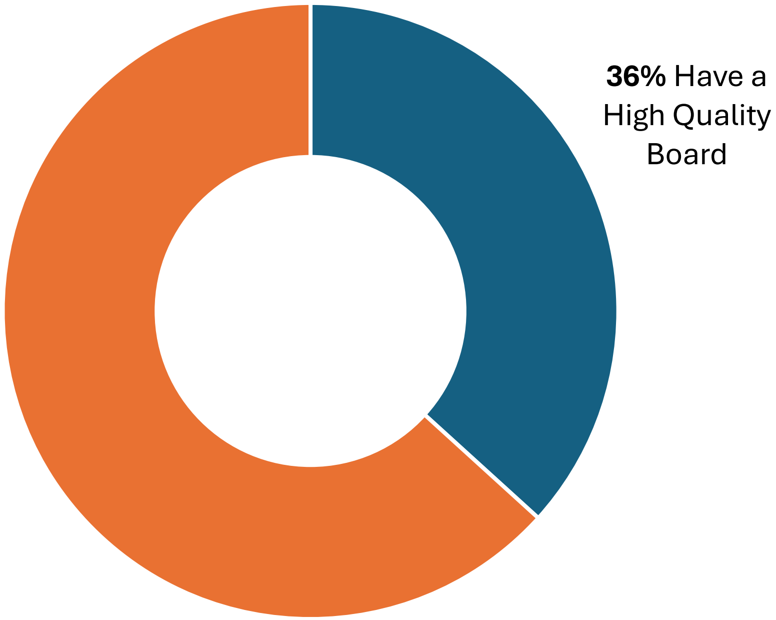
Governance



- Less than Half of Boards are Effective
- Percent of respondents scoring an average ≥6 on the 7-point Board Effectiveness Index[a]
- Percent of Organizations With Effective Boards

n = 111
Source: 2024 Gartner Corporate Governance and Board Management Benchmark
[a] Board Effectiveness Index combines Executive Accountability and Board Oversight of Strategy and Risk.

It’s Difficult to Get the Right Directors



- Percent of Boards With High-Quality Directors and Positive Board Social Dynamics
  - Percent of respondents scoring an average ≥6 on the 7-point Director Quality and Board Social Dynamics Index

Directors have and apply sufficient knowledge, experience and diversity, and work together productively.

n = 104
Source: 2024 Gartner Corporate Governance and Board Management Benchmark

Board Recruitment / Orientation

Lessons Learned: Governance

- **Board Recruitment**
  - What process do you undertake to recruit a diverse Board with the skill sets and competencies needed to navigate today’s health care industry?

- **Board Orientation**
  - How do you best orient Board Members on their fiduciary duties around transaction oversight?

Top Five Competencies for Board Member Selection

Figure 5.3 Top Five Competencies for Board Member Selection

Indicate the top 5 essential knowledge, skills and behavior competencies you used most recently when selecting board members.

	All	System Board	Subsidiary Board	Freestanding Board
Knowledge of business and finance	62%	68%	53%	59%
Strategic orientation	59%	82%	36%	34%
Community Orientation	52%		78%	65%
Innovative Thinking	41%	58%		
Collaboration	34%	37%	32%	30%
Impact and influence			32%	
Professionalism				30%
Quality and safety expertise		35%		

Source: American Hospital Assn. 2022 National Health Care Governance Survey Report

Board Competencies/Skill Sets

Board Of Directors		
Competencies/Skill Sets	**Primary Competency**	**Secondary Competency**
Clinical		
Finance/Accounting		
Fundraising		
Governance		
Healthcare Management		
Health Insurance		
Human Resources		
Information Technology		
Legal		
Marketing/Consumerism		
Population Health		
Quality		
Real Estate		
Strategic Planning		
Total		

Board Membership – Orientation

- Keys to setting Board Members up for Success:

  Educate on:

  - System Structure
  - Roles/People
  - Org Chart
  - Compliance
  - Fiduciary duties
  - Board Structure
  - Finances
  - Conflicts of Interest

Discussion:

How do you onboard your new Board or Board Committee members to best position them for success?

Board Membership – Recruitment

- Diversity
  - Cultural/Geographic
  - Physician representation
  - Industry/Field of practice
- Location /Remote Meetings
- Consider the time commitment for unpaid board members
- Term of Service

Discussion:

What process does Board utilize to recruit Board members to fill needed skill sets and competencies?

Opportunity: New Board Orientation

- Skill sets, experience, perspective
- Industry/business education (*see e.g., Silicon Bank*)
- Governance education
- Social media awareness
- Continuing education

Management can play key role in each of above

Corporate Governance Fundamentals: Management vs. Governance

Management vs. Governance

Governance:
Setting policy and strategy

Management:
Implementing policy and strategy set forth by the governing body

Board vs. Management

- Board
  - Sets Direction
  - Oversees Performance
  - Approves Major Strategic Decisions
  - Monitors Risk
  - Hires/Evaluates CEO
- Management
  - Evaluates Strategy
  - Runs Operations
  - Implements Decisions
  - Manages Risk
  - Leads Workforce

Board/Expectations of Management

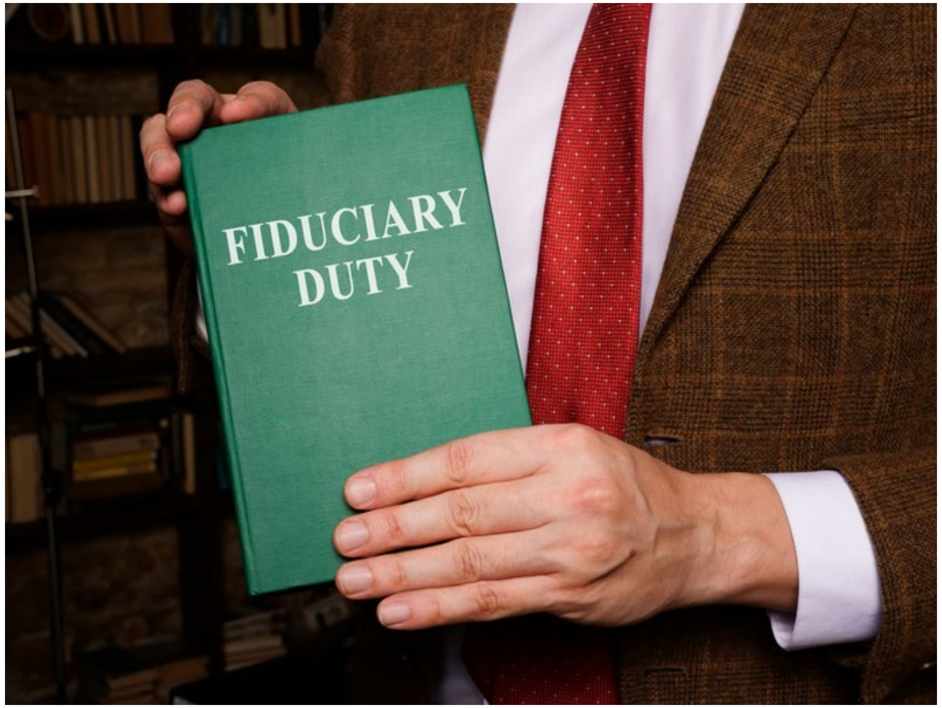
- Guidance on policy and strategy.
- Sufficient amounts of the right kind of information, in a timely fashion, to enable directors—individually and collectively—to fulfill their duties.
- Management's best interpretation of reports, performance indicators, etc., including implications.
- A realization that a director has assumed a responsibility to all stakeholders and expects the organization to be a good corporate citizen.

Management/Expectations of Board

- Directors will show up (on time) for board and committee meetings, well prepared to discuss agenda items.
- They will express their views on the quality, quantity, and timeliness of the information they receive from management.
- They will seek additional information when they need it.
- They will exercise an active skepticism, articulate doubts, and volunteer viewpoints.
- They will be available to the chairperson and CEO on an ad hoc basis for advice and counsel.
- They will confine their activities to their role as directors, and not allow themselves to drift into the management domain

Fiduciary Duties

Fiduciary Duties and Conflicts of Interest



Three Fiduciary Duties

The board's duties and responsibilities

Care

Loyalty

Obedience

Core Responsibilities

Quality Oversight

Financial Oversight

Strategic Direction

Board Development

Management Oversight

Community Benefit & Advocacy

Board Culture

Same Duties, New Twists

<u>Duty of Care, or Oversight</u> → attend meetings, be prepared and knowledgeable, ask questions

- *In re: McDonald's Corp. Stockholder Derivative Litigation* (Delaware Chancery Court, Jan. 2023)
- *In re: Caremark Int'l., Inc. Derivative Litigation* (Delaware Chancery Court, 1996)

<u>Potential liability if</u>:

- No good faith effort made to establish information reporting systems, or
- Consciously ignore red flags that arise from those reporting systems or otherwise come to their attention

Same Duties, New Twists (cont.)

Duty of Care – Financial Stewardship → manage the accounts and finances of the organization prudently

- *Silicon Valley Bank* – Federal Reserve Board: "Board of directors and management failed to manage their risks"
- *Signature Bank* – FDIC: "Board of directors and management pursued rapid, unrestrained growth without developing and maintaining adequate risk management practices and controls appropriate for the size, complexity and risk profile of the institution.
- And: "Management did not prioritize good corporate governance practices."

Same Duties, New Twists (cont.)

Duty of Obedience or Compliance → compliance with governing documents and applicable legal requirements

Duty of Loyalty → placing organization's interests ahead of all other interests, personal gain or benefit

- Conflict of interest policies and practices
- Corporate compliance programs
  - *Note: current focus of U.S. Department of Justice*
- "Duality of interests"
- Corporate opportunity situations
- IRS "disqualified person" relationships, "excess benefit transactions"

Board’s Role/Strategic Planning

Key Duties

<u>Strategic Oversight</u>

- How does the Board execute upon its role to provide strategic oversight?
- How do the Board and Management partner around establishing the organization’s strategic plan?
- How does Board evaluate proposed acquisitions in context of strategic plan?
- How does Board partner with CEO around potential transactions?

<u>Strategic Planning Actions</u>

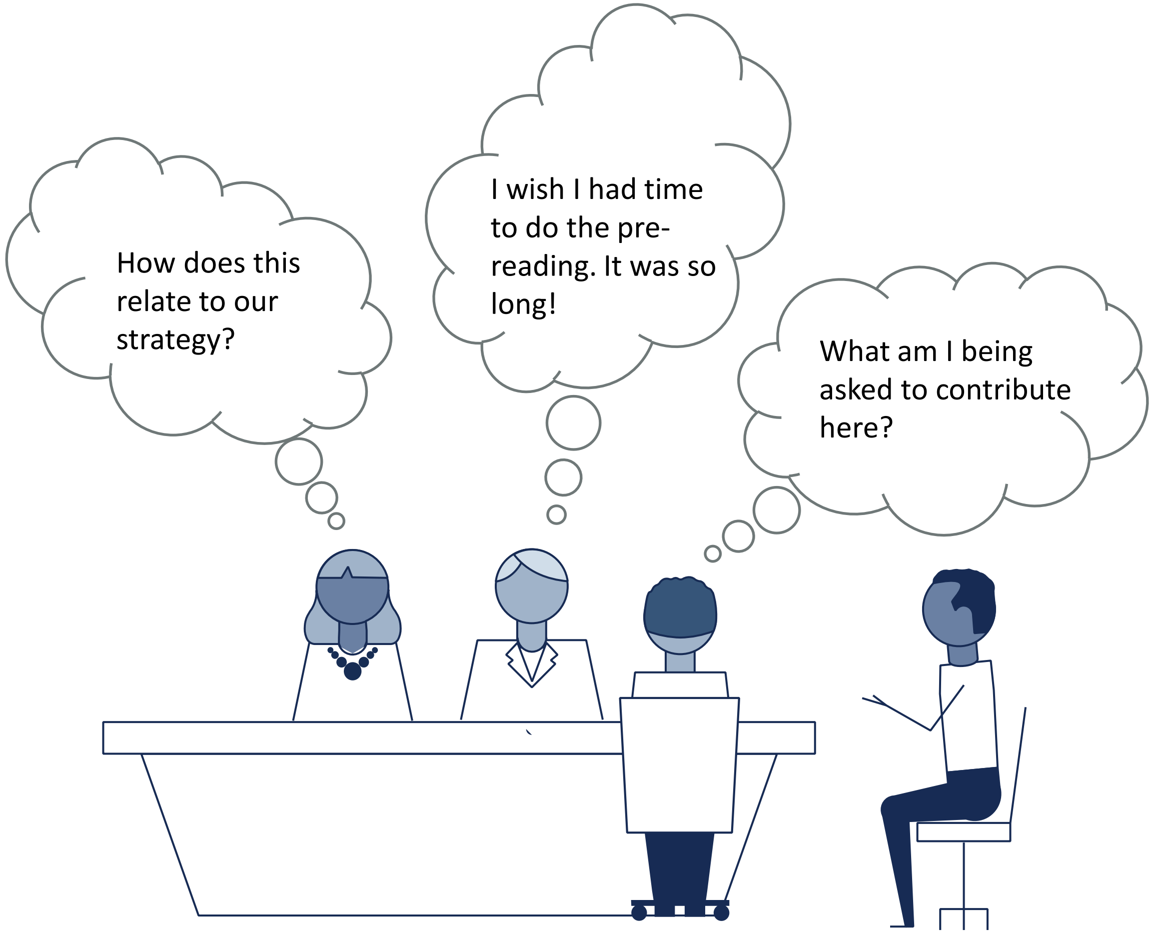
- Hire Strategic Advisor
- Guide Management around Board agenda strategic topics
- Seek educational sessions on industry and market dynamics

Board Operations

Boards Need Good Information to Be Effective

Director Thoughts During Board Discussion

Illustrative



Problems that occur when directors do not have access to sufficient, high-quality information

Source: Gartner

Board Operations

Sample Agenda Topics

<u>Business Items</u>

- President's Report
- Chairs' Report
- Committee Reports
- Elections
- Budget Approval
- Medical Staff Report

<u>Strategic Topics</u>

- Access & Consumerism
- IT Investments
- Workforce & Staffing
- Clinical Quality
- Financial Review

<u>Dashboard Review</u>

- Key Metrics & KPIs

Board Operations

Sample Annual WorkPlan

<u>Membership</u>

- Voting Members
- Staff
- Meeting Dates/Calendar

<u>Meeting Topics</u>

- Organizational Issues
- Strategic Topics

<u>Educational Sessions</u>

- Health Policy
- Compliance

<u>Required Reports</u>

- Budget
- Election Directors/Officers
- External Audit Approval
- CEO Evaluation

Board Management/Support

Management Team:

- Chief Executive Officer
- Senior VP/Chief Financial Officer
- Senior VP/Chief Legal Officer
- Senior VP/Chief Strategy Officer

Discussion:

What staff members will bring knowledge and efficiency to the board?

Board Education

Board Education

Board Membership/Ongoing Education

Education Sessions

- Current topics relevant to Board Members
- Compliance
- Industry Trends
- Health Policy
- Compensation

Discussion:

What type of Board education programs should you conduct to advance lay Board members industry knowledge?

Board Education

{Frequency should be regular, every meeting if possible}

Recurring Suggestions

- ❑ Fiduciary duties refresher
- ❑ Conflict of interest refresher
- ❑ Governing documents review
- ❑ Financial statements & 990 refresher
- ❑ Compliance program refresher
- ❑ Board self-assessment
- ❑ Podcasts on governance

Episodic Suggestions

- ❑ Case studies (e.g. *McDonald's*, Silicon Bank, etc.)
- ❑ Latest OIG guidance (e.g., executive compensation pilot program)*
- ❑ Understanding ESG as applied in health care
- ❑ Artificial intelligence
- ❑ DEI sensitivity & awareness
- ❑ Health equity initiatives

Board Committees

Board Committees

- Committees
  - Executive
  - Audit
  - Compensation/Human Resources
  - Finance
  - Governance/Nominations
  - Quality/Safety
  - Investment

  Other:
  - Transaction
  - Risk
  - Community Relations

Other Issues

Enterprise Risk Management Priorities/2026

2026 ERM Priorities			
Risk Item	**Accountable Executive**	**Risk Event(s)**	**Presentation Schedule**
Business Risks		External Threats	
Business Continuity		Epic/Clinical IT Systems Outage	
Cyber Security		Information Security/Cyber Risk	

IRS 990 Requirements

Part VI: Governance, Management & Disclosure

- Have a written conflict of interest policy?
- Have a written whistleblower policy?
- Copy of 990 provided to all Board members prior to filing
- Compensation determination processes
- Documents available to the public
- Charity care
- Community health needs assessments

Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No. 1545-0047

2023

Open to Public Inspection

A For the 2023 calendar year, or tax year beginning , 2023, and ending , 20

B Check if applicable:
- Address change
- Name change
- Initial return
- Final return/terminated
- Amended return
- Application pending

C Name of organization

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) Room/suite

City or town, state or province, country, and ZIP or foreign postal code

D Employer identification number

E Telephone number

G Gross receipts $

F Name and address of principal officer:

H(a) Is this a group return for subordinates? Yes No

H(b) Are all subordinates included? Yes No

If "No," attach a list. See instructions.

I Tax-exempt status: 501(c)(3) 501(c) ( ) (insert no.) 4947(a)(1) or 527

J Website:

H(c) Group exemption number

K Form of organization: Corporation Trust Association Other

L Year of formation:

M State of legal domicile:

Part I Summary

1 Briefly describe the organization's mission or most significant activities:

Conflicts of Interest – Beyond Policies

- **Handling of conflict of interest situations**
- Policy – see IRS recommended form at Appendix A of Form 1023 Instructions
- Procedures
  - Initial disclosures for new Board members
  - Annual disclosure forms
  - Review of disclosures
  - Presentation to and acceptance by Board of Directors
  - Periodic review and update to policy and procedures
- Addressing the "less obvious" situations
- Annual and continuous Board education

Board Evaluations:

1. Board Structure & Composition
    - Diversity
    - Expertise
    - Size
    - Structure

2. Board Governance
    - Board Committee effectiveness
    - Board Chair effectiveness
    - Governance policies
    - Board meetings

3. Board Training & Development
    - Training programs
    - Succession planning