Non-Profit Boards: Managing Mission and Margin

April 13, 2010
Moderator

- **Barbara Freedman Wand**
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  - Managing Director of Bingham Charitable Advisers
  - Fellow of the American College of Trust and Estate Counsel

Panelists

- **David G. Spackman**
  - Chief, Non-Profit Organizations/Public Charities Division of the Massachusetts Office of the Attorney General
  - Over thirty years of experience representing public, for-profit, and non-profit clients in the health care field

- **Joan Wallace Benjamin**
  - President and CEO, The Home for Little Wanderers
  - Trustee of Wellesley College and past member of the Board of Overseers for the Heller School of Social Policy & Management

- **Daniel S. Evans**
  - Corporate Partner, Ropes & Gray LLP
  - Trustee and Chairman of Audit Committee, New England Aquarium
  - Director, Cohasset Lightkeeper’s Corporation
David G. Spackman

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State Regulator Hot Topics
Executive Compensation

- Increased federal scrutiny
  - revised form 990, limitations
  - for-profit executive compensation limitation proposals
  - Grassley’s continued drumbeat
  - Unintended impact of Intermediate Sanctions
- Health care and, to a lesser extent education, ground zero
- Massachusetts AG initiative (health care focus, differentiate education)
  - September 2, 2009 letter to health plans and hospitals
  - Step one: uniformity, comparability and context
  - Step two: selected decision making evaluation
Director Compensation

- Compensation is clearly not the standard, extraordinarily rare in Massachusetts
- Inherent conflict of interest
  - Independence from management critical, but not a panacea
  - No natural push back, no check and balance
  - Consultant suicide
- Independent Sector – compensation requires a rationale with evidentiary foundation
- Moving to annual disclosure with public rationale
Dual Office Holding

- Clearly **not** standard in either non-profit or for profit world
- Inherent conflict of interest
- Limits board independence
- Coupled with high compensation, public relations nightmare
- Moving to annual disclosure with public rationale
Executive Multiple Board Service

• Organizational Strengths
  ➢ Community outreach and impact (network development)
  ➢ Opportunity identification
  ➢ Individual development, corporate education

• Organizational Dangers
  ➢ Executive time demands
  ➢ Service commitment dilution
  ➢ Conflict of interest (often the reason they are selected)
  ➢ Compensation leverage

• Increased Disclosure Requirements
Transparency

• Like “Paradigm Shift” transparency may be overused – but it is the future
• Examples
  ➢ Guidestar
  ➢ Mass AG website, at your fingertips
    - Financials, form PC, 990s
    - Regulatory compliance/non-compliance list
    - Settlement agreements
    - Solicitation campaign results
  ➢ Recent hospital cost hearings
  ➢ “Do no harm” no longer persuasive
Transparency (cont’d)

• Benefits
  ➢ Educated giving and support
  ➢ Powerful compliance tool
  ➢ E-filing will permit information mining, trend analysis

• Dangers
  ➢ See executive compensation and Lake Wobegon effect
  ➢ Information overload
  ➢ Exhaustion – is the cost of compliance always worth the benefit?
Mission/Margin Balance

• Balancing Mission and Margin a unique task of non-profit boards
  ➢ For profit mission is margin, mission is only a tool
  ➢ Non-profit mission is mission, margin is only a tool
• Decades drift to fiscal focus; governmental responsibility
• The twin dangers of the Edifice Complex and Mural Dysphasia
• Regulatory willingness to insure and investigate charitable purpose
  ➢ As a primary or secondary motivation
  ➢ Bottom line and growth as ends, rather than means
  ➢ Reports, minutes, correspondence, deliberations, intended impact and results
Self Dealing

• Process versus substance continues to be a problem
  ➢ Disclosure is only the first step
  ➢ Evaluation and independent decision making is the most important, and most neglected, step

• Founderitis is alive and thriving, we are willing to sue
Too Many Charities?

- Record of failure dwarfs the restaurant business
- Number of registered charities is stable, yet 1,500 new one register each year
- Boston Foundation report, too many charities for available pool of money
- Balance independence with collectivity
  - So you want to be a charity disclosure
  - Ease dissolution process
  - Shared services (Essex Community Foundation)
- Founderitis – the double edged sword
Joan Wallace Benjamin

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Mission Statement

The mission of The Home for Little Wanderers is to ensure the healthy emotional, social, behavioral and intellectual development and physical well-being of vulnerable children in at-risk circumstances, their families and communities. We do this through an integrated system of direct care services, education, prevention and advocacy.
The Home

- Oldest in America
  - Largest Child Welfare Agency in New England
  - 16 Programs
    - Residential
    - Community-based
    - Preventive
  - 10,000 Children and Family members served each year
The Home (cont’d)

- 42 million dollar operating budget
- 67 million dollar endowment
- 650 full and part-time staff
- 19 member Board of Directors
- 30 member Board of Ambassadors
A View From The Trenches

The Role of the Board

• Strategy
• Fiduciary Oversight
• Risk Management
• Policy Promulgation
• Board Nomination and Board Management
• Business Advice and Guidance
• Content expertise
• Hire, Fire, Evaluate and Support the CEO
Strategy

• The Home currently operates on a 5-year Strategic Plan (2005 – 2010)
• The Home’s Board and management are engaged in Strategic planning process for 2010 forward
• The Home is a merger of 4 child and family serving organizations
• The Home was one of the first human services organizations to use merger/acquisition as a strategy to:
  • Go to scale
  • Diversify service delivery model
  • Create economies of scale
  • Create a continuum of service from birth to age 21
  • Command a seat at the public policy and advocacy table
Fiduciary Oversight

- Board structure to support fiduciary oversight
  - Investment/Audit Committee
  - Finance Committee/Real Estate
- Review and Approval of Audit
- Review and Approval of 990 and UFR
- Selection and monitoring of endowment management company
- Approval and oversight of agency annual operating budget
- Fundraising and resource generation
Risk Management

• Understand and oversee the areas where agency risk exists
  ➢ In our services that care for children
  ➢ In personnel management and policies
  ➢ In facilities/property management and vehicles
  ➢ In the appropriate allocation and expenditure of resources
Board Nomination and Board Management

- The Board should manage its operation
- The Board should evaluate its own effectiveness
- The Board should increase its ranks through a robust nomination process and board rotation policy
- The Board should hold itself accountable for all the roles it plays on behalf of the organization
Business Advice, Guidance, Content Expertise

- In small non-profits Board members are also counted on to provide direct professional assistance to day-to-day activities.
- In large non-profits, the Board is needed to bring strategic business acumen and understanding to the complex realities of running a business whose product is service (human services). Larger non-profits have professional staff that manage and execute the strategic vision.
- A Board representative of a diversity of professions, fields, areas of expertise, racial/ethnic make-up and perspectives is necessary.
• Hire top talent with an appreciation of the complexities of running a non-profit today
• Provide regular feedback and ask questions
• Ensure the completion of a formal annual evaluation
A CEO LOVES A BOARD THAT...

❤️ has confidence in his/her leadership
❤️ believes that he/she is the best person for the job
❤️ asks probing questions designed to get at good answers
❤️ refrains from second-guessing every decision
❤️ keeps the well-being of the organization front and center
❤️ avoids board and staff “politics”
A CEO LOVES A BOARD THAT...

- supports the efforts of the CEO and the organization in the external environment
- is willing to open their rolodex and bring financial and other resources to the organization
- doesn’t mind asking others for money; and makes this organization a primary charitable priority
- and…believes that the CEO is worth every penny he/she is being paid and deserves more
- has a good sense of humor (because as the great author, Langston Hughes, once said: sometimes “one has to laugh to keep from crying”).
Special Structure and Oversight Challenges

Daniel S. Evans

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Role of Non-Profit Board is Broader than most For-Profits

- A Non-Profit Board Must:
  - Oversee/govern – just like a For-Profit
  - Work/mentor – Non-Profits are chronically understaffed
  - Fundraise – the Board typically is a key source of direct support and key to cultivating large donors
  - All with less institutional support than in a For-Profit

- As a result,
  - Non-Profit “Boards” are often quite large
  - Members selected for one or more of Time, Talent, Treasure
Need for Large Numbers and Diverse Contributions Presents Structural Challenges

- “Board” structure must be aligned with desired contributions (3 T’s) and engagement, often leading to:
  - Executive Committee – generally meeting monthly and quite “hands-on”
  - Trustees/Directors – generally meeting less frequently, with high-level involvement
  - Overseers – perhaps meeting less frequently, with limited or no governance/oversight responsibility

- Meeting Schedule and Content must likewise be aligned
Effective organization of committees permits efficient use of Time and Talent

- Executive Committee – ability to be fully engaged, and judgment to govern
- Finance Committee – financial expertise
- Audit Committee – oversee outside auditors and internal audit function
- Development Committee – oversee strategy, organize events, cultivate and solicit, solicit, solicit
- Nominating Committee – keep the lifeblood flowing
- Mission Committees – provide key volunteer support and engage interested donors
Non-Profits Present Unique Oversight Challenges

- Non-Profit Boards must understand and oversee compliance related to a range of legal issues, including:
  - Maintaining tax-exempt status, including permitted activities, donations record-keeping, etc.
  - Reporting of Unrelated Business Taxable Income
  - New form 990 disclosure obligations
    - Compensation
    - Related party transactions
  - Soliciting and reporting for grant funding
  - Preventing fraud/theft
    - e.g., WGBT accounting manager that embezzled almost $500K over 9 years
  - Conventional legal issues
    - e.g., employment practices
Non-Profit Boards must also be sensitive to a range of potential public relations issues, including:

- Compensation and perquisites of executives – need to be sensitive to public perception, particularly in light of pay scales of public officials
- Financial health and stability of the Non-Profit – need to be accurate and carefully manage discussion of any financial challenges
- Mission execution – need to avoid missteps that would be incongruous with mission
Leading Non-Profit Boards through Changing Governance and Disclosure Mandates

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