

Non-Profit Boards: Managing Mission and Margin

April 13, 2010



Moderator

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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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Where hope lives.

The Home for Little Wanderers 1799 - Present



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, Fire, Evaluate and Support the CEO



- 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

Need for Large Numbers and Diverse Contributions Presents Structural Challenges (cont'd)



- 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., WGBH accounting manager that embezzled almost \$500K over 9 years
 - Conventional legal issues
 - e.g., employment practices

Non-Profits Present Unique Oversight Challenges (cont'd)



- 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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