



# Governance and Organizational Structure

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# Governance and Organizational Structure Knowledge Area



Percentage and Number of Exam Questions in Each Knowledge Area	Percentage	Number of Questions
Healthcare	17%	34
Management and Leadership	15%	30
Human Resources	11%	22
Finance	11%	22
Quality and Performance Management	10%	20
Business	9%	18
Professionalism and Ethics	8%	16
Laws and Regulations	7%	14
<b>Governance and Organizational Structure</b>	<b>6%</b>	<b>12</b>
Healthcare Technology & Information Management Knowledge	6%	12
	100%	200

# Governing Boards



- 1.41 million nonprofits registered with IRS
- Public charities make up >75% of 501(c)(3) revenues and expenses
- Health care organizations (~13% of reporting public charities), account for nearly 3/5 of public charity revenues and expenses

*Source: Data for 2013, Urban Institute,  
"The Nonprofit Sector in Brief 2015"*



# What is a fiduciary?

- A legal obligation of one party to act in the best interest of another. The obligated party is typically a fiduciary; that is, sometime entrusted with the care of money or property.

Source: Employee fiduciary responsibility and fraud. (n.d.). Retrieved March 9, 2018, from <https://www.financierworldwide.com/employee-fiduciary-responsibility-and-fraud/#.WqbYX2rwavE>

# Fiduciary Duties



- Duty of Care
- Duty of Loyalty
- Duty of Disclosure
- Duty of Obedience
- Business Judgment Rule
- Confidentiality



Source: *Corporate director's guidebook* (6th ed.). 2011. Chicago, IL: American Bar Association, Section of Business Law.



# Duty of Care

*Directors exercise appropriate diligence in good faith to become informed in making decisions and overseeing management.*

## **Actions**

- Attend and actively participate in meetings
- Require management to provide adequate reports concerning the facility's operation
- Diligently inquire about any potential problems they see that could arise

# Duty of Loyalty



*A director's conduct must be in the best interest of the organization.*

## **Actions**

- Disclose conflicts of interest
- Reveal any related business opportunities



# Conflicts of interest

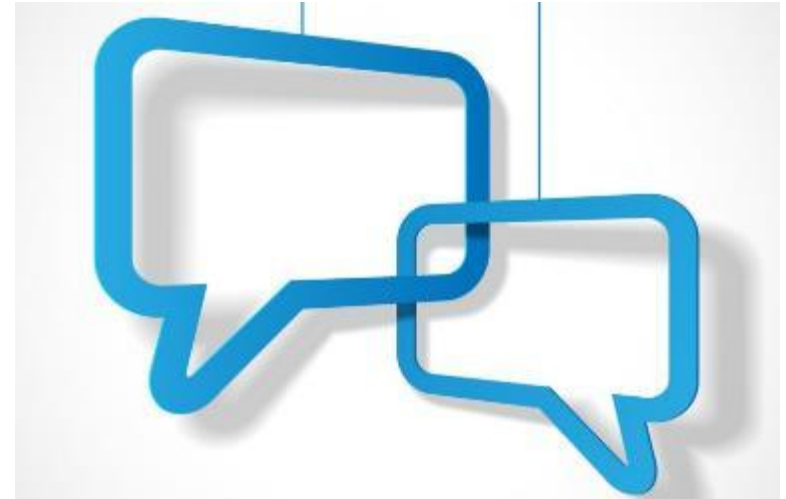


- Annually sign conflict statement
- Recuse themselves from any decision in which they are conflicted
- Hold others accountable for conflicts
- Avoid even the appearance of conflicts of interest

# Duty of Disclosure



*Directors inform fellow directors and management of information known to the director that is material to corporate decisions.*



# Duty of Obedience



## Actions

- Follow all laws
- Follow all regulations
- Follow the board's bylaws



# Business Judgement Rule



*This rule protects a disinterested director from personal liability if the decision that the director approved is a mistake.*

- Presumes the director acted in an informed and good-faith basis
- Presumes the director firmly believed the decision was the best for the organization

# Confidentiality Rule



*Director must keep confidential all matters involving the organization that have not been disclosed to the general public.*



# Functions of the Governing Board



- Maintain management capability
- Establish the mission, vision, and values
- Approve corporate strategy and annual implementation
- Ensure quality of clinical care
- Monitor performance against plans and budgets
- Improve board performance

Source: White, K. and Griffith, J. 2016. *The Well-managed Healthcare Organization* (8th ed.). Chicago, Ill.: Health Administration Press.

# Five Responsibilities of a Governing Board



1. The Board has the ultimate responsibility for envisioning and formulating the organization's mission, vision, and goals and strategy.
2. To select, encourage, advise, evaluate, and if need be, replace CEO. A Board must assume ultimate responsibility for ensuring high levels of executive management performance by focusing its attention on the CEO.

*Source: Practical Governance Group*

# Five Responsibilities of a Governing Board (cont.)



3. A Board must assume ultimate responsibility for ensuring the quality and safety of the service of the organization and operating efficiency.
4. A Board must assume ultimate responsibility for ensuring the organization's financial health.
5. A Board must assume responsibility for itself.

Source: Practical Governance Group

# Board Job Descriptions



Job descriptions should be required for chair, vice-chair and all board members.

# Board terms



- Board terms usually last three years with option to renew
- Term limits can remove poorly functioning Board members, but also remove highly functioning members as well
- “Could rob the Board of critical expertise”
  - Council of Institutional Investors
- Board self-evaluations are important

# RiskMetrics group comments



“There is no research or evidence that the existence of director term limits or retirement ages improves performance. It’s time to kick these crutches aside.”

*Patrick McGurn, JD  
EVP – Special Counsel  
ISS/RiskMetrics*

# Mission statement



- Mission, vision and values drive everything
- Mission, vision and values should be printed on cards, board agendas, payroll deposit slips and all around the hospital



# Sample mission statements

- **Emory Healthcare**  
To serve humanity by improving health through integration of education, discovery and health care.
- **Gwinnett Health System**  
We exist to provide quality health services to our community.
- **Navicent Health**  
To provide a comprehensive range of high-quality, reasonably priced health care services to the central and south Georgia community.
- **Southeast Georgia Health System**  
To provide safe, quality, accessible, and cost-effective care to meet the health needs of the people and communities it serves.

# Working together as a board



- Board size
  - 8 or fewer Too small
  - 20 or more Too large
  - 9 to 19 Ideal size
  - Relationship to Executive Committee

*Source: Practical Governance Group*

# Current board sizes



## Average numbers of board members

Freestanding hospital	12
Hospital subsidiary	12
System headquarters	16

*2014 Average all respondents = 13*

*2011 Average all respondents = 12*

*Source: 2014 National Health Care Governance Survey Report*

# Purpose of board self-assessments



- Characteristic of good governance
- Self-assessment appears on lists for outside evaluation; i.e., rating agencies
- Allows the board to begin dialogue leading to more open discussion
- Eliminates the need for board term limits

# Purpose of board self-assessments (cont.)



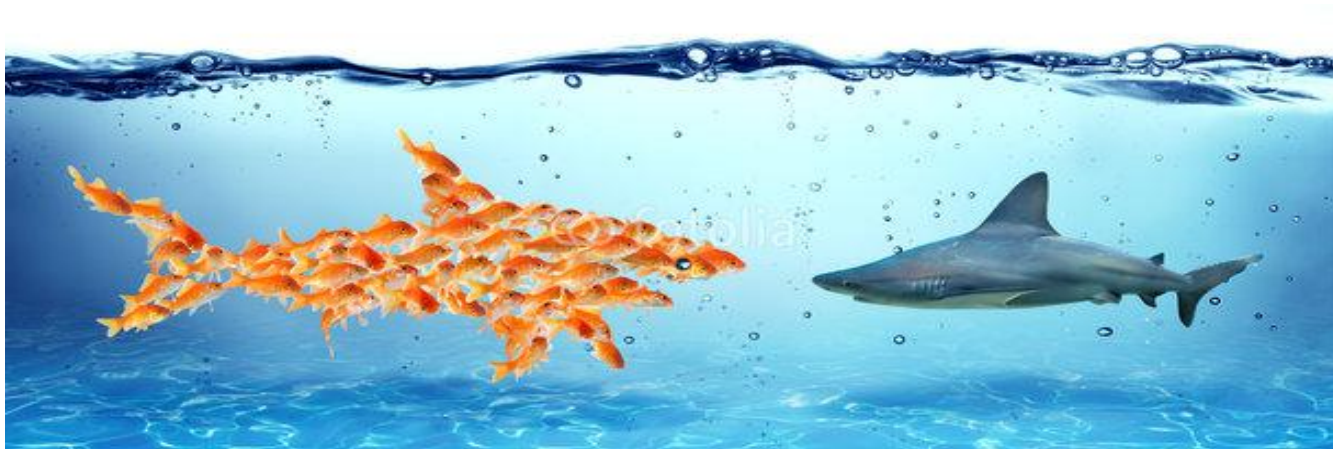
- Refresh the board's understanding of its role and responsibilities
- Identify important areas of board operation that need attention or improvement
- Measure progress toward existing plans, goals and objectives



# Purpose of board self-assessments (cont.)



- Define the criteria for an effective and successful board
- Build trust, respect and communication among board members and the President/CEO
- Enable individual board members to assess their own contributions and work more effectively as part of a team



# Summary of responses

*(Self-assessment for Board of Directors)*



<b>QUESTION</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Somewhat Disagree</b>	<b>Disagree</b>
1. Familiar with mission				
2. Mission appropriate	3/15 (20%)	2/15 (13%)	6/15 (40%)	4/15 (26%)
3. Board adopted plan				
4. Concept of “co-opetition”				
5. Physician participation				
6. Board open to physicians				
7. Reappointment of medical				
8. Review of quality reports				
9. Board adopts budget				
10. Board adopts financial ratios				
11. Capital expenditure plan				
12. Selecting new members				
13. Board performance	2/15 (13%)	6/15 (40%)	3/15 (20%)	4/15 (26%)
14. Board reviews structure				



**What can we do as a board to ensure that our decisions are consistent with our mission?**

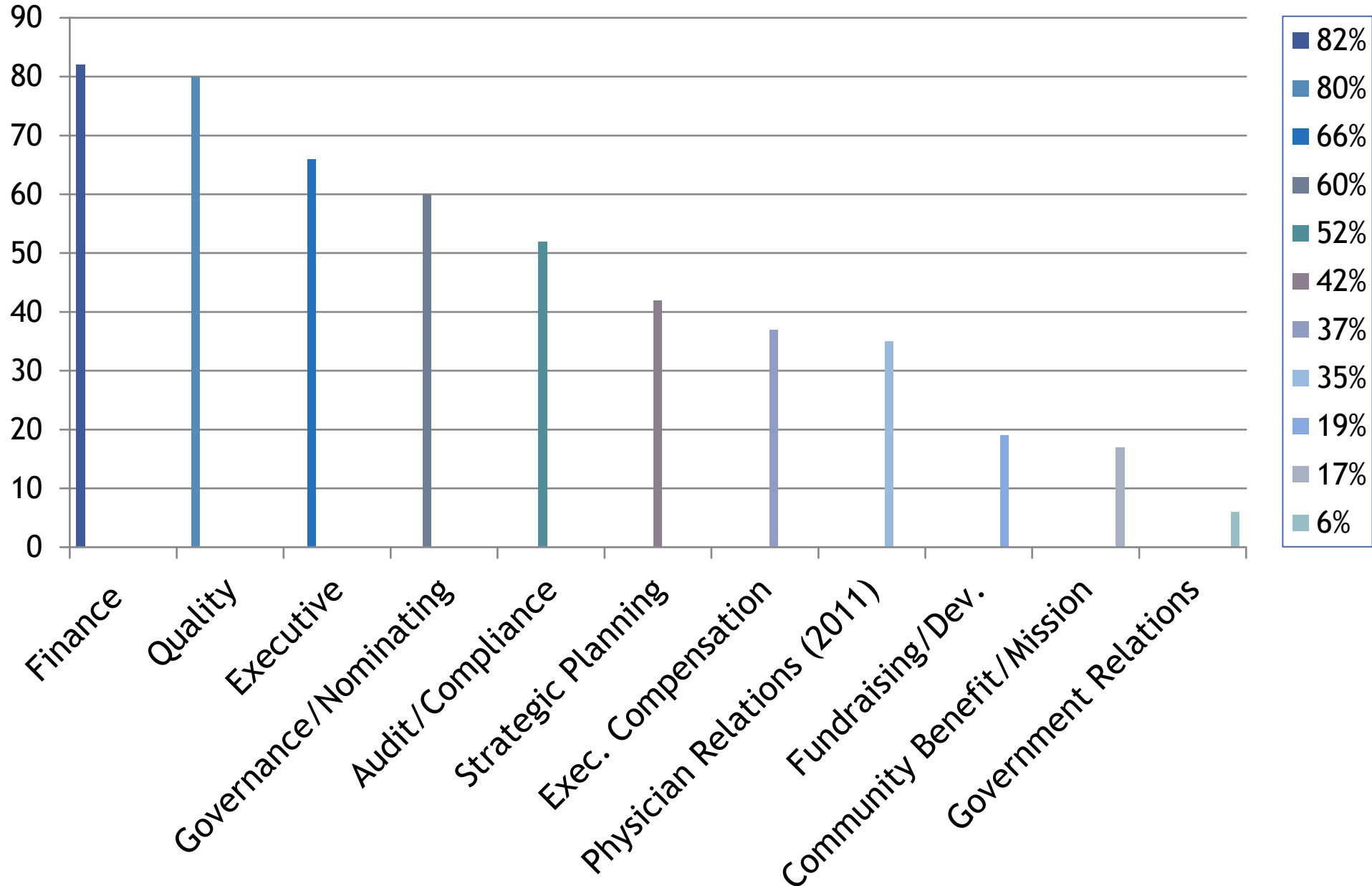
# Common board committees



- Executive Committee
- Strategic Planning Committee
- Finance Committee
- Quality and Safety Committee
- Audit Committee
- Governance Committee



# Common board committees



# Finance Committee



- Focuses on financial health of the organization
- Duties include budget review, approval of financing mechanisms, and investment philosophy



# Quality and Safety Committee



- Responsible for analyzing the quality of care and patient safety of the facility's population
- Must be active in obtaining data reports and benchmarks against other facilities
- Must be diligent in staying ahead of benchmarks recommended by outside organizations

# General Motors Board Committees



- Audit
- Executive Compensation
- Finance
- Governance
- Risk
- Executive
- Cybersecurity





# Executive Committee

- Made up of the board officers
- Should be used sparingly
- Often handles issues such as CEO performance appraisals and compensation
- On large boards, the Executive Committee can make many decisions alone

# Governance Committee



- Once called the Nominating Committee or Bylaws Committee
- Oversees board member recruiting, training, continuing education and self-evaluation



# Governance Committee



- Improves board's own functioning
- Reviews the board's structure and composition
- Makes nominations for new members
- Directs the board's continuing education programs
- Designs new member orientation program
- Directs the board's self-assessment process
- Plans the annual board retreat
- Reviews bylaws

# Audit and Compliance Committee



- Works with outside auditors to ensure financial statements are accurate
- Now separate from the Finance Committee because of Sarbanes-Oxley
- Works with Chief Compliance Officer

# Strategic Planning Committee



- Focused on the future of the organization
- Responsible for program and building planning
- Strategic plans are usually three to five years
- Monitors plan and progress on plan



# Executive Compensation Committee



- Sets parameters for C-suite
- Works with outside compensation experts
- Reviews and sets bonus for C-suite



# Fundraising/Development Committee



- Raises funds for the healthcare organization
- Many organizations have a separate foundation and foundation board for fundraising efforts



# Community Benefit/Mission Committee



- Sets goal and initiates projects to further the mission
- Prepares community benefit statement

# Government Relations Committee



- Interfaces with public officials
- Explains issues to public officials



# Appointing committee members



- Members are generally appointed by the Chair of the Committee with concurrence of Executive Committee



**You're hired!**

# Selection process for physician Board members



- Be aware of physicians with potential conflicts of interest and carefully evaluate

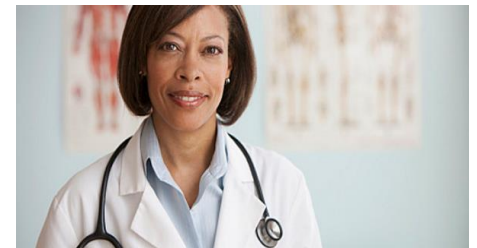


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# Selection process for physician Board members (cont.)



- Look for experience on other boards
- DO NOT ask medical staff for recommendations
- Review additional educational achievements
- Consider physicians from outside community
- Use same criteria for selecting other board members



# Physician input into Governance



- President of medical staff should be a voting member of the board
- President-elect or next in rotation attends board meetings, with or without vote
- Physicians serve on various committees
  - Schedule mindfully
- Other physicians serving on board provide physician perspective, and **do not** speak for the collective medical staff

# Physician input into Governance (cont.)



- Other physicians go through same nomination process as non-physicians
- No hospital-based physicians or those with significant hospital contracts, especially in board leadership positions
- Governance education for physicians going onto board is essential

# How some physicians make decisions



# Role of the CEO in Governance



- Make sure the board is fully informed as it makes decisions
- Provide timely information to the board



# Role of the CEO in Governance (cont.)



- Never surprise the board; give it a “heads up” on potentially negative information
- Help recruit new board members
- Ensure the board stays involved in governance, not management
- Help actuate annual board retreats



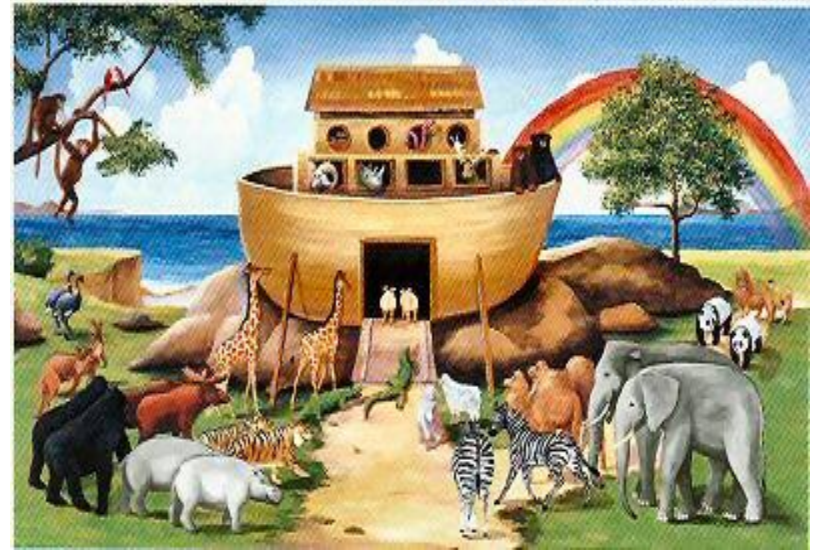
# CEO as member of board

- 46% of hospital CEOs are board members  
*(Governance Institute Study, 2013)*
- 17% are non-voting members
- Helps strategic partnership with board

# Board retreat



- Review mission, vision, and values of the organization
- Board should review strategic plan and progress on the plan
- Provide governance education
- Invite non-members to the retreat to hear new opinions



# Governance vs. management: Why Boards micromanage (cont.)



- No job descriptions
- Specialized knowledge
- Directors have special interests
- Pride and emotional connection
- No effective orientation program

# Governance vs. management: Why Boards micromanage (cont.)



- Board manages when given management (as opposed to governance) information
- Crisis arises
- Management ineffective

# Frequency of Board meetings



## Average number of board meetings

Freestanding hospital board	11
Hospital subsidiary board	8
Local hospital board with limited authority	7
Local hospital board with no fiduciary duties	8
Local hospital board with significant authority	9
System headquarters board	8

**Average all respondents = 9**

*Source: 2014 National Health Care Governance Survey Report*

# CEO succession plan



- Should be a top priority for boards
- Board driven, collaborative process
- Involves identifying (and developing) several leaders
- Assures key stakeholders of leadership continuity
- Internal candidates get generally better results



# Intermediate sanctions



- Not-for-profit directors can cause organization to lose non-profit status
- Intermediate Sanctions have caused directors to be liable for their actions
- Sanctions are brought when transactions involve “disqualified persons,” or an individual who is in position to exercise substantial influence over the organization
- See [www.irs.gov/Charities-&Non-Profits/Charitable-Organizations/Intermediate-Sanctions](http://www.irs.gov/Charities-&Non-Profits/Charitable-Organizations/Intermediate-Sanctions)

# Actions resulting in intermediate sanctions



- Paying unreasonable compensation
- Paying revenue-based compensation
- Participating in bargain sales



# Basics for a “good” Board



- Job descriptions for Board and Board officers
- Up-to-date bylaws
- Board self-evaluations
- Conflict of interest policies enforced
- Good relationship with CEO, but not in CEO's pocket



# Basics for a “good” Board (cont.)



- Effective orientation for new Board members
- Board is into policy setting, not operations
- Annual Board retreats
- Up-to-date strategic plan
- CEO evaluation annually

# Characteristics of an advanced Board



- Eliminate term limits and age limits
- Individual Board evaluations
- No monthly board meetings
- Spend as much time on quality as on finance
- Engaged in public policy initiatives
- Board members self-identify conflicts early and recuse themselves

# Characteristics of an advanced Board (cont.)



- Board member automatically resigns over continuing conflicts
- Board has dealt with “physician member” issues
- Board has added members outside of the community
- Ask members to leave the board for good reason

# Characteristics of an advanced board (cont.)



- Reputation of board is so good people ask to join
- CEO succession plan in place
- Board members are engaged in continuing education on governance



# Governance websites



- [Compensationstandards.com](http://Compensationstandards.com)
- [NACDonline.org](http://NACDonline.org)
- [Boardsource.org](http://Boardsource.org)
- [Thecorporatelibrary.net](http://Thecorporatelibrary.net)
- [Greatboards.org](http://Greatboards.org)
- [Healthpolicyinstitute.pitt.edu](http://Healthpolicyinstitute.pitt.edu)
- [Trustees.aha.org](http://Trustees.aha.org)
- [Practicalgovernancegroup.com](http://Practicalgovernancegroup.com)



# Questions



# Contact



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## *Insight*

[practicalgovernancegroup.com](http://practicalgovernancegroup.com) (website)

[Youtube.com/practicalgovernancegroup](https://Youtube.com/practicalgovernancegroup) (YouTube)