Highest Standards of Integrity—Are We There Yet?

Special Commentary

Edward A. Kazemek
Chairman & CEO, **ACCORD** LIMITED

The short answer to the question is "no." The 2009 biennial survey concerned governance practices that reflect the degree to which healthcare boards are doing all they can to perform their fiduciary duties and core responsibilities in a manner that leaves little doubt about the integrity of the governance function. The information revealed in this report suggests that governance integrity needs more attention. The data does indicate improvements over the past six years, especially on matters that have received a significant amount of public attention thanks to the Senate Finance Committee, the IRS and its "new and improved" Form 990, pressure from various state attorneys general, and tax-exemption challenges to the charity care and community benefits provided by hospitals and health systems. The data suggests that almost all boards pay attention to whatever the law, regulators, or government requires—to a degree.

However, mere compliance with laws, regulations, and/or avoidance of public scrutiny should not be the end game when it comes to institutional integrity. Boards and senior executives are encouraged to adopt a "zero defects" mindset on practices that could impact an organization's integrity and reputation. The survey data points to a number of areas where improvements can be made. The "good news" is that the issue of integrity is one where the board is in complete control to do whatever it takes to reach near perfection.

Principal Areas of Focus

The biennial survey provides a rich body of structural and practice information for boards to consider as they develop their unique governance enhancement plans. The integrity practice areas that require special attention on the part of a significant number of boards responding to the survey include:

- Fiduciary duties of care, loyalty, and obedience
- Self-assessment and development

Duty of Care

Arguably, the board's legally mandated duty of care represents the public's highest expectation of what boards are supposed to do in their oversight role, and the area that most often gets boards into trouble if not carried out rigorously. The survey information suggests that boards understand and, in fact, are using many of the recommended practices. However, almost 8% of the boards rated their performance in fulfilling their duty of care as just "good" or "fair" vs. "very good" or "excellent." There should be no room for error when it comes to the duty of care and the goal for all boards should be to pursue excellence on all of the recommended practices. It will be difficult to achieve that level of performance if boards don't require their members to show up for meetings. Yet, only 73% of the boards specify minimum meeting attendance requirements. The absence of meeting attendance requirements creates the impression that attending most, if not all, meetings is not an important dimension of board service.

Duty of Loyalty

This legal requirement has received a massive amount of attention over the past several years, especially regarding conflicts of interest among board members and other institutional leaders. Failure to address conflict-of-interest matters appropriately has led to the ruination of hospital reputations overnight, and has stimulated much of the IRS' and Senate Finance Committee's scrutiny. In spite of the sensitivity in this area of board performance, a significant number of boards have not embraced several key recommended practices.

Only 57% of boards have developed "disabling guidelines" that define specific criteria for when a director's material conflict of interest is so great that the director should no longer serve on the board (18% are considering developing such guidelines). In effect, many boards are saying that no matter how great the conflict and regardless of how it appears to the public, a director can continue serving on the board. This is the equivalent of playing Russian roulette with the hospital's reputation.

Only 65% of the boards have adopted a specific definition, with measurable standards, of an "independent director," in spite of pressure from the IRS and the importance of ensuring that only independent directors are charged with overseeing executive compensation and audit matters. Finally, almost 37% of the boards do not have a policy stating that **deliberate violations** (emphasis added) of conflict-of-interest/confidentiality policies/procedures constitute grounds for removal from the board. What would it take to remove a board member in these organizations?

Duty of Obedience

A board's most profound fiduciary duty is to ensure that the hospital's mission is crystal clear, guides the actions of the board and management, and takes precedence over the interests of those who serve or work for the organization. In effect, board members and management are expected to "fall on the sword" in behalf of the organization they govern, even if it means their personal interests are negatively impacted. The ways in which the board handles executive compensation and physician conflicts/competition raise duty of obedience concerns. Yet, almost 20% of the boards are not even considering delegating executive compensation oversight exclusively to independent directors and only 41% have developed a policy outlining the organization's approach to dealing with physician conflict/competition situations.

Since serving the needs of the community is a fundamental tenet of a not-for-profit hospital's mission, it is surprising that only 54% of the boards have adopted policies related to community benefit goal-setting, measuring, monitoring, and communication. It appears that almost half of the boards responding to the survey are ignoring this matter, notwithstanding the fact that they derive their tax-exempt status largely on the basis of the community benefits they provide.

Self-Assessment & Development

Most governance professionals agree that the most direct path to improving a board's performance of its fiduciary duties and core responsibilities is for the board to take seriously its responsibility to periodically assess its own performance, including the performance of individual directors. However, this area of board performance has been a chronic weakness over many years of surveying. The current survey reveals that over 19% of the boards do not evaluate their own performance at least every two years and only 29% evaluate the performance of individual board members. Most boards believe in the value of evaluating the CEO but come up short when it comes to evaluating themselves. In fact, only 63% rated their performance in this critical area as "excellent" or "very good."

Culture of Integrity

Institutional integrity transcends everything an organization does. It's a source of strength during hard times and a source of satisfaction for all times. "Integrity" is a value that must be embraced, cherished, and lived by the entire board. And values are the cornerstone of an organization's culture. Hence, pursuing the highest level of integrity is a means to create a strong, enduring organizational culture.