



BOARD OF DIRECTORS RESPONSIBILITIES FOR COMPLIANCE

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ANMC Tribal Health Compliance Conference

TODAY'S TRAINING:

- General Board of Directors Responsibilities
- Directors' Duties – Inherent in Compliance
 - Fiduciary Duty – Good Faith
 - Duty of Care
 - Duty of Loyalty
- Ethics & Ethical Culture
- Risk & Compliance Obligations



WHAT GOVERNS A GOVERNING BOARD?

- Alaska Nonprofit Corporation Act (AS 10.20)
- Alaska Case Law
- Internal Standards & Documents
 - Articles of Incorporation
 - Bylaws
 - Code of Conduct
 - Policies and Procedures
- State and Federal Compliance Requirements
- OIG Guidelines



GENERAL RESPONSIBILITIES

- Manage the affairs of the corporation (AS 10.20.081)
 - But don't micromanage!!!
- Be familiar with the governing documents
 - Bylaws
 - Code of Conduct – part of compliance
 - Policies
- Monitor organization's actions & performance
- Review and approve policies



DIRECTORS' DUTIES

- Director duties cannot be delegated – you can receive assistance and rely on experts, but cannot delegate the ultimate responsibility



FIDUCIARY DUTY

- When you become a director, you become a “fiduciary” – a person who acts on behalf of the corporation
- Fiduciaries are held to a higher standard than your average person – put the corporation ahead of yourself when making decisions
- Must act in good faith, with honesty and loyalty to the organization
- As a director, you agree to “honestly and diligently direct the business of the corporation.”
Bibo v. Jeffrey’s Restaurant (Alaska 1989)



WHAT IS GOOD FAITH?

- Being honest
- Being fair
- Not acting recklessly
- Avoiding conflicts of interest
- Not acting for personal gain
- Not taking advantage of being a director, or information received in that role



GENERAL DUTY OF CARE

- Duty of Care is both a fiduciary duty generally, and specifically required by statute (AS 10.06.450)
- Must act with care, including reasonable inquiry and investigation
- Allowed to rely on information, reports or statements prepared by:
 - Officers or employees (if you reasonably believe they are reliable and competent)
 - Lawyers, accountants & other experts (if within their area of expertise)
 - Committees of the board on which you do not serve (if within the authority of that committee)



DUTY OF LOYALTY

- Actions must be in the best interest of the corporation
- Keep information confidential
- Be aware of potential conflicts – don't let personal interests affect decisions or actions as a board member
- Disclose potential conflicts, including personal and professional relationships



ETHICS & ETHICAL CULTURE

- Ethics and ethical culture are a HUGE part of compliance
- The Board of Directors sets the example – you're all part of the same team!
- Acting in good faith includes acting ethically
- Stay true to the core values of your organization



CODE OF CONDUCT

- Code of Conduct is the guidance and framework to ensure that the organization carries out its obligations within appropriate ethical and legal standards.
- Board members should be familiar with the Code of Conduct, even if they weren't involved with drafting or approving it.
- The only way to ensure compliance with the Code of Conduct is to apply it to all activities and make it part of the culture of the organization



RISK & COMPLIANCE OBLIGATIONS

- Boards need to be engaged in risk management and compliance
 - Make compliance a responsibility at all levels
 - Review the performance of those in charge of risk management and compliance
 - Ask the right questions
 - Require regular reporting
 - Review reports not only for what is reported, but for what is not reported



OIG GUIDANCE ON COMPLIANCE FOR HEALTHCARE ORGANIZATIONS

- Set and enforce expectations for compliance information
 - Regular reports on risk mitigation and compliance efforts
 - Information from variety of players
 - Compliance, audit, human resources, legal, quality assurance, and IT
 - Reports on internal and external investigations
 - Report serious issues raised in audits
 - Report all allegations of material fraud or misconduct
 - Address significant regulatory changes and enforcement events
- Increase your knowledge of regulatory risks



MORE OIG GUIDANCE

- Reports should be in a format appropriate for the board members – don't be afraid to change the format or ask for it in a different way
- May want to establish tools for reporting and evaluation
- Identify and track trends
- May need to schedule and conduct regular executive sessions to explore issues further
- Check for controls and processes in place to reduce risk and identify non-compliance
- Ensure there are regular reviews and audits
- Review compliance as part of performance assessments, think about incentives



QUESTIONS?

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