

# The North Carolina Trustee

For North Carolina Hospital, Health System and Care Provider Governing Board Members

Spring 2018

## BOARDROOM BASICS

### Fiduciary Fitness: The Most Critical Governance Accountability

As the ultimate authority for the hospital, the board sets the overall agenda and charts the course for the hospital’s future. Boards are responsible for operational effectiveness, strategic direction, establishing and nurturing the corporate culture, ensuring CEO success, and maintaining a careful balance between meeting community needs and ensuring financial viability.

**A**ccomplishing all this requires every board member, and the board collectively, to consistently provide strong, insightful and well-balanced leadership. This is embodied in the fiduciary responsibility.

#### What is the Board’s Fiduciary Responsibility?

At its core, being a responsible fiduciary means being fully accountable to ensure that individual trustees always do the right thing, in the right way, at the right time and for the right reasons. These are the duties of loyalty, care and obedience.

**Duty of Loyalty.** The duty of loyalty bars trustees from the use of their board position in a self-serving manner. It is essentially the requirement for trustees to place the interest of the organization before all else. Undivided loyalty means that board members are:

- Objective;
- Unbiased in their thinking and approaches to issues and decisions;

- Free from external control, ulterior motives and “constituency thinking;” and
- Have no conflict of interest when discussing issues and making decisions.

**Duty of Care.** The duty of care means that trustees must always use the same level of judgment in conducting the business of the hospital that they would use in their own personal business activities. This is typically accomplished by:

- Obtaining adequate information before making any decision;
- Always acting in good faith; and
- Making decisions that are always in the best interest of the hospital.

**Duty of Obedience.** The duty of obedience requires board members to follow all state and national laws, corporate bylaws, rules

and regulations when representing the interests of the hospital.

#### Carrying Out Your Board’s Fiduciary Duties

The fundamentals of the board’s fiduciary responsibilities are carried out in a variety of ways, with financial responsibility and ensuring quality at the top of the list.

**Financial Responsibility.** One of the most common elements of the fiduciary duty falls in the area of accountability for financial responsibility and efficacy.

While not every board member should be expected to be a financial expert, all board members should have a good grasp of the financial elements and drivers of



organizational success. They should understand basic financial terminology, be able to read and understand financial statements and be able to spot financial “warning signs” that may indicate problems in the financial health of the organization.

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## NCHA NOTEBOOK

### Legislative Session Begins May 16

NCHA and government relations officers are monitoring committee activity leading into the short legislative session. New administrative rules at the General Assembly prohibit our usual Advocacy Day activities, so our approach this year will be to coordinate and support members in regular visits throughout the session, incorporating care providers in those visits. During the first week in June (June 4-8), we are planning an intentional focus on Behavioral Health issues, specifically NCHA-supported legislation to reform the state's Involuntary Commitment (IVC) law. This legislation was introduced last session and successfully passed through the Senate. In the interim, NCHA and members took the opportunity to make some revisions and additions to strengthen the bill, which will go before the House for consideration. We encourage trustees to work with your administration and government relations officers on opportunities to engage in advocacy throughout the session in Raleigh and especially at home in your districts.

### Upcoming Events

May 16	NCHA Legislative Session Begins
June 4-8	NCHA Advocacy Week (Behavioral Health focus)
July 18-20	NCHA Summer Meeting and Centennial Celebration Omni Grove Park Inn, Asheville
October 5-6	NCHA Trustee Education Forum Hotel Ballast (formerly Wilmington Hilton), Wilmington

### Trustee Education

This year, NCHA will host a Trustee Education Forum on October 5-6 in Wilmington. This will take the place of our regular spring trustee event, but promises to provide opportunities for learning, best practice sharing and plenty of networking with your peers from across the state. More information will be available in the coming months, but please save the date for this special event.

### Primary Elections in May

A number of incumbents as well as some new faces will be on the ballot in the upcoming May 8th primaries. All 13 U.S. representatives from the state have filed for re-election, and all of them have at least one opponent. State legislative races are more competitive than usual. Your support of HOSPAC is important in helping NCHA and your organization meet financial targets and enabling the PAC to support candidates who support healthcare.

### Response to the Opioid Crisis

NCHA is actively engaged with state agencies, member hospitals and community leaders in addressing the growing opioid epidemic in North Carolina. One group we are facilitating is the [Coalition for Model Opioids Practices in Health Systems](#). The coalition includes representation from all our member hospitals, as well as professional societies and government agencies.

In early May, NCHA will announce grant funding awards to six member hospitals to embed certified peer support specialists in their emergency departments to connect patients presenting with opioid overdose to community-based support programs. This initiative is based on a pilot at Wake Forest Baptist Medical Center.

### NCHA Summer Meeting is July 18-20

Final plans are being made for this year's Summer Meeting, which will include NCHA's Centennial Celebration. We will mark our 100th anniversary at the historic Omni Grove Park Inn in Asheville. In addition to nationally-recognized speakers, networking and our annual trade show, the event will include the introduction of the new Board of Directors for the North Carolina Hospital Foundation. The Foundation has been in existence since the mid-1960s, but is being reinvigorated with a new board and mission. Registration information will be sent in early May, or you can check our [new NCHA.org website](#) regularly for updates.

### Do you have suggestions for future issues of *The North Carolina Trustee*?

Our goal is to provide you with the information and knowledge you need to lead your hospitals in today's rapidly changing environment. Tell us what you think and what topics you would like to see in future issues. **Write or call:** Leslie Peterson, Vice President, Education Services, North Carolina Healthcare Association, 2400 Weston Parkway Cary, NC 27519, 919-677-4247 or [lpeterson@ncha.org](mailto:lpeterson@ncha.org).

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The board should have mutually agreed-upon guidelines and standards for measuring the financial progress of the organization. This typically requires utilizing a variety of key performance indicators or “vital signs” that show the interrelationship of various financial and operating ratios.

In addition, appropriate financial policies should be in place to guide management and board decision making.

**Quality of Care.** Another critical element of the fiduciary duty of care is the board’s accountability for quality and patient safety. Boards can’t be passive recipients of quality and safety information—they must be actively engaged in oversight.

Trustees don’t all need a medical background to effectively oversee quality and patient safety, but they do need to ask penetrating and insightful questions, and must make sure they get solid answers from the executive team.

### Warning Signs of Fiduciary Failure

As boards strive to fulfill their fiduciary responsibilities, there are a number of warning signs to watch for that may indicate a fiduciary risk or failure.

**Warning Sign #1: Rubber Stamp Governance.** A “rubber-stamping board” does not exercise independence, and typically does not understand its fiduciary role as the body that is fully responsible and liable for the organization’s direction and success.

Members of rubber-stamping boards fail to ask pertinent questions or engage in deliberative dialogue on solutions to challenges, and do not work successfully together to arrive at independent-minded decisions. They accept recommendations with little questioning or debate, and fail to

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## Digging Deeper: The Duties of Loyalty, Care and Obedience

### Duty of Loyalty

The IRS states that the duty of loyalty requires a trustee to act in the interest of the organization rather than in the personal interest of the trustee or some other person or organization. In particular, the duty of loyalty requires trustees to avoid conflicts of interest that are detrimental to the organization.

The IRS also recommends that the board adopt and regularly evaluate its adherence to a conflict of interest policy that:

- Requires trustees and staff to act solely in the interests of the organization without regard for personal interests.
- Includes written procedures for determining whether a relationship, financial interest or business affiliation results in a conflict of interest.
- Prescribes a certain course of action in the event that a conflict of interest is identified.

Trustees and staff should be required to annually disclose, in writing, any known financial interest that the individual, or a member of the individual’s family, has in any business entity that transacts business with the organization. To help ensure this duty of loyalty is fulfilled, boards should have a policy addressing conflicts of interest that clearly define when board members must recuse themselves from deliberations.

### Duty of Care

“Due diligence” is a critical component of the board’s duty of care. The IRS explains that trustees of a not-for-profit organization must exercise due diligence consistent with the duty of care that requires trustees to act in good faith, with the care that an “ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the trustee reasonably believes to be in the organization’s best interests.” To fulfill this, it is recommended that boards:

- Are familiar with the organization’s activities and know whether and how those activities promote the organization’s mission.
- Are fully informed about the organization’s financial status.
- Oversee quality and patient safety activities.

### Duty of Obedience

Hospital boards have a responsibility to protect the limited resources of the hospital to ensure optimum services and maximum benefit to the community, including:

- Ensuring the cost-effective utilization of resources.
- Regular review of meaningful and understandable financial reports, long-term financial planning and establishment of financial goals.
- Participation in and encouragement of community fundraising and other philanthropic efforts.
- Assessment of the hospital’s pricing and discount policies and contractual arrangements.
- Determination of policies relating to uncompensated care, financial assistance, subsidies for community serves, development of diversified revenue streams, and CEO compensation and performance review.

Sources: *Good Governance Practices for 501(c)(3) Organizations*, Internal Revenue Service and *Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors*, DHHS OIG and AHLA ([www.oig.hhs.gov](http://www.oig.hhs.gov)).

LEADERSHIP PERSPECTIVES

## Passing the Torch, Recruiting the Right Trustees for Leadership Success

High performance governance in today's environment is critical. Every board member must clearly understand and be capable of carrying out his or her responsibilities at the highest level of governance performance. Recruiting new trustees to serve on your board is every bit as important as CEO recruitment. How well boards plan and execute this vital process defines the hospital or health system's leadership success for years to come.

**T**he importance of governance succession planning is growing as health care organizations and their governing boards face increased pressure for high performance, transparency and accountability in a field undergoing significant change. The board should be comprised of individuals who display a diversity of opinions and independent thought and actions. Trustees should have demonstrated achievement in their career field and possess the intelligence, education, and experience to make significant contributions to governance. They should also possess the personal attributes that will contribute to sound working relationships with other board members and the executive staff. Instead of a board composition that is simply representational, boards of trustees should seek to develop a composition that also reflects the overarching experience and expertise needed to successfully govern in today's era of transformation.

### Leveraging Trustee Openings

Boards of trustees should be asking themselves: "When current trustees' terms end, who will replace them? Where will we find highly qualified board members who are "experts" in the areas of governance in which we need the most help, who are free of potential conflicts of

interest, and who are able to meet the required time and energy commitment?"

Governance succession planning is the key to not only filling an empty seat on the board, but to strengthening board and organizational performance. By regularly assessing the board's leadership strengths and weaknesses, and using the hospital's strategic plan to define critical future leadership requirements, a board can identify governance "gaps" that can be closed through targeted trustee recruitment.

A trustee succession plan should be developed to recruit trustees that meet the specific governance needs. These "gaps" will be different for each board and organization. One board may need increased diversity, while another may seek greater clinical expertise or an improved balance between visionary, "big picture" thinkers and more practical, shorter-term thinkers.

### Increased Trustee Demands

Boards of health care organizations govern highly complex organizations. The nature of hospitals requires trustees to engage in ongoing education, time-

consuming individual preparation for board and committee meetings, and attendance at trustee conferences and other educational and governance development events.

According to McKinsey & Company, board members serving on boards deemed as "most effective" spent an average of 41 days per year in their role as a board member. In contrast, directors on "less effective boards" spent an average of 28-32 days. When asked, the board members of the less effective boards indicated they would ideally spend more days focus on board activities.<sup>1</sup>

Many hospitals are challenged to find trustees who not only meet specific board leadership requirements, but who are also willing to commit the time required to fulfill their growing responsibilities and accountabilities.

### Recruiting the Right Trustees

Properly identifying, assessing and successfully recruiting a new trustee involves several steps. Boards should begin by conducting a comprehensive governance self-assessment to determine where they may have potential leadership "gaps," either now or in the future. After identifying specific characteristics and skills sets desired, the board should seek out and talk with a variety of candidates

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who may meet their board service requirements. Once a new trustee is selected, orientation and ongoing education is critical to ensuring trustee success in providing strong and effective leadership to the hospital on behalf of the community.

### Essential Skills, Experience and Knowledge

Boards of trustees can successfully recruit new trustees that meet their governance needs by selecting individuals with the right skills, experience and knowledge. Critical characteristics most often sought by hospital boards include individuals that are:

- Motivated, committed and passionate in serving the hospital and community;
- Ethical, respected and held in high esteem by the community;
- Strategic, innovative and visionary thinkers;
- Willing to advocate on behalf of the community;
- Intellectual and willing to learn;
- Collaborative, artful listeners who are willing to engage and ask hard questions;
- Able to grasp the implications of financial statements;
- Willing to seek the perspectives of others, including the medical staff and patients; and
- Exhibit critical skills or experience missing on the current board, such as community partnership expertise or experiencing in transformative thinking.

In addition, potential board members should ideally have prior board experience and no real or perceived conflicts of interest.

### Key Factors to Consider When Recruiting Trustees

- ✓ Recruit trustees with the skills that will best complement the hospital's future strategic needs.
- ✓ Select trustees who have the passion and time to be committed to the organization's mission.
- ✓ Seek candidates who have experience working with both corporate and not-for-profit boards.
- ✓ Ensure a commitment to the organization, experience as a trustee and a willingness to learn about health care issues and trends.<sup>2</sup>

### Finding Qualified Board Members

Once specific desired skills and characteristics have been identified, the board must recruit individuals that meet these specifications. Several approaches may be undertaken to find candidates, including:<sup>3,4</sup>

- Maintaining a list of potential board candidates, often developed by the Nominating Committee or the Board Development Committee, including the specific skills they can bring to the organization;
- Assessing the leadership potential of individuals who already volunteer for the hospital in other capacities, such as serving on the hospital's foundation, or participating in ad hoc committees and task forces;
- Seeking out individuals who have a record of successful governing service on other boards, and who have the potential to bring credibility, expertise and community connections to board work;
- Asking the CEO and former board members to suggest replacements for outgoing members;

- Contacting successful former board members who were highly regarded for their leadership skills, and ask if they would be willing to serve again. These individuals are often a deep well of information and perspectives; and
- Considering expanding the "network" of potential candidates, perhaps looking outside the immediate community for qualified trustees.

Throughout the recruitment process, stick to the board's pre-defined specifications for new trustees. Trustees must know and understand more and take on greater responsibility than they have in the past, underscoring the critical work of the board and weighty nature of board responsibilities. Candidates must have the time, availability and discipline to act on their commitment to the board and the responsibilities of trusteeship. When interviewing potential trustees, do not "sugarcoat" the job—be honest about board members' roles and responsibilities and the time commitment required. The last thing a board needs is to select a new trustee who did not understand the commitment and who is then unable to fulfill his or her duties.

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## What About the Next Generation of Leaders?

The keys to a successful and sustainable organization are rooted in a mission-driven focus, a sense of vitality and the ability to look ahead and plan for continued success into the future. Who better to contribute energy, new perspectives and a vested interest in the future than the next

generation of leaders? Yet nearly 60 percent of not-for-profit board members are over the age of 50; add in board members over age 40 and the percentage jumps to 86 percent.<sup>5</sup> If your board is missing the diversity of age, you may also be missing the commitment, passion for service, and fresh thinking of your community's next

generation of leaders. In addition to the benefits younger leaders can offer to your board, you may also be missing an opportunity to offer your community a valuable leadership development experience for these future leaders.

Four generations are now represented in the workforce, but not necessarily around the board table. If nearly sixty percent of not-for-profit board members are over age 50, and 86 percent are over age 40, there's a good chance that generations X and Y (those born between 1965 and 2000) are probably not represented on your hospital's board. And it's not because they aren't interested. Talented and educated young leaders are committed to not-for-profit work because of "its promise of meaningful work leading to social change." In a national study in which two-thirds of respondents were under the age of 40, nearly half the respondents indicated that their ideal next job would be in the nonprofit sector.<sup>9</sup> Unfortunately, the skepticism of current board members often keeps the next generation from serving as trustees.<sup>6</sup>

## Finding the Next Generation of Leaders.

The most common means used by boards to recruit new board members is to simply ask for recommendations from current board members.<sup>5</sup> The result is a gravitation to the familiar, recruiting friends and acquaintances that mirror one's self instead of drawing in younger individuals with

leadership talent and varied backgrounds. Investing now in the effort to recruit young talent to the board will define the hospital's leadership succession and success for years to come.

Hospital boards can start by looking at organizations that employ and/or interact with the talent pool of young leaders. Ask the administrators of agencies and organizations that serve younger populations to recommend responsible, confident and talented young individuals. Organizations to approach might include the Chamber of Commerce, local alumni associations, youth advisory councils, Rotary, AmeriCorps, faith-based



organizations and young professionals associations.<sup>6,7</sup>

## Bringing Young Leaders on Board.

Investing in governance succession planning is a critical component to creating a pipeline of well-prepared young leaders. Consider sponsoring or co-sponsoring a board training program for your community to ensure that not only the hospital's board, but also other not-for-profit organizations have a growing pool of trained board candidates ready for service. Share with participants the benefits of board service, educate them about the responsibilities of board members and highlight the need for their leadership skills. Nurture and evaluate the "board readiness" of emerging young leaders by inviting them to serve on task forces or

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## Breaking Barriers to Board Diversity

- ✓ **The just-like-me syndrome.** Too often nonprofit boards look for candidates similar to themselves in their career positions or education. The result is either outright failure, if no willing or suitable candidates can be found in the narrow segments that are searched, or a superficial increase in diversity that neglects diversity of ideas and experiences.
- ✓ **Ineffective nominating procedures.** Board members are typically drawn exclusively from the local community, and recruitment can be hampered by the limited scope of contacts and life experiences of the existing board members, who often act as the primary board recruiters. To achieve a broader perspective, boards should consider expanding recruitment of trustees to qualified individuals outside of the area.
- ✓ **Inflexible board membership requirements.** Overly strict criteria for board membership can be counterproductive. Eliminate requirements for recruiting individuals that represent specific constituencies or occupations (unless, for example, you seek a financial "expert" for your audit committee). Look instead for the very best thinkers and leaders.<sup>8</sup>

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committees, and continue building their board readiness with a strong orientation program. Many new trustees, not just the young, arrive on the board with little or no prior board or health care expertise. A strong orientation program and warm welcome is critical to their successful service on the board.

Take orientation to the next level by linking experienced board members as mentors with new trustees. As a mentor, an experienced board member has the opportunity to offer a new trustee support, background information and insights, recap critical issues and identify subtle nuances. Mentors that successfully engage new trustees can also help prevent potential feelings of isolation that new and particularly younger board members might experience.

**Ensuring Inter-Generational Success.**

Generational differences, perspectives and experience all have the potential to create challenges for effective board operations. The first step to avoiding or preventing problems is to ensure that diversifying the age of board members is a sincere and not token effort. Early identification of opportunities for new trustees’ engagement and participation in the work of the board is important. An attentive board chair can create opportunities for young trustees to voice their opinions without putting them “on the spot” by asking all board members to express their thoughts and viewpoints on key issues in “round robin” discussions.

No one, young or tenured, should discount the value of fresh perspectives and new ideas that younger trustees can offer. For their part, younger trustees must also give credence to the concerns and experience of more seasoned trustees. All trustees will need to recognize, respect and account for the fact that each age cohort may have a different communication style and varying comfort levels with the use of technology. As with any endeavor, positive communication, attentive listening and mutual respect among trustees are foundational to success.

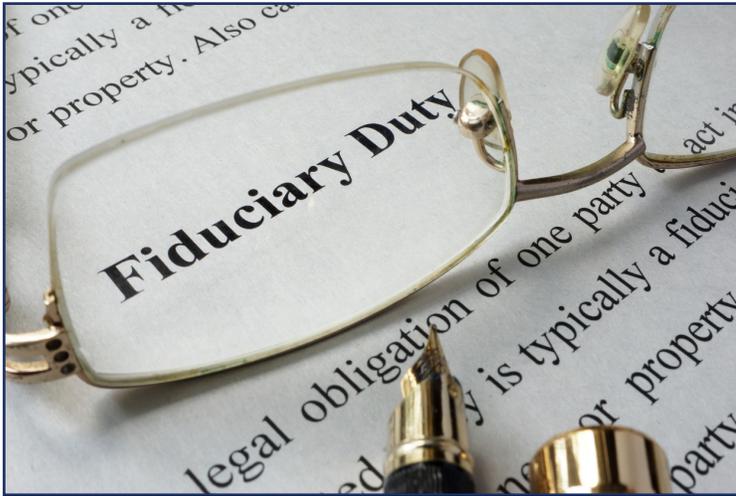
**Key Steps in the Trustee Recruitment Process**

The following steps are recommended for recruitment of trustees to serve on community hospital boards. The philosophy and process may be similar for governmental hospitals whose trustees are appointed, however the process is only a recommendation to the officials who will make the appointment.

- 1 Secure board agreement on a long-term succession plan and process: Purpose, participants and objectives
- 2 Appoint a board development committee to oversee the recruitment process
- 3 Develop appropriate background material on the hospital and board of trustees: Bylaws, board member biographies, information about the hospital and its challenges, information on trustees and officers liability insurance, conflict of interest statement, board self-assessment process, board orientation process, etc.
- 4 Develop a trustee candidate overview and application (includes board job description, trustee qualifications, and candidate application), and a letter to be sent to prospective trustees indicating the hospital’s interest in discussing potential trusteeship opportunities
- 5 Develop a a summary of candidate qualifications and a candidate profile, and a candidate assessment form to use as a tool in evaluating potential trustees. The assessment should be based on the criteria included in the candidate profile and job description. Consider assigning a “weight” to each criteria that reflects the relative importance of the criterion (e.g. 5 = greatest weight, 1 = least weight), and include specific questions to ask candidates to determine motivation and willingness to serve, ability to devote time required, knowledge of issues, conflict of interest, etc.
- 6 Secure board approval of the board development committee’s recruitment process and recruitment materials
- 7 Identify potential field of candidates
- 8 Make preliminary contact (emails, letters and/or telephone calls), assess initial candidate interest and willingness to serve, if chosen
- 9 Review candidates and arrange interviews with members of the board development committee
- 10 Evaluate candidates using the candidate assessment tool, and prepare a brief written summary of each candidate (occupation, length of residency, community involvement, answers to questions, etc.)
- 11 Determine top-rated candidates, and present to the board development committee
- 12 Board development committee makes recommendation to full board
- 13 Nomination of candidate(s)
- 14 Send follow-up letters to candidates not selected, and determine other ways for candidates not selected to be involved, such as serving on the foundation board, on task forces, etc. Assess interest in filling future vacancies

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explore alternatives and scenarios that may reveal the weaknesses of arguments or positions.

Rubber-stamping boards are often a result of overly dominant individuals and weak board chair leadership. A strong board chair will ensure that every board member is meaningfully engaged in constructive thinking and deliberation on the important issues that come before the board.

In order to avoid being a rubber-stamping board, every board member must understand his or her individual responsibilities, as well as the full board's responsibilities and liabilities.

**Warning Sign #2: Governance Micromanagement.** It's often a challenge for board members to see the fine line between management and governance. One of the keys to discerning that line is for board members to understand that they are expected to be leaders and overseers, not managers and implementers. Micromanagers feel obligated to become involved in the actual implementation of the work.

Boards should be most concerned with the "what," or the big picture mission and vision-related strategic issues. Boards should not focus on the "how," or the tactics of ensuring achievement of the strategies, mission and vision.

Micromanagement is a term generally applied to boards that pay too much attention to details, and not enough attention to the "big picture," strategic issues and implications.

It's up to everyone on the board to guard against micromanagement, but the board chair

and CEO play a critical role. The board chair ensures that all board members understand their roles and responsibilities, and that they're consistently adhered to. The CEO must be willing to candidly discuss problems of micromanagement with the board chair to work out board-driven solutions to micromanagement. In the event that the board chair is the offending micromanager, the CEO should address the situation directly, referring to board policy and bylaws as a helpful way to ensure that the chair is successfully fulfilling his or her leadership responsibilities.

Most importantly, the CEO can help avoid micromanagement by not bringing management issues to board meetings for discussion.

**Warning Sign #3: Breaches of Confidentiality.** Confidentiality in the boardroom is a key component of a board member's duty of loyalty. Many boards, however, are unclear as to what is and what is not confidential in the boardroom.

For example, board members are encouraged to be active and energetic advocates for their organization to various constituents and stakeholders. This advocacy oftentimes includes sharing information about organizational challenges and issues to help give stakeholders a perspective on

organizational needs. In the course of doing this, the line between what should and should not be openly shared may become blurred.

In recent years, there has been a push for increased not-for-profit transparency of operations and governance. This expectation of transparency may in some cases be in direct conflict with the board's requirement to maintain confidentiality.

Transparency may be generally defined as the disclosure of information publicly to show that an organization is well-managed, functions in an ethical manner and operates with the efficiency, effectiveness and responsibility necessary to fulfill its mission and vision.

In contrast, confidentiality is the obligation to not disclose proprietary information to unauthorized individuals or organizations if that disclosure could harm the organization in any way and/or prevent it from successfully achieving its mission and vision.

### It's All About Accountability

Accountability is what occurs when the board and its trustees completely understand and always carry out their fundamental roles and responsibilities.

- ✓ The accountable board understands its responsibilities and willingly assumes leadership liability for the organization.
- ✓ Accountable boards ensure the organization always meets governance requirements, obeys all laws, and consistently adheres to policies and procedures.
- ✓ The board and leadership team set the standards for accountability through everything they do and say. They set the tone for a culture of accountability driven by consistent adherence to the fiduciary fundamentals.