



## Governance Principles & Best Practices for EMS Agencies

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*Presented by*

Andrew Marietta, VP, Regional Development, New York Council of Nonprofits, Inc.

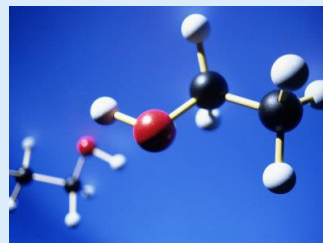
[www.nycon.org](http://www.nycon.org) | 800.515.5012 | [amarietta@nycon.org](mailto:amarietta@nycon.org)

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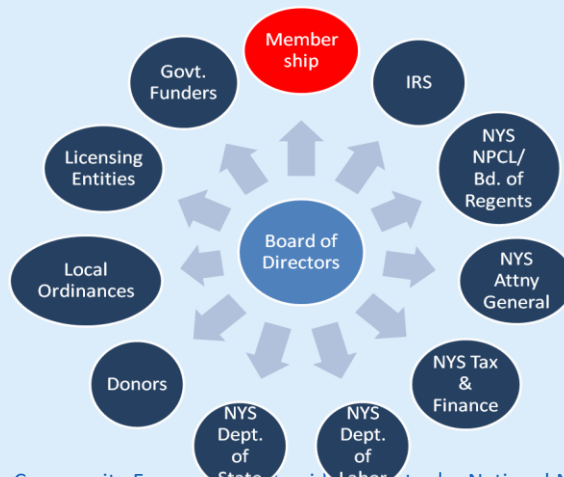


## An Board Accountability Structure...

Clearly defines the monitoring,  
reporting and decision-making  
roles and tasks at the board,  
committee, membership & staff  
levels in order to know  
*who is responsible for what,  
accountable to whom and  
in what ways.*



## Board Accountability Landscape



2/4/2019

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## Membership Body

- Has statutory rights *plus* any additional powers as may be stated in the bylaws or the Certificate of Incorporation
- Key statutory rights of Members
  - Elects and can remove board members
  - Amend bylaws
  - Amend Certificate of Incorporation (includes name, purposes, etc.)
  - Sale, transfer of all or significant assets
  - Approve merger or dissolution
- *But, Members are not the Board of Directors and have no legal obligations or responsibilities, nor liability exposure associated with those responsibilities*



## The Board as Fiduciaries

Act for someone else's benefit; has responsibilities in connection with the administration, investment & distribution of someone else's assets.

- Consists of the Duties of Care, Obedience & Loyalty



## Duty of Care

The degree of competence & care expected to advance the mission & avoid reasonably foreseeable harm.

### *Carrying Out Duty of Care:*

- Be Reasonable – Not Reckless!
- Be prepared for, attend & actively participate in meetings
- Deliberate, ask questions & inquire
- Vote your opinion
- Ensure documentation shows exercise of care and proper conduct in decision-making & actions





## Duty of Obedience

- Compliance with the laws & regulations that govern the organization's actions including:
  - Federal, State & Local Laws
  - The Bylaws
  - The Certificate of Incorporation/Charter & any Amendments
  - Contractual Obligations
- Board decisions & policies
  - Respect process
  - Understand & support duly made decisions



## Duty of Loyalty

- Faithfulness/Allegiance to position & organization
  - Be publicly supportive of organization
  - Follow the established chain of command
- Make decisions in the best interest of the mission & the nonprofit without being compromised by private gain or other interests
  - Minimally, adhere to law & applicable regulations
  - Consider higher standard such as non-financial conflicts and those that are “perceived”
  - *Best Practice - put in bylaws*



## Be Aware - Board Members Have Liability Exposure for:

- Violations of law, including employment related claims
- Operating outside of the bylaws
- Defamation
- Misappropriation of assets
- Unpaid payroll & other taxes
- Unsatisfied corporate debt
- Error or Neglect (under NYS Immunity Laws)
  - Gross error or neglect of fiduciary, legal, & financial responsibilities (if a volunteer)
  - Neglect of fiduciary, legal, & financial responsibilities (if paid)



## Board Members Are Protected By:

- Immunity Laws
- Insurance Options
- Risk Management (including having qualified, well-performing board members)
  - Policies and procedures



## Starts with Your COI/Charter and Bylaws

- The Certificate of Incorporation (COI) or Charter is the fundamental corporate document
- The bylaws are essentially your *legislation*
  - The board is legally bound to adhere
  - Cannot conflict with statute, COI or Charter
- Sets the rules for composition, leadership & decision-making
- Distributes duties & powers to officers, committees, & executive leadership/management
- Serves as a compliance & risk management document



## The Bylaws-Policy- Procedure Flow

### Bylaws

- **Legal Obligations Established by Board (and/or Membership)**
- Usually advance notification required for amendment as stated in bylaws

### Policies

- **Parameters Established by the Board**
- Can be changed at duly held board meeting
- May delegate some policy-making to ED

### Procedures

- **Established By Administrative Leadership to Implement the Policies**



## Officers

- Must have persons fulfill 3 positions
  - Chair/President
  - Treasurer
  - Secretary
- Two persons can do the three functions, but the Chair/President and Secretary functions cannot be held by the same person



## Board Meetings

- Requires quorum of voting members as per bylaws
- Minimum annual number of board meetings should be in bylaws
- Phone – video conference participation
  - All parties must hear & be heard; provision should be in bylaws
- Meeting notices may be faxed or e-mailed
  - reasonable certainty that destination is correct, not valid if undeliverable
  - number/address must be recorded with the Secretary
- Cannot act without a duly convened meeting *unless* there is unanimous written consent (can be electronic) to the same resolution to waive meeting



## Board Voting by Proxy

- Unlike member voting, is prohibited for board & committee meetings
  - Another Director nor surrogate cannot vote on behalf of another *unless* there is an authorized “alternate director” as per bylaws
- If absent, a director may request their view on a matter be stated in minutes of the meeting missed or a subsequent meeting
- For Member voting, proxies may be sent by fax/e-mail



## Key NPRA Reforms

Most became effective July 1, 2014

- *Some* electronic age updates for Board, Committee & Membership Meetings and for Filings with AG’s Office
- REQUIRED Conflict of Interest Policy – New Definitions & Significantly Stronger Requirements
- Higher Audit Thresholds & Increase Audit Oversight
- Required Whistleblower Policies (20 or more employees and \$1M)
- Improved processes for Certificate Amendments, Mergers, Dissolutions & Consolidations, Real Estate Sales or Transfers
- Greater Authority for the AG
- Redesigned Committee Structures
- Definitions for “Entire Board”
- 2/3 Board must approve if staff serves as chairperson

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## Committees

- **“Committees of the Board”**
  - Voting directors only, at least 3, and appointed by the Board
  - Have or could have authority to “bind” the corporation, subject to statutory limitations and those in bylaws
  - *Common examples:* executive, audit, finance
- **“Committees of the Corporation”**
  - Board or non-board individuals, at least 3, appointed by the Board
  - Cannot, in any way, be empowered to “bind” the corporation but makes advises or recommendations to the board
  - Can be standing or ad hoc
  - *Common examples:* compliance, nominations, advisory
- **Member Body Committees**
  - Do not obligate or advise the board; tend to be program oriented



## NPRA Limits on Board Committee Authority

### No Committee of the Board or Corporation can:

- fill board or committee vacancies on the Board
- fix compensation for Directors or committee members;
- authorize any amendments to the by-laws or Certificate of Incorporation
- authorize any action relative to the sale, lease, exchange or other disposition of all or substantially all the assets
- amendment, or repeal, of any resolutions of the Board
- elect or remove voting Officers or Directors
- approval of a merger or dissolution;
- take actions that are the rights of members by statute and/or bylaws

*Best Practice* – State these limits in the bylaws



## Conflict of Interest Obligations

- Must have written conflicts of interest policy
- The Board or an “Audit’ Committee” (or an analogous committee) comprised solely of Independent Directors must oversee the adoption, implementation & compliance with the policy
- All voting Directors must annually submit conflicts disclosure statements

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## Conflict of Interest Policy Requirements

1. Define circumstances that constitute a conflict and document procedures specific to conflicts
  - Board has discretion in defining
2. Key requirements:
  - Written disclosure statements (prior to initial election & annually) of real/potential conflicts to be submitted to the auditor
    - Required of officers, directors and key employees
  - Procedures for disclosing and addressing conflict to the Secretary and then to the Board Chair or Audit Committee Chair
  - Prohibition of conflicted Directors from being present at or participating in deliberations &/or voting on the matter
  - Restriction of conflicted Directors from attempting to improperly influence deliberations or voting
  - Proper documentation of existence & resolution (including minutes)



## Conflict of Interest Definitions

- **“Related Party”**
  - any Officer, Director or Key Employee (or a “Relative”) of the nonprofit, or an affiliate corporation, or
  - any entity where that individual has a 35%, or more, ownership interest, or, for professional corporations/partnerships, more than a 5% interest.
- **“Related Party Transaction” (RPT)**
  - any arrangement in which a Related Party has a financial interest with the nonprofit or its affiliate
- **“Key Person”**
  - in a position to exercise substantial influence over a nonprofit’s affairs
- **“Relative”**
  - spouses, siblings (whole or half), children, spouses of siblings or children, grandchildren, great-grandchildren, ancestors, & domestic partners

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## Conflicted/Related Party Transactions

- **Best Practice** – Avoid or act cautiously with any such transactions, which although they may be legal, are strongly discouraged
- The Board can only authorize a RPT only if it is *fair, reasonable and in the best interest* of the nonprofit
- If the transaction is one where a RP has a “*substantial*” financial interest, the Board must:
  1. consider alternate options prior to entering into the transaction
  2. approve the transaction by, at least, a majority vote, &
  3. document the basis for its decision
- RP must disclose all material facts & refrain from attending, or attempting to influence, deliberations &/or voting

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## Who Qualifies as an Independent Director?

**If within the last 3 years, either the *Director or a Relative* (key employee or officer) was:**

- employed by the nonprofit;
- compensated by the nonprofit in an amount of \$10K+;
- employed by, or had a substantial financial interest in, any entity that made payments to or received payments from the nonprofit exceeding between \$10K, \$25K or \$100K (depending the entity's gross) or 2% of the entity's gross; or,
- employed by, or had an ownership interest in, the nonprofit's auditing firm or was involved with the audit.

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## Audit Oversight

- The Board or a Committee of the Board must oversee the audit, in part, by consulting with the auditor about audit scope & planning before work even begins,
- Review the results of the audit & discuss any material risks or weaknesses:
  - restrictions on scope of activities or access to requested info
  - significant disagreements between the auditor & management
  - the adequacy of the accounting and financial reporting processes
- Annually renew or retain the auditor & in so doing consider auditor performance & independence
- Report Committee's activities to the Board
- **Only** Independent Directors may participate in deliberations or voting relative to audit oversight & conflict/whistleblower compliance
- **Best Practice** – require the Treasurer to be independent

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## Whistleblower Policies

- Policies must address procedures for reporting violations, preserving confidentiality & protecting whistleblowers from retaliation, specifically consider:
  - individuals to whom violations may be reported
  - possible means of reporting, such as email or telephone
  - investigative steps the nonprofit will take
  - consequences for policy violation relative to retaliation
  - any other organizationally-specific procedures

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## Accounting 101 The Very Brief Basics



### Accounting Defined:

A system that records, presents, and interprets financial information.



## The Basics: Accounting System Components

- Fiscal provisions in bylaws
  - Responsibilities of Treasurer (including financial reporting to Board and Members) and fiscal-audit related committees
  - Budget development/approvals
  - Mandatory audit functions; conflicts of interests & RPT
  - Whistleblower
  - Fiscal Year
- Qualified fiscal staff
  - Job descriptions
- Fiscal policy/procedures manual stating internal controls
- Computer & software
- Chart of accounts
- General ledger
- Bank & investment accounts; checkbook



## Fiscal Policies & Procedures

- *Policies* - Board approved or adopted financial principles, plans or courses of action
  - Consistent with bylaws
  - Ensures that fiscal management is carried out with accuracy, integrity, & in a timely & compliant manner
  - Monitored by Treasurer & committee process, reported to board
- *Procedures* - to implement board fiscal policies
  - Detailed procedural manual that specifically addresses internal controls
  - Monitor to ensure adherence



## Examples of Fiscal Policies

*Written, board-approved policy examples where procedures need to be documented:*

- Expenditures outside budget lines
- Check-signing authorization process/limits
- Monetary transfer authority
- Use of credit cards
- Capital expenditure approval
- Borrowing
- Board-restricted funds
- Records retention & destruction
- Petty cash
- Investments
- Gift acceptance



## What are Internal Controls?

“A process of the board, management, and others so designated that designed to provide reasonable assurance regarding the achievement of objectives concerning:

- 1) effectiveness & efficiency of operations
- 2) reliability of financial reporting
- 3) compliance with applicable laws & regulations
- 4) safeguarding of assets.



## Monitoring Internal Controls

- Board committees & officers with clear charges & authority stated in bylaws
- Up-to-date job/volunteer position descriptions
- Review & document segregation of duties
- Flowcharts or narratives to document the flow of transactions, controls & reporting responsibilities
- Review with understanding & inquiry financial reports regularly, including budget vs. actual & programmatic activity
- Where staffing is minimal or all volunteer, insert processes that ensure a separate review
- Interact with the external auditor & regularly review the status of management letter comments
- “trust & verify” organizational culture



## Know Your Accounting Method

- **Cash** - involves reporting revenue & expense items as they are received or paid (simplest)
- **Accrual** - involves reporting revenue and expense items when they are realized or incurred (preferred, GAAP)
- **Modified Accrual** - a hybrid of cash & accrual; an entity uses cash basis for bookkeeping & converts to accrual for reporting purposes (not unusual)





## Fund Classifications

- **Unrestricted** - includes board designated funds-now includes land, building and equipment, unless donor restricted
- **Temporarily restricted** - specific purpose-timing restriction
- **Permanently Restricted** (endowment) – restricted by donor/source; generally the principle is protected



## Accurate & Reliable Financial Reporting

- Accounting information systems
  - Software adequacy
  - Access controlled by management/volunteer leadership with limited access for other leaders
- Adequacy of format
  - Comprehensive, concise, understandable
- Timeliness of reporting
  - Internal to management & the board
  - External to funding sources & regulators



## Compliance With Laws & Regulations

- Federal, state & local reporting requirements
  - IRS 990, CHAR 500, Audit or Review
- Funding source requirements
- Labor laws (if paid employees or independent contractors)
- Donor confidentiality/protections
- Annual Report to Membership
- Bylaws



## Fraud Occurrence

- 3 conditions are generally present:
  - Incentive or pressure ( I need the money.)
  - Opportunity (No one is reviewing my work.)
  - Ability to rationalize committing a fraudulent act (i.e. I am volunteering or get paid so little for hard or serious work, they owe me!)



### ***Good Idea!***

Hold brainstorming sessions regarding mitigating fraud risk. If someone were to steal from us, how would they do it?



## High Risk Area: Receipts

- Restrictive endorsements on checks received
- Lock boxes for cash
- Make all deposits regularly
- Timely reconciliation between accounting/development/program
- Timely reconciliation between general ledger & receivables ledger with supervisory review
- For collections of currency, have two people count cash



## Further Discussion, Questions?

