

TEXAS HEALTHCARE TRUSTEES Trustee Bulletin

W.W. Aston Incoming THT Chairman

“Do we not want our patients to know that they can come to us with the confidence that we will assure them the highest quality of care and the knowledge that they will be safe as they entrust their most precious possessions to us?”

New THT Chair To Focus on Quality Care and Patient Safety

Some people have a knack for making organizations thrive – even in times of economic uncertainty. New Texas Healthcare Trustees Chairman W.W. Aston is such an innovator. Including a 40-year career with Dallas Power & Light Company, he has applied his exceptional leadership skills in a variety of settings – as a respected health care trustee, Dallas civic leader and now as chairman of THT.

Aston, who has a well-deserved reputation for integrity, communicating and advocating, took the helm of THT in September for 2002-2003. He has identified quality care and patient safety as top issues for THT this year. He currently serves on the boards of Baylor University Medical Center and Baylor’s Heart and Vascular Hospital. A former board member of Baylor Health Care System, Aston received Texas Healthcare Trustees’ highest honor, the Founders’ Award, in 2000.

Long dedicated to the issue of quality care, Aston led the Baylor

University Medical Center board in the adoption of a resolution on quality and challenged the boards of all the Baylor Health Care System hospitals to pass similar resolutions, which they did.



Aston

“As the former president of Dallas Power & Light Co., Aston brings a valuable level of expertise to the board. He is a consensus and relationship builder and has been very successful in bringing groups together – trustees, physicians and management – to address and resolve issues that might arise. A tireless and dedicated advocate for the community, he is a champion for quality care and patient safety,” said Joel Allison, FACHE, president and chief executive officer of Baylor Health Care System.

Chairman’s Message

“The health care trustees of Texas will face many challenges during 2002-2003

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Trustee Bulletin

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New THT Chair, continued from page 1

that will call for each of us to be more involved and more diligent in our service to our individual institutions," says Aston. "While some of these issues are different for each board, we face many of the same challenges. The challenge that cuts across all of our activities, and that should be embraced by every person with any responsibility for providing care to the sick and suffering, is the improvement of quality care and patient safety," he emphasizes.

"It is my goal during the coming year to urge all of us individually – as trustees of health care institutions – and jointly through Texas Healthcare Trustees, to rededicate ourselves to becoming national leaders by showing significant gains in delivering high quality patient care and keeping patients safe while they are in our care.

"All of us want to be proud to be associated with our health care institution as do our management, employees, physicians and other support groups. Is it not time for action

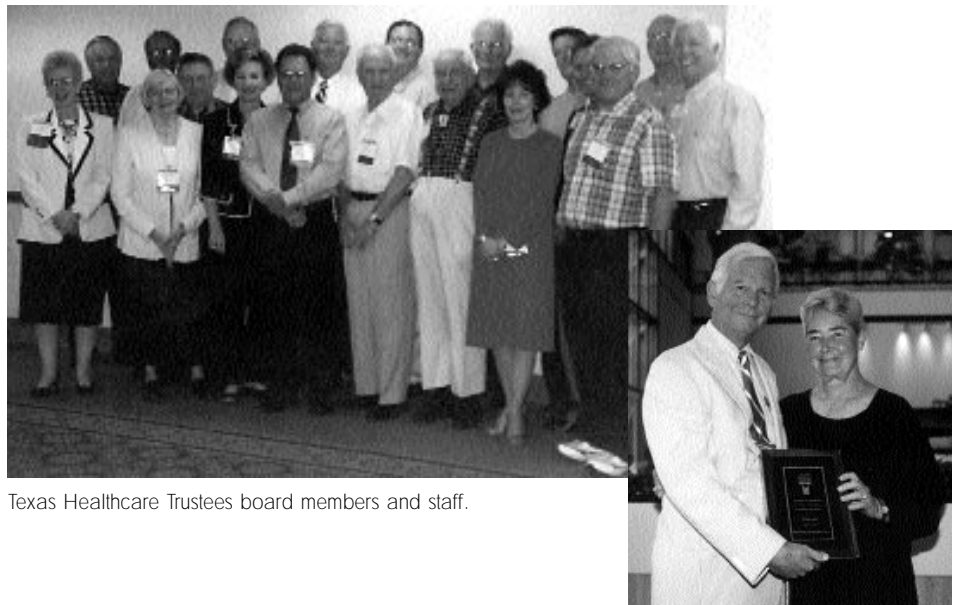
on our part as trustees? Should we not insist that we measure up to the challenge of surpassing national, state and regional norms? Do we not want our patients to know that they can come to us with the confidence that we will assure them the highest quality of care and the knowledge that they will be safe as they entrust their most precious possessions to us?

"We call on THT to help us in every way possible to do what our communities expect of us as their representatives as we participate in an endeavor that calls for nothing but our best. We can, must and will deliver."

Total Commitment

Aston, who frequently starts his day at 6 a.m. to meet with Baylor's physician leadership, started his career in construction and worked as a lineman climbing poles before taking on many other assignments at Dallas Power & Light. He retired in 1986 as chairman, after four decades with the company.

Though a noted business and community leader, Aston has a bit of a daring streak as well. He enjoys



Texas Healthcare Trustees board members and staff.

Outgoing Chairman Paxton Howard, M.D., and wife, Carolyn.

spending time with his family and pursuing a variety of adventures. So far, he has performed shark and manatee research and traveled by oceangoing freighter. He completed a 6,000 mile trip by boat and even catapulted and landed as a guest off a nuclear aircraft carrier, ala Top Gun. He also still makes time to drive an authentic antique McKinney Avenue Trolley one weekend a month. As THT's "top gun," Aston stands ready to meet the challenges ahead and welcomes the opportunity to work with the trustees of Texas in the coming year.

"Aston keeps the board focused on its role and responsibilities and assures that all trustees have the opportunity to participate," Allison adds. "He is totally committed to whatever task or responsibility he accepts and takes it upon himself to be educated and informed about the health care field in general, as well as current issues and topics – all of which will serve him well as THT chairman."

Quality Resolution Example

A growing number of trustee boards have passed resolutions calling for improvements in quality care and patient safety. The following is a model that can be tailored for your own health care facility. Any board wanting to enact such a resolution for its organization can use this example by inserting language from hospital or health system vision and mission statements:

Whereas, [language from vision statement]; and whereas, [language from mission statement]; and whereas, one of the primary responsibilities we have as trustees of [name of health care facility] is the continuous improvement in quality patient care and safety; and whereas, maintaining the status quo or achieving quality and safety levels only equal to or slightly better than national, regional or local norms is not compatible with the [health care facility] vision and mission statements; and whereas, regulatory and legislative changes and a growing number of better informed patients support better quality patient care and safety.

Therefore, be it resolved that the board of trustees of [health care facility] hereby challenges itself and everyone involved in providing health care at [health care facility] to give patient safety and continuous improvement in the quality of patient care the highest demonstrable and measurable positive improvements in the quality patient care and safety and, be it further resolved, that the board of trustees requests that periodic reports be made to the board on planning, budgeting, execution and results of activities to improve patient safety and quality of patient care at [health care facility].

Source: Baylor Health Care System

Summer Forum Spotlights Top Issues

Trustees today face challenges that are monumental, but armed with the right strategies, they are surmountable. Financial and liability issues abound, and the challenge of operating with a scarcity of human resources can try even the best health care systems. Is there any good news?

Through the Texas Healthcare Trustees, trustee leaders learned the answers to many questions, including how to best lead their organizations into the future. Key trends and leadership responses, quality care, talent recruitment and liability insurance issues were on the agenda for the THT Summer Forum held Aug. 9-10 at the Hyatt Regency in San Antonio. More than 200 health care trustees, administrators and physicians attended the two-day event.

With trustees facing critical issues as never before, the theme of the Forum was "Governance: Mission Possible." During the Forum, hospital and health system board members explored trustee leadership, liability and other governance issues.

In addition to informative speakers, the THT Summer Forum featured the announcement of the THT Founders' Award winner for 2002 and introduction of new officers and board members. Prior to the Forum, a special refresher orientation for public hospital board members was held.

For more information on Forum sessions, please see related stories in this and subsequent issues of the *Trustee Bulletin*.

Winning the Talent Wars

The dramatic shortage of health care professionals – nurses, pharmacists, imaging techs and others – is reaching crisis proportions. In July, an ominous warning was sounded by the Joint Commission on Accreditation of Healthcare Organizations that today’s shortage of nurses is a “prescription for danger.” Experts say the crisis only will worsen as the population ages and the demand for nurses skyrockets.

How can trustees help give their facilities a much-needed “shot in the arm” when it comes to recruiting and retaining staff?

There is reason to be optimistic, says Connie Curran, RN, Ed.D., president and CEO of Your Virtual Executive in Chicago, Ill. “When we have a risk, we can find a solution.” Curran gave her perspective and suggestions for “Winning the Talent Wars” at the Texas Healthcare Trustees Summer Forum in San Antonio on Aug. 9.

“I really believe that the most important predictor of quality care is the person on the other side of the health care giving experience,” says Curran. “What do sick people want? They want competence and dignity and someone providing their care with a passion for human life. We all want this for ourselves and our loved ones,” Curran asserts.

The Face of Health Care... Is Leaving

Nurses traditionally have been the face of health care, the public icon that provides this care, as noted in a national survey. Yet, as a group, nurses are aging – only 12 percent of registered nurses are younger than 30, according to the Joint Commission report, and many more people are leaving the profession than are entering it. The average age for nurses is 47. It’s even higher for operating room nurses – 57. Additionally, nursing school enrollment is declining, and nursing school faculty is decreasing.

A Higher Calling

Nursing is a difficult profession. “Condescending doctors, non-traditional hours, mountains of paperwork, plus daily life and death decisions add up to a pressure cooker of a job. That’s why most nurses don’t view their profession as merely a job, but a



Connie Curran, RN, Ed.D., president and chief executive officer of Your Virtual Executive in Chicago, Ill., addresses trustees at the Summer Forum in San Antonio.

higher calling,” says Curran. “Their loyalty is to the patient, not the hospital,” she explains.

According to Curran, other factors have contributed to the nursing shortage. Hospital mergers, cost-cutting, “floating,” mandatory overtime and heavy workloads have prompted many nurses to leave the profession. Many who have stayed say they are overstressed, overworked and worried that they’re not able to spend enough time with the patient.

A Quality Question

From the nurse’s perspective, many feel they are unable to give adequate patient care. They consistently say, “I can’t do what I was trained to do,” or “Patients don’t get the care they deserve,” Curran stated. In fact, the perennial shortage of nurses has been linked to ill

Nurse Retention and Recruitment Tactics

(Adjust to Your Own Mission, Values and Culture)

- Involve nurse managers in retention efforts.
- Offer flexible staffing.
- Re-engineer workload to create acceptable nurse staffing levels.
- Develop a highly structured orientation program for new hires.
- Improve working conditions, compensation and benefits.
- Recruit for culture, not skills.
- Create recruitment campaigns targeted at high school and college students.
- Fund education loan repayment and scholarships.

health, according to the recent Joint Commission study. The study found that short-handed nursing staffs were cited as a contributing factor in 24 percent of the cases analyzed – some 1,600 reports of patient deaths and injuries – since 1996.

What Can Hospitals Do?

Besides the quality issue, financial data show hospitals pay a high price when a nurse leaves. The cost to recruit and fill a three-month nursing vacancy costs as much as an entire year's nurse's salary. With recruitment so costly, hospitals should evaluate their retention and recruitment policies carefully and strategize to make them the most effective.

"People leave because of bad management, lack of development, poor career opportunities, lousy cultures and co-workers, or better rewards elsewhere," says Curran. "Know your numbers," she encourages.

"Know turnover rates by manager, staff satisfaction scores by manager, applications received, average time of the recruitment process, number of interviews, number of offers and number of jobs accepted."

- **Retention.** Curran says the single most important thing a hospital can do is to improve the work environment. She cited an example of one health care facility that asked nurses to work mandatory overtime, but sent an hourly wage housekeeper to their homes for four hours. When the nurses got off, they were weary but went home to sparkling homes. For a small expenditure, the boost in morale was priceless. Innovative tactics such as these are key to keeping nurses and other professional staff. She also suggests involving nurse managers and physicians in retention efforts. "Make sure your physicians are on board and treat nurses well, offer mentors for new nurses and find ways to offer flexible staffing and acceptable patient ratios."
- **Recruitment.** "Speed wins," Curran emphasizes. "When your hospital gets a qualified applicant, response should be immediate. Check your recruitment processes. Orient the process to the applicant, not the system. Establish a separate Web site specifically for nurse recruitment and retention. Respond to e-mails immediately and follow up with a personal response quickly." Lastly, Curran says to "recruit to your culture. Identify and choose nurses who want to be in your culture. If not, the nurse will be come dissatisfied, regardless of pay and benefits, and sour the spirit of the rest of the unit."

Congressional Action

The national nursing shortage has drawn attention in Washington, D.C. In July, Congress passed the Nurse

Reinvestment Act, which authorizes financial aid programs for nursing students. The act calls for a public campaign to draw people to the profession, plus incentives to help keep nurses there and encourage them to go into teaching.

While an infusion of federal dollars will help, hospitals must develop their own recruitment and retention methods that best serve their mission and culture. What is the bottom line? Patient and physician satisfaction is linked directly to caring, compassionate care givers, most often nurses at the bedside. Look at your hospital practices to see how your hospital or health care system can improve the work environment for nurses and other health professionals. "It is a matter of life and death," Curran concluded.

TEXAS NURSE STAFFING RULES

Texas is addressing some of the issues presented by Connie Curran in her presentation to Texas Healthcare Trustees during the Summer Forum, Aug. 9. By adopting the Nurse Staffing Rules, Texas has addressed some of the concerns about the nursing environment in hospitals.

On March 24, the Texas Department of Health adopted amendments to the hospital licensing rules related to developing, implementing and evaluating nurse staffing plans. The rules are effective Sept. 1, 2002, with an exception for certain provisions for rural hospitals.

The amendments were based upon a joint recommendation by the Texas Hospital Association and Texas Nurses Association to address concerns about the nursing workplace environment and the adequacy of nursing staffing in hospitals. The basis of the rules were the nurse staffing principles, developed by a special task force consisting of hospital chief executive officers, chief nursing officers, human resources administrators, educators and staff nurses, and TNA representatives. The principles were adopted by the THA Council on Policy Development and the THA Board of Trustees.

The rules do not establish nurse-to-patient staffing ratios or require specific numbers of nurse. However, the rules do require hospitals to develop and implement a staffing plan that addresses the staffing process through an advisory committee that obtains input from nurses involved in direct patient care and require on-going monitoring and annual evaluation of the staffing plan. The rules establish a requirement that the chief nursing officer have an educational background that includes a master's degree. However, there is a provision that allows the individual not having that degree to be progressing toward it under a written plan and time table developed by the hospital. Approximately 150 hospitals with less than 100 beds and located in counties with a population of less than 50,000 are exempted from this CNO educational requirement.

For hospitals with less than 100 beds and located in counties with a population of less than 50,000, the implementation date for the staffing plan part of the rules is delayed until April 1, 2003, and the annual evaluation of the staffing plan is delayed until April

For more than 50 years, B. J. Simpson has lived in the Rio Grande Valley. During that time, his community service activities have become legendary. A 27-year board member of Valley Baptist Medical Center in Harlingen, Simpson has been named as the 2002 recipient of the Founders' Award, THT's highest honor.



Simpson

The long-time health care advocate and community leader has never let obstacles stand in his way. Orphaned at age seven and serving his country in World War II by age 18, Simpson has learned a thing or two about adversity. Yet, he's spent a lifetime giving back to his community.

At age 20, he embarked on a lifetime of farming and ranching in the Rio Grande Valley. Together with his wife, Martha, Simpson expanded into other diverse business interests, including a water service company, a crop dusting company and an agriculture grain storage facility at the Port of Harlingen, which helped shape the Valley's agricultural economy. He also has been active in banking and served as a bank director for 17 years.

Simpson Named Founders' Award Winner

For almost three decades, Simpson has held a steadfast commitment to community service and given unselfishly of his time and energy to improving the health of the people in the Rio Grande Valley. According to Ben M. McKibbens, FACHE, president/CEO of Valley Baptist Health System in Harlingen, "Honor, faithfulness and commitment are words that immediately come to mind in describing B. J. Simpson. He is a man who has demonstrated meritorious performance and service. He is unselfish with his time and truly cares about the well-being of the Valley community in which he lives."



Ben M. McKibbens, FACHE, president and chief executive officer of Valley Baptist Health System in Harlingen, (left) and B. J. Simpson, the 2002 Founders' award recipient.

Perhaps nowhere is his commitment to his community confirmed more clearly than his service to Valley Baptist Health System. Simpson has served on the board of Valley Baptist Medical Center since 1975. He was board chairman for 10 years. Simpson also serves on boards of related entities including Golden Palms Retirement and Health Center, Rio Grande Valley Service Corporation and Valley Health Plan, a health maintenance organization.

During his tenure as chairman of the board at Valley Baptist, Simpson was instrumental in discussions related to the formation of the Regional Academic Health Center associated with the University of Texas Health Science Center in San Antonio. With his astute guidance, Valley Baptist Health System has grown in size, scope and service area. During the last 26 years, the health care system has experienced more growth than any other time in its history.

A particular honor was bestowed when Valley Baptist Health System dedicated a new six-story medical office building adjacent to the hospital last year. A common atrium and lobby connecting the new Medical Arts Pavilion to the Professional Building was named in honor of Mr. and Mrs. B. J. Simpson. Though Martha passed away in June, this legacy is a true testament to the lifetime of service she and her husband have given to the community. McKibbens concludes, "B. J. Simpson is a gentleman, a man of spiritual depth and a standard bearer for our mission."

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Stay True to the Mission

“Being an effective trustee is not magic, or the work of would-be geniuses – but it does require an absolute commitment to the mission of the organization. Moreover, the best trustees have an unwavering appreciation for the gravity of the role, and they understand the few key legal principles that underpin trusteeship. The rest they learn on the job,” says Keith Pryor, principal, Keith T. Pryor and Associates in Bryn Mawr, Penn.

Most trustees are nominated because they are well-respected and considered to be competent, solid citizens. The assumption generally is made that because they’re skilled in their field of expertise, they also know how to be a trustee.

“Nobody ever asks, they just assume you know. To be honest, most of us don’t know what is involved in being a trustee,” says Pryor.

This Is Not Easy

According to Pryor, members of a board must understand that their primary duty is to be committed to the mission. When a member doesn’t understand this role, the collective body cannot function effectively. On the other hand, when a trustee bases the tough decisions on the mission, that clarifies the action the trustee might be recommending.

Core Competencies

“Trustees are accountable to the community and hold the organization’s assets in trust for the community,” says Pryor. Yet, he adds that some 90 percent of the trustees he talks with do not know their fiduciary responsibilities – commitment to mission, duty of care and duty of loyalty. “Your fiduciary responsibilities inform your activities and are the cornerstone of your work as a trustee,” he emphasizes.

■ Commitment to Mission

“Trustees are guardians of the mission and values of the organization, and are obliged to uphold that mission in their deliberations,” says Pryor. Understanding this principal duty is critical in public and non-profit organizations, as it is tied to the legal obligation.

■ Duty of Care

The trustee is expected to provide a level of care and attention to duties consistent with those that a reasonable businessperson would give to his business. “It’s not saying you need to be up nights worrying about every aspect of the hospital, but you can’t be casual either,” Pryor says.

■ Duty of Loyalty

Place the interests of the organization above yours. Sit out any decisions where you may have a conflict of interest.

“The most important thing for trustees to know is what the law expects of them. Then they need to apply their best judgment to the issues at hand, bring their leadership skills to the table, be good listeners and better questioners – that is what makes a good trustee,” Pryor stated.

The Core of Trusteeship

Depending on their background, trustees have to learn some things – like how to read a financial statement. They need to understand the major issues of health care governance, and knowing some of the language of health care helps.

Asking the right questions is important. “Few boards ask enough questions,” says Pryor. “If the topic and the questions refer to the mission, strategy, policy, values or relationship to the community – then it is unlikely to be too far off. Ultimately, board members who stay true to the mission and practice fiduciary responsibility will be effective board members.”

MOST COMMON MISUNDERSTANDINGS

- The board’s authority is collective – individual trustees have no authority. The CEO should cultivate good relationships with individual trustees. But ultimately, the CEO is accountable to the board as a group.
- Physician trustees do not represent the medical staff. They represent the community – just like other board members. They just happen to be physicians.
- Committees are advisory to the board – they do not have power or authority unto themselves unless the board or the bylaws specifically gives it to them.
- In the eyes of the law, there is one “class” of trustee – being on the executive committee does not provide one special authority. Likewise, not being on the executive committee is no excuse for not knowing something critical to one’s role as a trustee.
- Of the time spent in board meetings, 75 percent should be focused on the future. Most boards spend 75 percent or more of their time focused on the past.

Source: Keith T. Pryor, principal with Pryor & Associates, Bryn Mawr, Penn., 610/519-0607.

The Liability Insurance Crisis: Affordability, Availability and What to Do about It

Increasingly, hospitals and health systems are facing skyrocketing insurance premiums and deductibles coupled with severe restrictions. Many insurers are choosing to leave the state. The result: a liability insurance crisis of the magnitude the state never has seen. What does this mean for hospital and health system trustees?

Addressing the cost of professional insurance is one of the most significant challenges trustees face today, according to Liz Jennings, vice president of the Texas Hospital Insurance Exchange in Austin; and Barry Couch, president of HealthSure, and board member of King's Daughters Hospital in Temple. The two addressed trustees at the THT Summer Forum and gave their perspective of the insurance crisis and what to do about it.

Jennings and Couch explained that rates and deductibles have escalated dramatically while terms have become increasingly restrictive. "Insurers are looking at each piece of business with a very critical eye," says Jennings. "What once was a slam dunk is no more." She adds, "Hospitals can expect raises in premium rates of 40-200 percent."

Additionally, as costs continue to rise, many insurers are pulling out of the Texas market, and doctors are forced to make difficult decisions that affect access to care.

Daunting as this scenario is, the duo says there are options for dealing with tough coverage issues.

Rates

Most Texas hospitals face a minimum increase of close to 50 percent in their liability insurance rates this year. In some instances, rates have jumped by as much as 200 percent in one year.

■ Higher Deductibles

Small and rural hospitals particularly are hit hard. "A small hospital that previously carried a \$5,000 deductible now will need to increase to a \$10,000 or \$25,000 deductible to preserve a comparable premium. This represents a 100 to 500 percent increase," says Couch.

■ Lower Limits

Many hospitals have to accept lower limits, sometimes half of previous coverage, even with premium increases of two to three times what they paid last year.

■ More Restrictions

"Previously, policies covered punitive or exemplary damages in addition to compensatory damages. Today, all of the companies appear to be removing that coverage," Couch says.

Availability

Of the 13 insurance companies that recently provided professional liability insurance to Texas hospitals, only four continue to write new policies. Two have closed their doors to new business and one is undergoing liqui-

dation. Six already have withdrawn from the Texas hospital market entirely, or are in the process of doing so. The remaining companies are AIG Insurance Company, Medical Protective, Texas Hospital Insurance Exchange and Zurich. Farmer's Insurance is showing interest in the hospital market and Lloyds of London currently is evaluating entry into the Texas market, according to Couch.

Current Situation

Numerous factors have contributed to the dire situation hospitals now face. In the early '90s, insurers cut rates and funded growth with stock market profits.

Insurance companies kept rates lower to acquire premium dollars to invest, but stock market showings have been poor in the last few years. Unexpected high awards by juries for patients in malpractice suits have continued an upward trend since 1998. Insurance company reserves have been inadequate to cover mass tort litigation cases and claims handling expenses have grown at exponential proportions. "Add to this the events of Sept. 11, and we've got the conditions for the 'perfect storm' to hit the insurance industry," Couch explained.

Today, insurance companies are reviewing their rates and their ability and confidence to win lawsuits in a "plaintiff favored" environment. Insurance companies also are looking at their ability to

predict the maximum possible loss they can incur. All these factors have created an insurance market that is very conservative and seeking shelter for a chance to recover, says Couch.

Ramifications

Health care providers are examining their practices to determine if it is economically feasible to continue delivering certain services to their patients. For example, some obstetricians, who are charged \$70,000 to \$140,000 for liability insurance, have stopped delivering babies. Consequently, access to patient care is being limited in certain parts of the state. Patients will continue to experience problems accessing care if meaningful reform is not imposed on the liability tort and judicial system in Texas.

The Valley in South Texas provides a vivid example, with many doctors eliminating services, retiring or leaving the community. In other cases, doctors have reduced their insurance coverage to be able to afford the premiums – leaving the hospitals to provide the “deep pockets” should the need arise. “When doctors make these tough decisions, it affects access to care,” Couch says.

Insurance for Trustees

Most boards in Texas carry Directors’ and Officers’ liability insurance, or D&O, which protects directors and officers from a wrongful act arising out of the conduct of their duty. The most frequent claims occur in the area of employment practices, liability by employees and physicians for credentialing or peer review issues.

Small- to medium-sized health care organizations have experienced D&O premium increases of roughly 25 percent this year. Insurance companies never could have predicted events such as those at Enron, and limit capacity now is an issue, particularly with larger hospitals. “Because some claims are hitting the high limits, insurance companies are cutting the top end significantly,” Couch says.

Alternative Solutions

For hospitals considering alternative forms of risk financing that will reduce or eliminate the need to purchase insurance, self-insurance is an option. “Self-insurance is not ‘going bare’ – or canceling the insurance and sticking your head in the sand,” explains Couch. Some organizations financially are strong enough to set aside funds in a formal structure to pay claims, without commercial insurance. For others, structuring a self-insurance plan with a large deductible and securing a commercial policy on top of it as an “umbrella,” makes financial sense.

When considering self-insurance options, seek advice from a competent risk management consultant or attorney who can outline the steps of a feasibility study. The board’s duty to perform due diligence is critical in deciding to go forward with little to no commercial insurance. “If it is found that the board has not properly insured the institution, members could be subject to personal liability. If due diligence can be demonstrated, they should survive the threat of a D&O claim,” says Couch.

CONSIDERING SELF-INSURANCE?

■ Start Early

Unlike the typical 60 days to 90 days to re-evaluate commercial insurance coverage, those considering self-insurance should contact advisors about six months in advance. It takes approximately four months to perform due diligence, and the remainder for bids and comparisons.

■ Deal with Competent Advisors

Do your homework. Secure competent insurance and risk management advice from individuals who have experience with hospitals.

■ Determine Risk Tolerance

Consider your hospital’s propensity to assume risk. In the past, hospitals transferred all the risk by paying a premium, so assuming risk may be a foreign idea.

Source: Barry Couch, president and CEO of HealthSure in Temple, 254/773-9814.

W.W.P.M.D.: What Would the Prudent Man Do?

Gone are the days of board meetings providing a brief review of the hospital's current status and a good lunch. In the current world of Enron and Arthur Andersen, hospital directors would be well-served to consider the fiduciary duties and policy-making responsibilities – including decisions regarding their hospital's retirement plans. When dealing with these duties and responsibilities, the question to be considered by all hospital board of director members is: "What would the prudent man do?"

Who is This "Prudent Man?"

The Employee Retirement Income Security Act of 1974, also known as ERISA, establishes the general requirements of retirement plan sponsors and their fiduciary duties and responsibilities. ERISA considers any person with discretionary control over a retirement plan's assets to be a fiduciary. As a fiduciary of the retirement plan, the principal function is to ensure that the plan is operated to the exclusive benefit of the participants and beneficiaries.

In discharging the duties as a fiduciary, conduct is measured against the fictitious standard of care established by "a reasonably prudent person." Therefore, in discharging the duties, actions must be conducted with the skill, care and diligence that would be exercised by a reasonably prudent person familiar with the situation.

How Does a "Prudent Man" Conduct Business?

The "Prudent Man" follows three key elements in pursuit of a plan that operates for the exclusive benefit of the participants and their beneficiaries. There is a fiduciary duty to ensure that all investment responsibilities, as well as other plan responsibilities, are conducted with care, skill and diligence. To fulfill this duty, a fiduciary should follow a written investment plan, monitor the plan, do market comparisons and keep a tab on the fees and cost of administering the plan.

- As one Texas court stated, "A pure heart and an empty head are not good enough." As a fiduciary, you must keep your head in the game when it comes to the administration and/or management of the plan. Even if an investment manager or group retirement plan monitors the plan or participants are allowed to pursue investments, this does not relieve you of your oversight investment responsibilities.

- A fiduciary has a duty to diversify, or see that investments of the plan are diversified. Diversity that will maximize each participant's return while minimizing potential risks should be sought.

Do not keep, or allow others to keep, all of the eggs in one basket. One needs only to read a current newspaper for another sad example of the potential outcome of this investment blunder. Therefore, keep a vigilant eye on the retirement plan, always seeking the correct mix of maximum return with minimal risk.

- Avoid investments that potentially could create a conflict of interest. No "brother-in-law deals" and no self-dealing – the plan fiduciary must remain focused on the betterment of the plan participants. All investment strategies ultimately must benefit the participants or beneficiaries and not the individual plan fiduciary.

How Do You Become a "Prudent Man?"

A prudent trustee will seek the advice and wisdom of those who are more knowledgeable. Contact a reputable pension administrator, consultant or attorney to gain the insight needed to provide the greatest return to the plan participants. Many plan fiduciaries refuse to seek this type of advice due to its potential cost. By refusing to do so, however, plan fiduciaries may be choosing to breach their duties.

Plan fiduciaries should educate plan members about the workings of the retirement plan. They also should provide an educational process so that plan members can make sound decisions in regard to their own retirement and investing.

A Call to Action

The "Prudent Man" standard should be considered a call to action for each and every member of a hospital board. Stewards of the hospital retirement plan are charged with the fiduciary duty and responsibility for providing the maximum benefit for plan participants. Therefore, before one casually dismisses the importance of this task, he should ask, "What would the prudent man do?" – and know the answer.

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Excess Benefit Transactions

For a nonprofit hospital to retain its tax-exempt status, it must comply with federal law and the rules of the Internal Revenue Service for tax-exempt organizations. One important requirement is that the hospital's earnings may not be paid to benefit any private shareholder or individual. The IRS may impose sanctions on certain persons involved in tax-exempt nonprofit organizations, including nonprofit hospitals, who engage in certain sweetheart deals, known as excess benefit transactions. Excess benefit transactions may be discovered by the IRS through an audit of an exempt hospital or as the result of a complaint to the IRS.

History

Before the Taxpayer Bill of Rights 2 was passed in 1996, the only penalty available to the IRS in situations where wrongdoing had occurred was to revoke the tax exemption of the organization. Because of the significant effect on communities served by tax-exempt hospitals, this death penalty sanction rarely was used against health care organizations. The intermediate sanction rules were adopted as a tool to enforce compliance with the obligations of tax-exempt status in a more routine manner, without resorting to the extreme penalty of revoking an exemption.

What Is a Prohibited Transaction?

A prohibited transaction occurs when a benefit is provided by a tax-exempt hospital to a specific individual, and the benefit is greater than the value received by the hospital for providing the benefit. This can occur in a compensation arrangement or transaction between certain individuals and the exempt hospital.

Who Is Affected?

An individual is subject to the intermediate sanction rules if he or she is in a position to exercise substantial influence over the affairs of the exempt organization at any time during the five-year period preceding the date of the transaction. For hospitals, such individuals would include members of the governing body, the chief executive officer or administrator, chief operating officer and chief financial officer, as well as their family members. Any entities in which such an individual holds more than 35 percent of the voting power or interest also would be subject to the intermediate sanctions rules.

Penalties

If a prohibited transaction occurs, the IRS will impose excise taxes on the individual and on organization managers who participated in or approved the transaction, but not on the exempt organization. A tax equal to 25 percent of the benefit is imposed on the individual(s) who inappropriately benefited from the transaction. If the 25 percent tax is imposed and the transaction is not corrected within a specified period, an additional excise tax equal to 200 percent of the benefit will be imposed.

Another excise tax equal to 10 percent of the benefit may be imposed on organization managers (including trustees, directors and officers) who participate (including by silence or inaction) in a transaction knowing that it is a prohibited transaction. A manager who opposes the transaction is not considered to have participated in the transaction. For example, a director who votes against giving the benefit ordinarily would not be subject to this tax.

For additional information, contact Kevin Reed, J.D., shareholder with Davis & Wilkerson, P.C. in Austin, 512/482-0164.

EXAMPLES OF POTENTIAL EXCESS BENEFIT TRANSACTIONS

- Unreasonable salaries and/or benefits paid to an organization's executives;
- Payment by an exempt organization of more than fair market value for assets, goods or services purchased from an insider;
- Receipt by an exempt organization of less than fair market value for the organization's assets, goods or services sold to an insider;
- Certain revenue-sharing arrangements between an exempt organization and insiders; or
- Other transactions that inappropriately divert assets of an exempt organization into the hands of insiders.

Source: Kevin Reed, J.D., Davis & Wilkerson, P.C.

THT Introduces New Slate of Officers

Newly elected officers and members of the Texas Healthcare Trustees Board of Directors recently were installed at the THT Annual Meeting in San Antonio. The THT Board of Directors consists of the president, president-elect, secretary and treasurer; eight district representatives; and four at-large members. The 2002 election was conducted by mail ballot in July. THT members elected officers, representatives of Districts and two at-large members.

THT's 2002-2003 Board of Director's officers include:

CHAIRMAN

W.W. Aston serves on the board and is immediate past chairman of Baylor University Medical Center in Dallas. With a long record of community service and achievement, he has served as chairman of the board of the national, state, regional and local levels of the American Heart Association and is a past chairman of the board of the American Red Cross in Dallas. In addition, he has served on the boards for Southern Methodist University in Dallas, Baylor University in Waco, The Better Business Bureau, Children's Medical Foundation of Texas, Dallas Chamber of Commerce, Cotton Bowl Council and the State Fair of Texas. He has been honored as a distinguished alumnus by Southern Methodist University, his alma mater. Aston also has received recognition for community service by Rotary International, the U.S. Department of the Treasury and the National Conference of Christians and Jews. He received the Texas

Healthcare Trustees Founders' Award in 2000. For 40 years, he performed various assignments for Dallas Power and Light Company, retiring in 1986 as chairman.

CHAIRMAN-ELECT

Henderson Garrett retired from Metroplex Health System after holding an executive position for 20 years. He continues to serve the system as a board member. Garrett is secretary of the board of directors and chairman of the board of Metroplex Management Inc., the corporation that oversees the operations of Metroplex Urgent Care Center. As Metroplex's vice president of operations from 1973-93, Garrett helped oversee significant growth from 35 to 213 beds, an increase in medical staff from six physicians to more than 80 and hospital staff from 125 to more than 800. He also managed a \$4.8 million hospital expansion, completed in 1995. He serves on the board of the United Way Greater Fort Hood Area as chair of the Finance Committee. Garrett, a native Texan from Fairfield, received a bachelor's degree from Prairie View A&M. He also was commissioned as a second lieutenant in the U.S. Army. He served for 20 years in the military, retiring as a lieutenant colonel in 1972. He is active in civic and community affairs for the City of Killeen.

TREASURER

John M. Zerwas, M.D., is a board member of Houston's Memorial Hermann Healthcare System. He has been an anesthesiologist for 17 years and is the past president

of Greater Houston Anesthesiology. Dr. Zerwas attended Baylor College of Medicine in Houston and served his internship and residency at the University of Texas-San Antonio. Active in a number of professional societies, he is a past president of the Texas Society of Anesthesiologists and the Texas Gulf Coast Anesthesia Society. He also served as chief of staff of Memorial Hospital Southwest in 1994.

DISTRICT II

William Hetzler has been a board member of the Ector County Hospital District for 11 years. He served for more than two decades in the U.S. Air Force. Upon his retirement from the military, Hetzler assumed management of the engineering department at Odessa's Medical Center Hospital. He retired from that position in 1991. A graduate of the University of Texas at the Permian Basin, Hetzler has long been active in civic, community and church activities. He is a past president of the Odessa Optimist Club and a board member of West Texas Opportunities, Inc., a state-funded charity organization.

DISTRICT IV

Jeff Council is chairman of the board of Polly Ryon Memorial Hospital in Richmond and has served on the board since 1982. His leadership has helped guide the Planning, Construction and Public Relations committees. An insurance businessman for almost four decades, he is president of New First Financial, Inc. He was named Businessman of the Year in 1993 by the Rotary Club. Council is a past president of the Rosenberg Chamber of Commerce, president of the Fort

Bend County Fair Association and a member of the Rotary Club.

DISTRICT VI

Buddie F. Rivers serves as chairman of the board of Wilbarger General Hospital in Vernon. A professional engineer for almost three decades, he graduated from Texas Tech University in Lubbock with a bachelor's of science degree in civil engineering. Rivers has been a member of the Lion's Club for more than 25 years and is a member of the Vernon Chamber of Commerce and its ambassador organization, the Red Coats. He also serves on the city's Planning and Zoning Committee and the Beautification Committee.

DISTRICT VIII

Peggy Allison is chair of the Methodist Healthcare System Board of Governors and serves as an honorary board member of San Antonio's Methodist Healthcare Ministries. She previously served on the community boards of Northeast Methodist Hospital and Southwest Texas Methodist Hospital. Long known in San Antonio for her civic and charitable endeavors, Allison has served as a board member of the Alamo Heights Parent Teachers Organization, vice president of the Battle of Flowers and vice president of the Charity Ball Association. She also is a member of the Chancellor's Advisory Council at Texas Christian University in Fort Worth.

MEMBERS AT LARGE

Denzer Burke, D.D.S., is a board member of CHRISTUS St. Michael Healthcare System in Texarkana. Burke has been honored by the Texarkana Chamber of Commerce as "Citizen of the Year." He is a former Texarkana City Council member and now serves on the Texas State Advisory Committee to the U.S. Commission on Civil Rights. In addi-

tion, Burke is a member of the board of the Texarkana Community Foundation; the Northeast Texas Economic Development Board; and is a past member of the Texas Educational Opportunity Committee of East Texas State University-Commerce. A practicing dentist in Texarkana, Burke is a retired lieutenant commander of the U.S. Naval Reserve and an ordained deacon and elder in the Presbyterian Church.

Ronald J. Epps, D.V.M., currently serves as a board member and is a past president of the Harris Methodist Hospital H-E-B board of trustees. He has been a board member since 1993 and served as board vice-chair and chair of the Finance and Strategic Planning Committee. Dr. Epps also serves on the Harris Methodist Health System board of trustees. A doctor of veterinary medicine, he is the program director of veterinary technology at McLennan Community College in Waco and a guest lecturer at numerous veterinary colleges. Dr. Epps is the chairman of the Hurst-Euless-Bedford Chamber of Commerce and serves on the board of the Hurst-Euless-Bedford Independent School District Education Foundation.

James (Jimmy) Y. Wynne, a former mayor of Kaufman, is the current chairman of the board of Presbyterian Hospital of Kaufman, one of the 13-member hospitals of Texas Health Resources. Wynne has served on the board since 1989, and as chairman for the past eight years. He also serves on the board of Presbyterian Healthcare Resources, one of the two founding members of Texas Health Resources. Wynne's grandfather was one of the original founders of Presbyterian Hospital of Dallas, and he is the third generation of his family to serve on Presbyterian boards. Wynne and his wife, Dee, established the Yellow Rose MS Foundation in 1986 to fund

research at the University of Texas Southwestern Medical Center at Dallas. During the past 15 years, the Foundation's Yellow Rose Gala has raised more than \$5 million for multiple sclerosis research.

TO COMPLETE TERMS IN 2003

District I: **Helen Etter Holt**, Hansford Hospital, Spearman
District III: **Wesley Leopard**, Valley Baptist Medical Center, Harlingen
District V: **Harold D. Samuels**, JPS Health Network, Fort Worth
District VII: **Sister Pat Elder**, SETON Health Care Network, Austin

MEMBERS-AT-LARGE

Wade C. Ridley, East Texas Medical Center Regional Healthcare System, Tyler
James (Jimmy) Y. Wynne, Presbyterian Hospital of Kaufman

MEMBERS EMERITUS

Noble Allen, Knapp Medical Center, Weslaco
W.H. "Bill" Beazley Jr., Hillcrest Baptist Medical Center, Waco
Barry Couch, King's Daughters Hospital, Temple
Jud Cramer, Harris Methodist Health System, Fort Worth
Vernon Garrett Jr., Memorial Hermann Healthcare System, Houston
Robert Gutierrez, McAllen Medical Center
Betty Himmelblau, HealthSouth Rehabilitation Hospital of Austin
Paxton Howard, M.D., Scott & White Memorial Hospital, Temple
Tere Lawrence, Rolling Plains Memorial Hospital, Sweetwater
Lester Smith, Shannon Health System and Shannon Medical Center

LIAISON TO THE TEXAS HOSPITAL ASSOCIATION BOARD

Dan Stulz, M.D., Shannon Health System, San Angelo

Trustees Learn the Ropes at Public Hospital Orientation/Refresher

Not so very long ago, few would have predicted the immense changes that have taken place in health care. Not only are trustees dealing with personnel shortages and ever-changing regulatory issues, but also they need to have an understanding of the governance issues needed to oversee hospitals and health systems. These challenges can be especially complex for public hospital board members, who face additional regulations and specific requirements of the Texas Open Meetings and Texas Public Information laws.

Texas public health care trustees gained insight to many of today's concerns at the fifth annual Texas Healthcare Trustees Public Hospital Refresher Orientation, Aug. 8 at the Hyatt Regency in San Antonio, held in conjunction with the 2002 THT Summer Forum. The day-long refresher benefited both new and veteran public hospital board members.

Noted health care expert and board member Kevin Reed, J.D., shareholder of Davis & Wilkerson, P.C. in Austin, led the session. He was assisted by Fletcher Brown, also of Davis & Wilkerson; Bill Parrish, president, Parrish,

Moody & Fikes in Waco; and Stephen Wohleb, J.D., director of legal and litigation, SETON Healthcare Network in Austin. The special presentation was held specifically for trustees who serve on public hospital boards.

"Public hospital governance is distinguished from non-profit hospital governance by a number of very specific differences," explains Reed. Primary among these are the requirements of the Texas Open Meetings and Texas Public Information laws, issues relating to bidding, nepotism, public funds and liability, and the future of public hospitals.

Additionally, Reed advised new trustees about their responsibilities and legal duties as a public hospital board member. "Trustees should be advised that their role and responsibilities do not include running the hospital, handling personnel matters other than the chief executive officer, choosing equipment, or engaging in micro management of the day-to-day affairs of the hospital," says Reed. "The trustee's role is one of overall leadership," he emphasizes.

Free Resource for Trustees

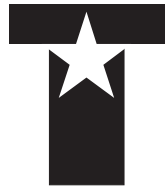
A free newsletter and other helpful resources for governing boards are available at www.GreatBoards.org. *Great Boards* is a newsletter that covers a range of current issues facing hospital and health system boards, such as the function of governance committees, recruitment of a more diverse and talented board, and the role of physician board members.

Trustees can sign up for a free online subscription. Frequent Texas Healthcare Trustees' Forum speaker, Barry Bader, a governance consultant and president of Bader & Associates in Potomac, Md., produces the newsletter. For more information, visit the Web site or call 301/340-0903.

Going, Going, Gone: Silent Auction Attracts Bidders

T·E·X·A·S
HEALTHCARE
TRUSTEES

Foundation



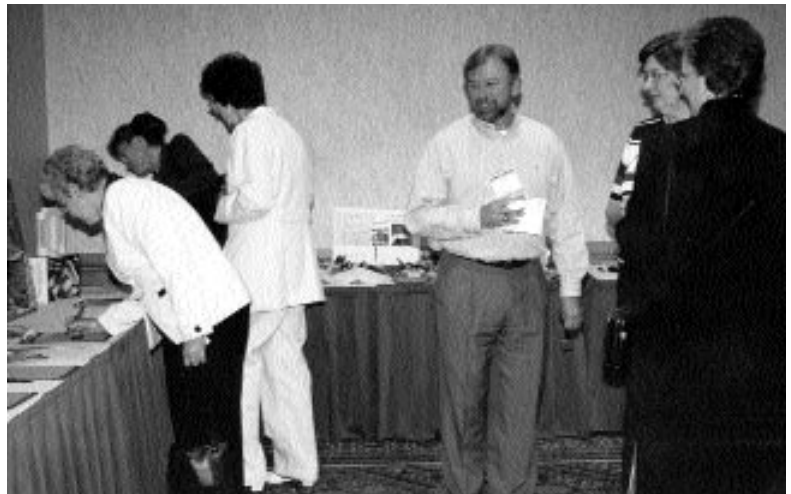
Lively bidding and good-natured ribbing took center stage as trustees participated in the fifth annual silent auction hosted by the Texas Healthcare Trustees Foundation. The silent auction was held in conjunction with the Texas Healthcare Trustees Summer Forum in San Antonio. Back by popular demand, the auction featured a wide array of eclectic items.

The auction raised more than \$5,600 for the THT Foundation.

The auction showcased treats for every taste, from the exciting live action of sporting events to relaxing weekend getaways. Benefiting the THT Foundation, the auction included professional baseball tickets, luxury hotel stays, Brighton accessories, art, tools and gourmet gift baskets.

Browsers and bidders had a chance to view auction items on display during the Friday evening reception and on Saturday before the first morning session. Winners were announced Saturday.

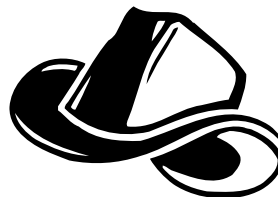
Noble Allen once again donated significant time and effort to serve as the silent auction committee chair. The THT Foundation thanks all the bidders, those who donated items and those who helped with the auction.



Trustees place bids on silent auction items.

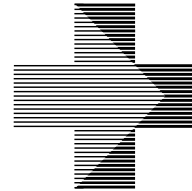
HATS OFF TO Y'ALL!

Due to the popularity of this event, look for it again at next year's Summer Forum.



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