



# LEGAL LIABILITY FOR BOARD DIRECTORS

The individuals who are elected or appointed to serve on a hospital's Board of Trustees (or Managers or Directors) have the legal responsibility for the operation of the hospital as well as overall patient safety and satisfaction. Board members should work to achieve the mission and vision of the organization, oversee the appropriate use of financial and other resources, and ensure that business units are fulfilling their purpose, operating legally and ethically, and continuously monitor and adjust the strategic direction in response to changes in the operating environment. Governing board members have a fiduciary responsibility to the hospital/health system. They have a legal obligation to become thoroughly informed before making any business decision; they must ensure the organization's mission is paramount; and they must abide by applicable laws, regulations and standards of hospital or system operations.

The board holds the hospital or organization "in trust" for the community, sponsor or stockholders. A trustee's fiduciary duties to the hospital are based on the common law duties of Care, Loyalty and Obedience.



**DUTY OF CARE**



**DUTY OF LOYALTY**



**DUTY OF OBEDIENCE**

## Duty of Care

The Duty of Care requires board members to make informed decisions, meaning those that follow a reasonable effort by the board member to become informed with the relevant, available facts. Individual board members must take the time to review the information prior to the board meeting and come to meetings prepared for discussion. The board can meet its duty of care by regularly reviewing the organization's mission, vision, and goals and ensuring that its committees have updated charters outlining their duties and the board is in compliance with its bylaws and other governing documents. Continuing education sessions should be held to help members understand their organization and health care industry, and the board should be knowledgeable about relevant information and act with prudence and care.

## Duty of Loyalty

To fulfill its duty of loyalty, the board should annually review its conflict-of-interest (COI) policy and disclosure statement and ensure board members are adhering to COI, ethics and code of conduct policies.

The Duty of Loyalty requires a board to avoid conflicts of interest, prohibit board members from taking advantage of opportunities for personal gain, and confidentiality. It is crucial for hospital boards to establish and adhere to a clear conflicts-of-interest policy when making important board decisions or approving transactions involving a conflicting interest held by a director or officer.

## The Duty of Obedience

Directors must obey all laws, support the organization's mission and bylaws, and avoid exceeding their authority. The board must act and make decisions through the lens of the organization's mission and applicable rules and regulations. Boards should receive regular reports on compliance. As fiduciaries, board members must provide oversight that the organization is obedient to its central purposes as stated in its articles of incorporation and its mission.

The board and its members must comply with all laws and regulations, uphold the organization's mission and bylaws, and act within their authority. Their fulfillment of the Duty of Care is assessed through the Duty of Obedience. Nonprofit board members are required to adhere to legal regulations and the organization's principles and guidelines, especially related to community benefit and tax-exempt status.

Board members, as fiduciaries, are required to consistently act in the best interest of their organization. Trustees are responsible for ensuring that the organization's resources are used in a reasonable, appropriate, and legally accountable manner. While the board does not usually participate in the day-to-day operations of the organization, it is accountable for overseeing management, making important strategic decisions and ensuring quality delivery of health care to their community.