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. Accomplishing 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 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 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, as well as 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. 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 cannot be passive recipients of quality and safety information—they must be actively engaged in oversight. Trustees do not 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 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 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 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 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. However, many boards 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.

Special thanks to The Walker Company for use of: *Fiduciary Fitness: The Most Critical Governance Accountability*. Additional trustee resources are available in the Trustees' section of the KHA website and on the new Kansas governWell (see related article below).

**Hospital Leadership and Governance Resources on Kansas governWell™**

The Kansas Hospital Association has partnered with governWell™, and we are excited to merge our state and national governance resources. Kansas governWell™ is your new single source of valuable governance programs, BoardBriefs, videos, templates and tools that will enable your board to practice better governance and ensure better health care for your community. Kansas hospital staff and trustees will need to login to this website to get access to the free resources and consultation services. Go to Kansas governWell and enter username: kansastrustee, password: 1governWell+.

A recorded webinar on governWell is available to KHA members at no charge – Noon Briefing: *Introducing governWell™*. KHA also will provide education on governWell during the Critical Issues Summit on Feb. 27-28 in Wichita, and during Regional Trustee Sessions, April 28-May 7. Watch for more information on these events.

We are passionate about supporting hospital boards as they lead, serve and carry out their vital governance responsibilities. We believe these trusted resources and assessments, combined with consults from our governWell advisors, will result in greater success in governance performance and leadership development. In addition to KHA, the Kansas Department of Health and Environment, in partnership with the Kansas Hospital Education and Research Foundation, is supporting this project. Federal funds were provided through the KDHE-BCHS-FLEX Program. The FLEX program is managed by the Federal Office of Rural Health Policy, Health Resources and Services Administration, U.S. Department of Health and Human Services.

**Register Now for the 2020 Critical Issues Summit – Feb. 27-28**

The Critical Issues Summit brings together hospital leadership and trustees from across the state and promotes the importance of good governance practices. This event provides top-notch speakers, educational sessions and discussions on the most critical topics facing hospitals today.
Session topics will include the following:

- The Challenges of Hospital Finance
- The Board’s Role in Improving Health Care Quality and Safety
- The Age of Consumerism: Seeing Health Care through Outsider’s Eyes
- Strategic Planning in Uncertain Times
- Panel Discussion: The Future of Rural Kansas

The summit will be at the Wichita Marriott. A block of rooms has been reserved for the nights of Feb. 26 and 27 at the rate of $112, plus tax. The room block is available until Wednesday, Feb. 5. After that, reservations will be taken on a space-available basis. To make your reservation and receive the special rate, call (316) 651-0333 and ask for the Kansas Hospital Association room block.

Please contact the KHA Education Department at (785) 233-7436, if you have any questions.

**Recognize Your Trustees on Feb. 27-28**

The Kansas Hospital Association’s Trustee Recognition and Accountability Program annually recognizes trustees at the Critical Issues Summit for the standards of excellence they uphold, governance best practices they adhere to, and the education in which they have invested. We encourage you to complete a Trustee Accountability and Recognition Program form to recognize your hospital and trustees specifically that:

- Understand and embrace the need for governance accountability;
- Govern according to a standard of excellence;
- Are willing to formally recognize their adherence to governance best practices;
- Embrace community accountability; and
- Structure their community benefit and outreach programs to meet identified community needs.

Please complete a recognition form by Feb. 21. Once completed, email (csamuelson@kha-net.org) or fax (785) 233-6955) the form to Cindy Samuelson at KHA.

**Save the Date for a Regional Trustee Seminar Near You**

A strategic focus for the Kansas Hospital Association is to expand our education and resources to hospital governing boards. KHA surveyed hospital trustees across the state and found trustees from every district and all sized hospitals were interested in regional governance education. We are thrilled to conduct our second series of regional trustee seminars.
During this seminar, we will:

- Discuss best governance practices;
- Highlight state and national tools and resources to guide strong board discussions, deliberations and decisions;
- Educate trustees and staff on how to use governWell resources, modules and expert consults that are now part of their KHA membership; and
- Provide an overview of the most common legal issues challenging hospital boards.

These seminars are appropriate for any board member or hospital administrator, and will be offered four times for convenience, each seminar covering the same material. Registration materials for the following dates and locations will be coming soon.

Locations and Dates:

- Wichita - April 28
- Topeka - April 29
- Garden City - May 6
- Hays - May 7

KHA Announces Leadership Changes

In January, the Kansas Hospital Association sent a statewide media release announcing the retirement of KHA President and CEO Tom Bell. The announcement of his retirement was shared with KHA members in his column before Thanksgiving.

Bell became president and CEO of KHA in January 2005. He has led the association through many milestones, including the 100th anniversary of the association in 2010. Under his leadership, KHA increased its focus on quality and patient safety in numerous areas, including the founding of the Kansas Healthcare Collaborative with the Kansas Medical Society and the development of one of the strongest Hospital Engagement Networks in the country. Bell stressed the importance of advocacy on behalf of Kansas hospitals, especially in areas of maintaining the state's strong tort laws, holding managed care companies accountable, reversing proposed Medicaid cuts, and most recently in moving Kansas closer to adoption of Medicaid expansion. The association also increased collaborative efforts with stakeholders throughout the state as the health care system changed to focus more on preventive and population health. Under Bell's leadership, KHA is recognized as a national leader in the development of new models of health care delivery and advocacy efforts that support the evolving rural health care system.
Last week, the KHA Board of Directors announced they selected Chad Austin to fill the position of president and CEO upon Bell's retirement in September. Austin began working at KHA in 1999, and in the intervening 20 years has held responsibilities for managing many aspects of the association's operations including the association's data-related activities, rural health and Critical Access Hospital issues, as well as the oversight of the Kansas Rural Health Options Project. Most recently, he has been in charge of KHA's advocacy efforts on both the state and federal level. Austin is tremendously respected by policy makers on both sides of the political aisle.

Congratulations to both Tom Bell and Chad Austin.

Welcome to New AHA and KHA Board Leaders
The beginning of the new year marks a change in board leadership for both the American Hospital Association and the Kansas Hospital Association.

We are excited to note the chair of the Board of the American Hospital Association for 2020 is Melinda Estes, MD, president and CEO of St. Luke's Health System. A board-certified neurologist and neuropathologist, Dr. Estes oversees the operations of Saint Luke's Health System, the region's only locally-owned, not-for-profit, faith-based, aligned health system, which includes 18 hospitals and campuses; renowned heart, neuroscience and cancer programs; home care and hospice; behavioral health care; more than 100 physician practices and retail clinics; senior living communities, and more. Dr. Estes has been instrumental in leading AHA's efforts to develop and implement effective physician leadership strategies, something we have tried to parallel at KHA.

St. Luke's hospitals have been active members and leaders in KHA, and we are thrilled to have "one of our own" in this important and influential position for 2020. We look forward to working with Dr. Estes as AHA board chair and know she will provide exceptional leadership.

Speaking of exceptional leadership, we are pleased to welcome Melissa Atkins as the 2020 chair of the KHA Board of Directors. Melissa serves as chief executive officer of the Graham County Hospital in Hill City. Atkins is a certified public accountant and has an extensive history in hospital finance and auditing. She first joined Graham County Hospital in 2009 as the chief financial officer. In 2012, she was promoted to CEO.

Atkins joined the Graham County Hospital after a period of frequent leadership changes and has clearly brought stability to the local healthcare delivery system. She has focused much of her attention on efforts to recruit and retain providers to Hill City and has shown it is possible to do just that in rural Kansas. We will have a busy and challenging year at KHA, but have no doubt Atkins will provide superb leadership as we move forward.
Please join us in congratulating both Dr. Estes and Melissa Atkins and thanking them for their service to hospitals and the patients they serve.

**Take Aways from Lt. Governor's Listening Tour**

Over the course of the last year, Lieutenant Governor Lynn Rogers has conducted a "listening tour" across the state as part of his duties as the head of Governor Laura Kelly's Office of Rural Prosperity. Many of you have participated in discussions with Lt. Gov. Rogers as he visited many different communities and their hospitals. His office just released a report of his listening tour, and the results are interesting and informative.

In each listening tour session across the state, the Lt. Gov. asked three questions: 1) How do you define prosperity; 2) What has your community done well to prosper; and 3) What barriers or roadblocks stand in the way of future prosperity. The answers received are not surprising. The definition of prosperity included references to strong public schools, community pride, affordable housing, population growth or stability, access to broadband and quality roads. Responses to what communities have done to prosper referred to community investment, strong and involved leaders, quality education, including higher education, and collaboration. Barriers mentioned often were limited job opportunities, declining and aging population, property taxes, negative attitudes, housing and lack of broadband access.

Also, not surprising, but very significant, is that healthcare issues were mentioned prominently in responses to each question. Prosperity included accessible and affordable healthcare; prosperous communities reported accessible and affordable healthcare; and barriers included limited access to healthcare and lack of Medicaid expansion.

With regard to healthcare issues, the report makes several policy recommendations. First, it recognizes that "The economic impact of a rural community hospital closure is greater than a cursory glance would expect. For example, on average, a rural community hospital accounts for 20 percent of the local economy and one physician generates 26 jobs." Lt. Gov. Rogers notes that because studies have demonstrated the financial vulnerability of many rural hospitals, "one of the most immediate actions that can be done to address the healthcare needs of rural communities across the state is for the Kansas Legislature to expand Medicaid." Further, when talking about infrastructure, the report stresses the importance of "access to the information superhighway" to the future of rural communities. It therefore recommends investing in a long term, sustainable, grant program to expand access to broadband across the state.

Listening is always a good place to start; so in that sense, the Report of the Office of Rural Prosperity is promising. It also does a good job of recognizing the plethora of challenges facing rural Kansas, and that solutions to those problems will not come from a "top-down, one size fits all approach," but will require collaboration and more listening.
However, much work remains. The healthcare focus needs to include a variety of approaches, including the need to explore new delivery models for communities that may choose to do so. And the entire effort needs to clearly recognize that almost all rural challenges are related: healthcare is connected to transportation, housing, education, leadership, jobs and many other community priorities. The best solutions will encompass this idea, and we look forward to working with the Governor and Lieutenant Governor as they go about crafting those solutions.

**Update on U.S. Supreme Court Response to Review ACA Mandate**

Last week, the United States Supreme Court rejected a motion by the House of Representatives and Democratic-led states to expedite review of a 2019 decision in *Texas v. Azar*, in which a Texas District Court ruled the entire Affordable Care Act was unconstitutional. In December 2019, the U.S. Court of Appeals for the 5th Circuit ruled the ACA's individual mandate to purchase health insurance is unconstitutional, but stopped short of saying the whole ACA law is invalid. Instead, the court of appeals sent back to the district court the question of whether the rest of the ACA can stand without the mandate. The Supreme Court's response to not expedite its review did not rule out the possibility it will hear the case at a later date.

**Hospitals Keep Kansas Healthy and Economically Strong**

The Kansas Hospital Association has once again worked with the Office of Local Government, K-State Research and Extension, to produce *The Importance of the Health Care Sector to the Kansas Economy*. New data confirms the health care sector is among the fastest growing in the economy. The entire health sector in Kansas employs more than 240,000 people and is the third largest aggregate employer in Kansas.

Kansas hospitals alone employ nearly 100,000 people, or 4.8 percent of all job holders in the state. These jobs are not only essential to serve our communities but also have a ripple effect on the Kansas economy. For every job in a Kansas hospital, another .91 jobs were supported in other businesses and industries in the state. Kansas hospitals have a total impact of more than 185,000 jobs.

According to the report, hospitals generated approximately $7.1 billion in total income. For every $1 of income generated by hospitals, another $.60 is generated in other business and industries in the state’s economy. As a result, hospitals have an estimated total impact on income throughout all business and industry of nearly $11.4 billion. Funds spent to buy goods and services flow from hospitals to business and ripple throughout the economy. The impact on area retail sales generates nearly $4 billion in the Kansas economy each year. Additionally, the hospital sector generates more than $259 million in state sales tax. The state uses these critical funds for important programs such as education and transportation.
This report documented the relative importance of hospitals and the health care sector to the Kansas economy. While the estimates of economic impact are substantial, they are only a partial accounting of the benefits that health care in general, and community hospitals in particular, provide to the state. Kansas community hospitals help to not only stabilize the population base, but also invigorate their communities and contribute significantly to the quality of life.

It would be careless not to reflect on the additional impact expanding KanCare would have on the Kansas economy. The impact of health care services in Kansas will grow even more if Kansas can expand the KanCare program. Expanding KanCare will add needed dollars that will assist in growing the economy, creating jobs and supporting the state's budget through increased revenues and cost savings.

Kansas community hospitals are major employers and business partners throughout the state. As we continue to look for opportunities to enhance our state's economy and stabilize our population, a strong health care system, anchored by well-supported community hospitals, is essential.

In addition to this statewide report, county economic impact reports are linked on the KHA website. We encourage our members to use these reports as you discuss the economic impact of hospitals with your staffs, boards and communities.

Health Care Scholarship Money Available
Any Kansan planning to attend college for a new health care degree or those seeking a health care license may apply today for a Kansas Hospital Education and Research Foundation Health Care Scholarship. Individual scholarships of up to $1,000 will be given in the following categories:

- **Undergraduate Health Care**: undergraduate students in non-nursing health care fields. Sample degrees include: physical therapy assistant, clinical lab scientist, phlebotomy, pharmacy technician, occupational therapy assistant and medical imaging.
- **Undergraduate Nursing**: undergraduate students who have been accepted into a licensed or degreed nursing program. Sample degrees include: licensed practical nurse, registered nurse and bachelor of science in nursing.
- **Advanced Clinical Practice**: graduate-level students in any clinical health care discipline. Sample degrees include: doctorate of nursing practice, master of social work, family nurse practitioner, doctorate of pharmacy and doctorate in physical therapy.
- **Health Care Administration**: students in health care administration, whether under- or graduate level. Sample degrees include: organizational leadership, health care administration, leadership, master of science management and health care management – sponsored by the Kansas Association of Health Care Executives.
- **Human Resources**: students in health care human resource related field, whether under- or graduate level. Sample degrees include: human resources or another degree
with a concentration in human resources – sponsored by the Kansas Healthcare Human Resources Association.

Priority will be given to hospital employees, particularly those who work in facilities licensed for 25 or fewer acute beds. Thanks to the Kansas Association of Health Care Executives and the Kansas Healthcare Human Resources Association for partnering with KHERF to administer these scholarship programs.

All applications are to be entered through Reviewr. Applications may be started and saved for completion at a later date. In addition, letters of recommendation may be added by either the applicant or their employer. All documents must be uploaded as a PDF. The submission deadline is Feb. 28.

More information is available on the KHERF website. If you have any questions or need further information, please contact Susan Cunningham at (785) 233-7436.