# *Governance:* *from* *Conversations* *to* *Actions*

"Governance Conversations"
Loma Linda University Health
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# Objectives:

1. To wrap-up the 'Governance Conversations' series.
2. To compare/contrast governance and management.
3. To know essential governance responsibilities.
4. To understand a Board member's mental approach to Board meetings.
5. To reflect on how to introduce changes in governance.
6. To pursue excellence in governance.

# Institutional structure:

| | |
|---|---|
| Constituency/Membership | “Ownership” and oversight |
| Board of trustees | Governance |
| Chief Executive | Management |
| Administration | |
| Departments/Services | Operations |

# What is governance?

Governance is an ongoing process that creates:

- ✓ the system by which an organization is controlled
- ✓ the policies under which it operates
- ✓ the mechanisms by which it, and its people, are evaluated and held to account.

Governance decisions must be ethical, compliant with law and/or regulations, protective of assets (e.g., risk management), and supportive of organizational mission .

# Governance differs from Management

**<u>Governance</u>**—addresses "What"

- Reflect interests of owner(s) in adopting strategic plan and policies
- "Doing the right things."
- Oversight of overall institution
- Clarify long-term vision of how to achieve mission
- Appoint/evaluate management personnel

**<u>Management</u>**—addresses "How"

- Implement strategic plan and policies of governance
- "Doing things right."
- Day-to-day operations
- Initiate and co-ordinate activities to achieve mission
- Employ/evaluate staff personnel

# The scope of governance:

- Timely oversight of institutional performance and trends
- Alignment with Church mission and institutional purpose
- Approve and review entity’s mission statement
- Approve strategic and operational plans
- Develop and approve key policies and procedures
- Ensure adequate resources—operating/capital budgets
- Appoint/evaluate management personnel (CEO, VPs)
- Approve and monitor program for quality and safety
- Conduct board education and governance evaluation
- Ensure appropriate enterprise risk management

# Board and Board member responsibility:

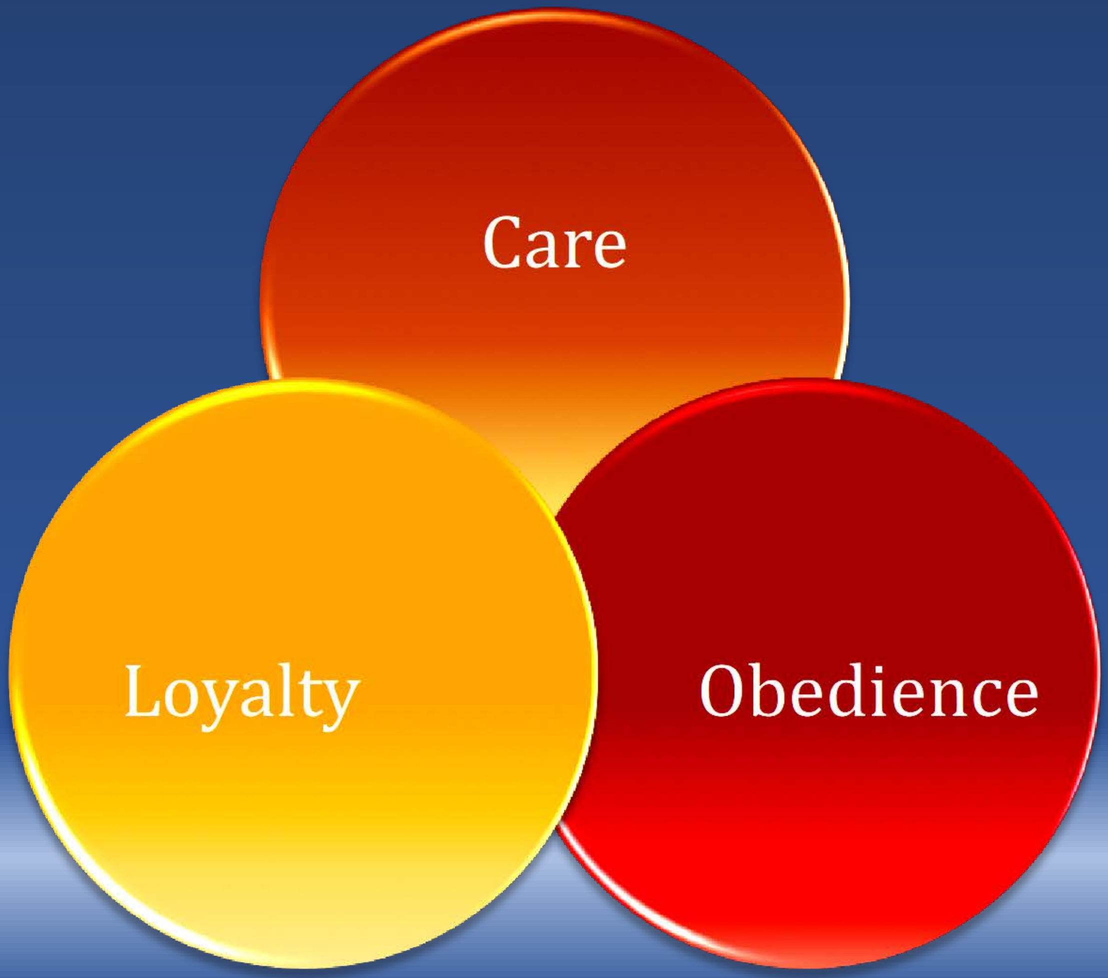
When the Board meeting is in session:

1. The Board has virtually ultimate authority—limited only by the organization's Constitution and by the State.

2. The Board and its members act as fiduciaries—"someone to whom property or power is entrusted for the benefit of another."

3. The Board is legally responsible for the organization.

# Fiduciary obligations in Board meetings:



# The duty of care:

- What does it mean:
  - The carefulness with which the Board makes decisions
  - Legal standard: “ordinary prudent person rule”

- What to look for:
  - Qualified, informed, and engaged Board members
  - “Situational awareness” when making decisions
  - Timely publication of reports
  - Timely decision-making
  - Protective and judicious use of assets

# The duty of loyalty:

- What does it mean:
  - Faithfulness to the organization and its mission
  - Acting in good faith with conscientiousness, fairness, morality, and honesty

- What to look for:
  - Position not used for self-interested transaction
  - Conflict of interest awareness and disclosures
  - Undivided allegiance when making decisions
  - Confidentiality of privileged information maintained

# The duty of obedience:

- What does it mean:
  - Faithfulness to corporate purpose, mission, and decisions.

- What to look for:
  - Adherence to corporate mission
  - Compliance with governance documents
  - Compliance with laws/regulations
  - Fulfilling commitments (to owners, to employees, to clients, to community, to government)

# *'Governance Conversations'* presentations illustrate or amplify fiduciary duties.

1. World-class leadership
2. Fiduciary obligations of trustees
3. The Board's role in financial oversight—1
4. The Board's role in financial oversight—2
5. Legal and risk management
6. Role of Finance and Audit Committee
7. Church and institution relationship
8. The Board's role in financial turnaround
9. Effective and efficient Board meetings
10. The Board's role in planning
11. The Board's role in quality and patient safety
12. The Board's role in policy development and oversight

# Effecting change in governance:

1. Commit to pursuit of excellence and best practices.
2. Assess change in context of improving governance.
3. Maintain collegial not confrontational manner.
4. Engage through questions instead of accusations.
5. Address one thing at a time.
6. Recognize that change may take time and practice.
7. Ensure fiduciary obligations are being met.

# Conclusions:

1. Governance excellence is possible in any organization!
2. Excellent governance requires Board intentionality, knowledge, and practice.
3. The success of an institution is ultimately the responsibility of the Board.

# Case study #1

I am a businessman in the local area. My business has been extremely successful in part due to a Board of Governors who take their duties toward my business seriously.

One year ago, the local SDA Union President, who is also Chair of the SDA Hospital serving this area, asked me to be on the Board of the hospital and I accepted. Since I joined the Board, we have had one Board meeting.

# Case study #1—cont'd

The agenda for this meeting consisted of a discussion of the financial difficulties of the hospital and the requirement of the Union to provide funds so critical suppliers could be paid and payroll met.

During the meeting I asked to see the latest financial statement and the current financial budget.

# Case study #1—cont'd

I was told by the CFO and confirmed by the CEO that there was not time to prepare a budget or to produce a financial statement. All of their energy and time was spent on dealing with the shortage of revenue.

I take my duty of care, loyalty, and obedience toward this hospital seriously and would like your wisdom on what I should do.

# Case study #1 Response

1. Board membership.

2. How often should the Board meet?

3. Board agendas.

4. What is the problem at this hospital?

# Case study #1 Response—cont'd

5. The problem is unknown because of the lack of financial data.

6. A financial turn around plan is needed. Who should initiate the plan?

   "When any institution or organization shows in its monthly or yearly statements that it is not operating within its income, it is the responsibility of the committee or board that directs the organization to take immediate steps for correcting the situation."

7. What should the business man do?

# Case study #2

Elder Smith just started his new position as President of the Union Conference. There was a 3-month gap between Union Presidents due to the election process and his relocation. He is, by virtue of his position, the Chair of the Union-sponsored hospital board. He learns from other Union officers that the hospital has had challenges meeting revenue expectations and high expenses making the financial operations tenuous. Elder Smith meets with the hospital CEO as early as possible.

# Case study #2—cont'd

The Hospital CEO indicates that Administration implemented a cost reduction plan without consulting the Board. The CEO says they didn't feel they had time to wait for the new Chairman to arrive.  Neither the Board's Finance Committee nor the Union Treasurer (Chair of the Finance Committee) were consulted.

# Case study #2—cont'd

In the reduction in expenses, hospital administration terminated a contracted physician and several nurses including three of the highest paid senior nurses. The physician filed a breach of contract lawsuit against the hospital. The three senior nurses filed lawsuits for wrongful termination since they had long service and only positive work reviews.

# Case study #2—cont'd

The breach of contract action is not covered by insurance, but the wrongful terminations are covered by insurance. However, earlier in the year, Administration raised the insurance deductible to reduce insurance costs. The new deductible will make it difficult for the hospital to pay if it loses the lawsuits because of its cash position.

# Case study #2—cont’d

The Chairman learned that the Board was not scheduled to meet for another three months because the CEO changed the schedule to annual meetings although the Bylaws called for the Board to meet twice yearly. The Hospital CEO indicated that since Administration was responsible for the operations of the hospital having more Board meetings was not needed.

# Case study #2—cont'd

Elder Smith, the new Chairman, called for a Board meeting immediately and presented each of the issues for consideration.

# Case study #2 Response

Strategy and Planning are part of the Board's **Duty of Care.**

**Duty of Obedience** requires compliance with organizational documents and government legal requirements.  Two meetings are required by the Bylaws.

# Case study #2 Response—cont'd

- Reduction in force requires careful risk management implementation.
  - Consultation with Legal Counsel
  - Implications for Insurance
  - Planning for Reductions should be something the Board is involved with to avoid legal and public relations issues
  - Default position without more planning is seniority = retention over recent hires

# Case study #2 Response—cont'd

- Reductions require **Duty of Care** and **Duty of Obedience** to laws. May involve **Duty of Loyalty** depending on the workforce makeup. Objective criteria should be applied.

# Case study #2 Response—cont'd

- Change of insurance should not be motivated solely by saving money. **Duty of Care** for the Board to be sure coverages are adequate for the needs.
- **Duty of Care** is involved in turnaround plans.
- Urge evaluation system for top administration, especially the CEO.

# Case study #3

I am a physician, newly elected CEO of the SDA Hospital in my Union. We are 22 physicians, two employed and 20 community docs in private practice. The institution is in an acceptable financial position, with little competition in the private sector of that city; our board meets statutorily twice a year.

# Case study #3—cont’d

We do not have a quality program, and there are lots of complaints from the physicians and significant dissatisfaction about mishaps in the nursing department and repeated near-miss events in the operating theater.

# Case study #3—cont'd

I was appointed just as LLUH was initiating its *Conversations on Governance* to the benefit of hospital boards. As I registered and followed directly all 11 of the presentations so far, I have been seriously impacted by the series and motivated to start implementing in my institution as much of the topics discussed as needed. Unfortunately, I was the only person from the institution and its board attending the series, no one else among the members paid attention to it.

# Case study #3—cont'd

Currently our executive committee is made of the Union officers, the Union Health Ministries Director, five local field presidents, and two laypersons. The finance committee includes just the Union treasurer, one layperson, and the hospital CFO. The Board is resisting my efforts to convince the Chair to appoint a Quality committee, and many of the members feel that they do not have enough time for committee participation, telling me that it is my job and responsibility.

# Case study #3—cont'd

As an obvious One-Person Team so far, what advice can you give me to turn the situation around before something serious happens and instead to help put the institution on the right tracks?

# Case study #3 Response

I see the situation of an institution running on its own and the physicians functioning independently on their own, with no specific oversight by Management and board—maybe except for the financial issues; with no competition, no benchmarking, it is the only, therefore the best choice. No one seems to be feeling challenged to do better than usual, what is right as long as nothing major ever happened to wake them up.

# Case study #3 Response—cont'd

The board seems to be on "automatic pilot", just two meetings annually, probably no active executive committee, with the Union administration filling in for everything else in governance. At least the 22 physicians and the nurses are doing just enough, being satisfied with a routine status quo, with little challenges.

# Case study #3 Response—cont'd

In this case, education/motivation and regulations are three sets of elements that might assist towards building a different culture with everyone getting onboard, participating, doing the hard work necessary.

# Case study #3 Response—cont'd

I would advise the new CEO to call for help from relevant entities like Adventist Health International for the following:

- Sustained Board education,
- Leadership orientation and training at the Union level,
- Trying himself to comply with existing regulations about Protocols and Standards,

# Case study #3 Response—cont'd

- Incentivizing the staff, better compensation with performance-based type of contract,
- Even work with regulatory agencies to encourage them to adopt Progressive Norms

# Case study #4

I am a layperson who owns a business having 120 employees. I have also been elected to serve as a member of the Union Executive Committee and a Board member for the hospital sponsored by the Union.

# Case study #4—cont'd

I observe that in the Seventh-day Adventist Church system one person can end up serving on several different governing bodies. This seems to be especially true of Church leaders such as the Union officers and Local Conference presidents.

# Case study #4—cont’d

I have noticed that there are times in hospital board meetings when the boundaries between the institution and the Union Conference seem to dissolve. For example, Hospital Board agenda items seem to be decided by the Union officers who speak from their Union positions.

I realize that the hospital and the Union Conference really exist to accomplish one overall mission, but I am uneasy about how and who governs what at times.

# Case study #4—cont'd

When do things like multiple board memberships become a conflict of interest? Is it inappropriate for me, or anyone else, to be a member of more than one board?

All of the Board members sign a Conflict of Interest declaration each year but that is all we do on this topic.

I, and perhaps others on the hospital board, need some help on this subject. What should a Board do?

# Case study #4 Response

- Serving on multiple boards is not in itself a conflict of interest provided the member acts in the interest of the entity when in that entity's board meeting.
- Conflict of interest is episodic, not structural. It pertains to one decision at a time.
- If handled appropriately, does not compromise a person's ability to continue functioning as a trustee.

# Case study #4 Response—cont’d

- COI declarations may exist, but no process for managing occasions when COI potentially present.
- The Board is responsible for managing conflicts of interest. There needs to be:
  1. A Conflict of Interest policy definition
  2. A declaration process for all Board members
  3. A determination process when COI might exist
  4. A documentation of how a COI situation has been handled.
- Board may need to implement separate declaration of confidentiality.