



YOUR ROLE ON THE BOARD OF DIRECTORS

2019 BHSA BOARD SEMINAR, MYRTLE BEACH, SC
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AGENDA

- How do you govern your agency?
- Purposes of Governing Board
- Board Accountability
- Board Responsibility
- Board Liability

PURPOSE

- “Govern” designated substance abuse agency for your county (SC Code Sec. 61-12-20)
- Serve as a link with your community
- Comply with State and Federal requirements

DUTIES

- Duty of Care
- Duty of Loyalty
- Duty of Obedience
- Directors are required to perform their duties **in good faith, with ordinary care, and in the best interest of the nonprofit.**

IN GOOD FAITH.

- Good faith is shown by honesty and faithfulness to duties and obligations.

WITH ORDINARY CARE.

- Use of good judgment and common sense.
- It means doing what an ordinarily prudent person in a similar position would do under similar circumstances.
- Ordinary care may differ from director to director based on their background and experience and the role they play in the organization.

IN THE BEST INTEREST OF THE NONPROFIT.

- A director acts in the best interest of the nonprofit if the director believes that the action will benefit the nonprofit and requires:
 - Being loyal to the nonprofit means that the organization's interest prevails over the director's personal or business interest.
 - Being obedient to the "laws" of the nonprofit, including the Articles of Incorporation, bylaws, tax-exempt status, and other legal requirements, as well as following its mission and purpose.

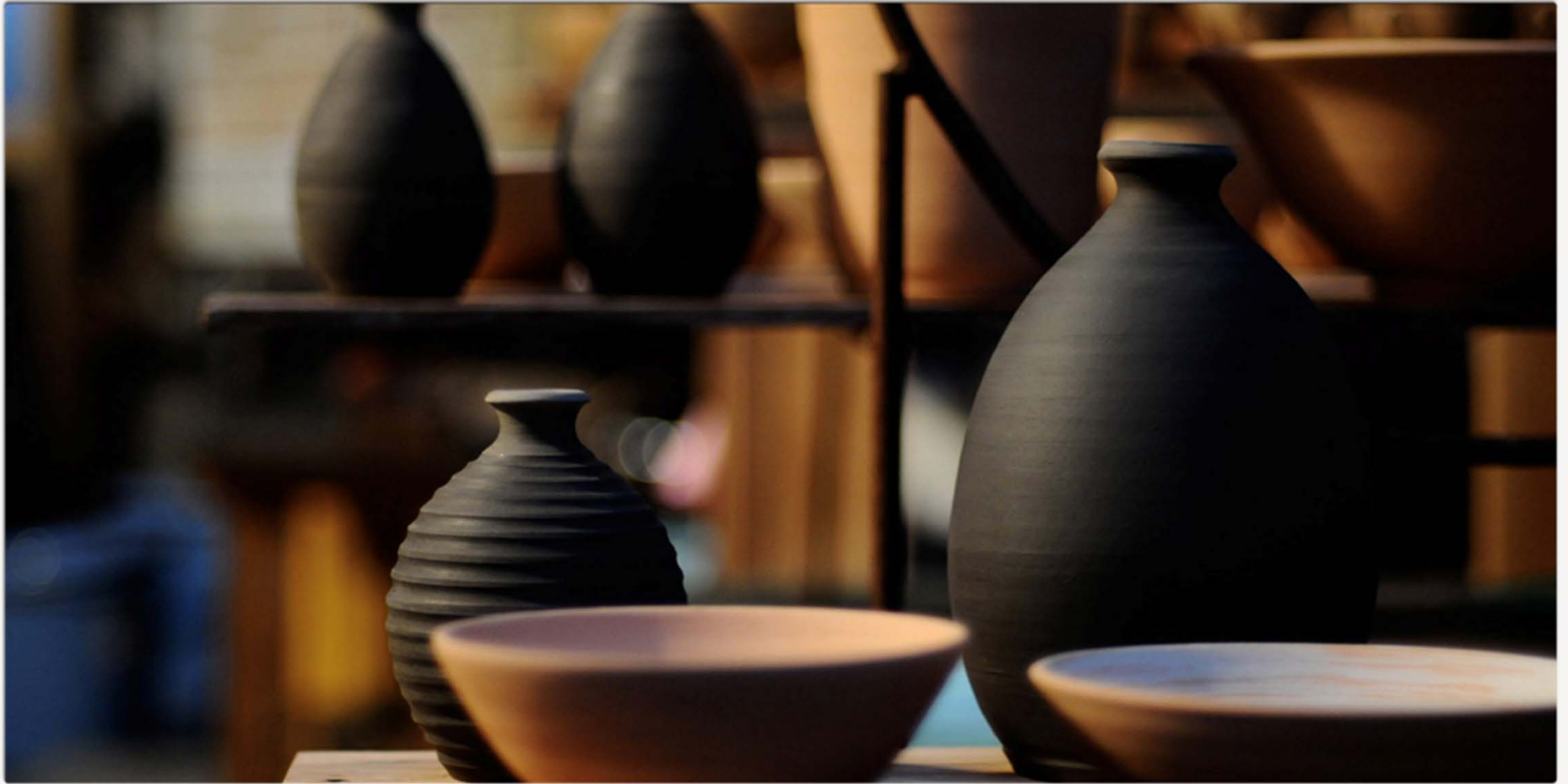
DIRECTORS SHOULD KNOW:

- Legal form of the organization
- Mission of the organization
- Bylaws
- Any policies affecting decision makers (e.g Conflict of Interest Policy)
- Financial picture (budget and financials)
- Most recent IRS Form 990

- Existence/operations of related entities
- Where the organization is conducting activities
- Tax status and applicable legal requirements of the organization
- Management structure and key employees
- Committee structure
- How directors and officers are selected

DIRECTORS SHOULD KEEP:

- Articles of Incorporation/Certificate of Formation from the Secretary of State
- Bylaws
- Conflict of Interest Policy
- Minutes of previous year
- Most recent audit/review
- Budget and most recent financials (Profit and Loss; Balance Sheet)



TEN BASIC RESPONSIBILITIES OF NONPROFIT BOARDS

1. DETERMINE THE ORGANIZATION'S VISION AND MISSION

- **Vision:** Defines optimal desired future state; mental picture of what an organization wants to achieve over time
 - Our vision is a world without drug abuse
- **Mission:** Defines present state or purpose of an organization and answers three questions about why an organization exists:
 - WHAT it does
 - WHO it does it for
 - HOW it does it

2. SELECT THE CHIEF EXECUTIVE

- Greatest impact on the organization's development and effectiveness.
- Prerequisite of effective executive performance is the Board's recognition of its duty to provide the type of working environment that will enable the chief executive to succeed.
- Best governed organizations have a executive selection and compensation plan in place, naming duties and compensation levels for executive directors.

3. SUPPORT THE EXECUTIVE AND REVIEW PERFORMANCE

- Board should serve as source of moral and substantive support for chief executive.
- Board as a whole should ensure that the chief executive:
 - Receives frequent and constructive feedback,
 - Is introduced to other community leaders and organizations,
 - Is invited to important social functions,
 - Is complimented for exceptional initiatives,
 - Is encouraged to take professional and personal leave for renewal,
 - Is assisted when members overstep prerogatives or misunderstand roles,
 - Understands that his or her performance is being assessed in relation to the Board's performance.

4. ENSURE EFFECTIVE ORGANIZATIONAL PLANNING

- Board members must be involved in planning process if they are to assume proper ownership of the plan and implementation.
- Board role is essentially one of asking good questions, expecting good answers, and serving as resources in areas of personal and professional expertise.
- Board should formally and enthusiastically approve plan following extended period of consultation and opportunity for revision.

- Executive should make annual progress reports to Board to keep staff accountable and board aware of progress.
- When there is professional staff, the conduct and coordination of planning is best entrusted to it rather than expecting volunteer board members to be full-time authorities on programmatic, financial, and managerial issues.
- Because Directors are, or should be, free of vested interests, their input is essential part of oversight.

5. ENSURE ADEQUATE RESOURCES AND MANAGE RESOURCES EFFECTIVELY

- An organization is only as effective as it has resources to meet its purposes.
- Providing adequate resources is a Board responsibility.
- While appropriate to consider the chief executive as the chief fund raiser, the Board determines what level of achievement is possible.
- Every Director should inventory his or her connections with potentially helpful givers and should accept responsibility in his or her area.

6. MONITOR THE ORGANIZATION'S PROGRAMS AND SERVICES

- Important part of the public trust is protecting accumulated assets and ensuring that current income is managed properly.
- Because nonprofits are incorporated and granted tax-exempt status by state and federal law to fulfill a public need, the Board's obligations go beyond its organization's members, constituents or customers.
- Regardless what they are called, Directors are essentially trustees in the literal and legal sense of the term. The Board has the principal responsibility for fulfillment of the organization's mission and legal/fiduciary accountability for its operations.

ANNUAL BUDGET!!!

7. ENHANCE THE ORGANIZATION'S PUBLIC IMAGE

- Are current and proposed programs and services consistent with the organization's stated vision and mission?
- Given limited resources and unlimited demands, the Board should decide among competing priorities.
- Board has monitoring and oversight role and must seek a balance between its responsibility to ensure quality, cost-effective programs and services, and the staff's responsibility to creatively initiate and conduct them.



**BEWARE OF DIRECTORS CONDUCTING OR
MANAGING PROGRAMS**

8. ASSURE COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS

- Compliance is not a manual.
- Boards are an increasing target for government investigations.
- The compliance officer should report directly to the Board.
- Board should be made aware of internal audits, risk assessments, and annual risk analysis and should confirm that these are done.

9. EDUCATE ITS OWN SUCCESSORS

- Most non-profit boards are charged with selecting their own successors. However, the fact that the county council appoints your members does not alleviate the Board's responsibility to look to the future of the organization.
- Consider succession plan for long-time Board officers and/or members.
- Are Director terms staggered?

10. ASSESS ITS OWN PERFORMANCE

- Every three to five years, the Board and its chief executive should stand back and reflect on how the Board is meeting its obligations.
- Consider:
 - Membership composition,
 - Membership selection process,
 - Organization structure, and
 - How overall performance can be strengthened.



DEFENSIVE COMPLIANCE

WORKING WITH MANAGEMENT TO AVOID
ORGANIZATIONAL LIABILITY

KEEP YOUR SHIELD UP

INSURANCE & INDEMNITY

- A nonprofit may provide additional protection for directors by providing Director's and Officer's liability insurance.
- Sometimes a person is sued simply because he or she is or was a director of a nonprofit. In some situations the nonprofit may indemnify (pay legal expenses for) the director; in other situations the nonprofit must indemnify the chief executive.

BUSINESS JUDGMENT RULE

- Reliance on certain information prepared by others.
- If the director is acting in good faith and with ordinary care, the director may rely on reports, financial statements, and information prepared by another director or an employee, a board committee, legal counsel, accountants, or other professionals hired.
- If you know the information is unreliable, you are NOT protected.

BOARD PRIVILEGE

- Documents and communication at Board meetings is considered “privileged” which means there is some protection offered at common law.
- However, nonprofits have reporting requirements and must provide documents to members of the public upon request.

ATTORNEY-CLIENT PRIVILEGE

- Only covers legal discussions with lawyer.
- Do not disclose legal advice to third parties.
- Do not forward emails!
- Check who is on email string!

ROLE

- “Stay in costume!”
- Board OVERSEES: legal/ethical, management, financial, program
- Chief Executive DOES: staff management, develop and manage policies and programs, staff liaison to Board of Directors.
- Together: Strategic Plan, Fundraising Plan, evaluation of organization

OVERSIGHT

- Direction
- Long Term
- Future Focused
- Dynamic
- What, Why, When
- Who - Executive

MANAGEMENT

- Implementation
- Short Term
- Present Focused
- Stable
- How
- Who - Staff

COMMON BOUNDARY CROSSINGS

- Personnel Management
- Customer interaction
- Imposing personal relationships
- Requiring “special treatment”
- Plan paralysis / redundancy

BOARDS HEADING FOR A FALL:

- Focus on detail rather than big picture - micromanagement
- Ignoring the future
- Attempt to “provide service” rather than governance
- Make reactive rather than proactive decisions
- Perform tasks instead of monitoring outcomes
- Review staff rather than chief executive
- Delegate improperly to chief executive

THE BEST BOARD MEMBERS:

- Understand and commit to the vision and mission of their organization
- Know their organization's particular compliance requirements
- Know their organization's environment
- Keep up to date on their industry
- Use their knowledge and relationships to positively impact public awareness of the issues facing their organization and their organization's solutions and positive outcomes





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