

THE NONPROFIT RESOURCE HUB IN PARTNERSHIP WITH MOLLOY UNIVERSITY

ANNUAL LEADERSHIP HALF-DAY CONFERENCE



Laying a Foundation for Your Board to Help Them Thrive



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Key#1:
All Roads Lead
Back to...

Overall Strategic
Goals

- Reflect on your overall strategic goals
 - Program growth/ expansion
 - Increased sROI
 - Partnerships
 - Resource development
- Need commitment from leadership



Key #2: Board Assessment & Communication

- Is our board representative of the communities we serve?
- Do we foster a sense of belonging?
- Do our meetings encourage discussion & participation?
- How are we offering mission moments?
- How effective is our committee structure?
- Do we make it easy for members to access their governance information?
- Do we communicate expectations effectively?



Key#3: Tangible Tactics for Building Engagement

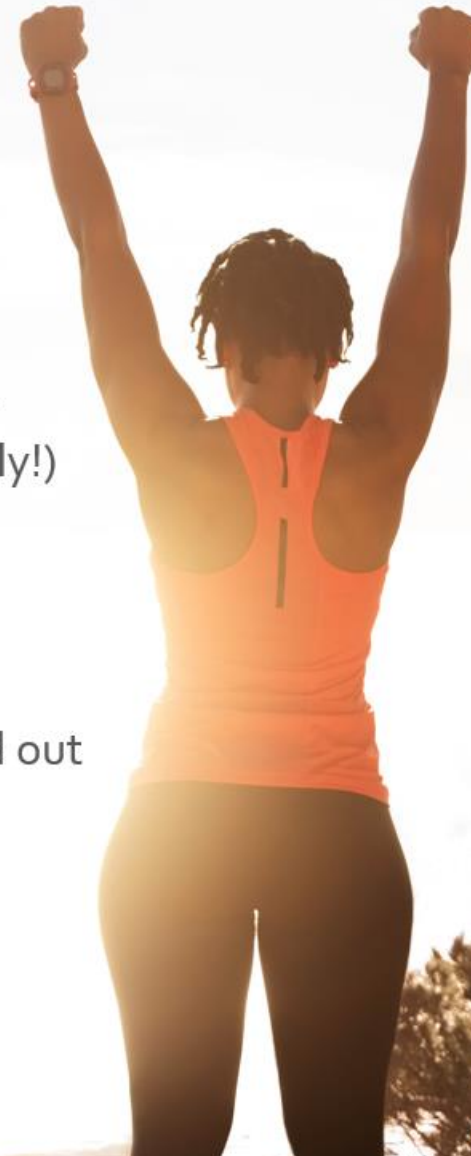
- Board Matrix (self-identification + facilitated discussion)
- Self-Assessment
- Board Portal (central location for information & communication)
- Connect members to board education & support
- Board Retreat



By the end of
today's
session...

Top
Takeaways

- At least one new tactic to grow board engagement (strategically!)
- Make time for assessment
- Consider your communication mechanism & style (both in and out of meetings!)



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- Accountability**
- Clear Roles & Responsibilities**
- Engagement**

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Accountability:

2 levels of accountability

- internal corporate accountability (2 Ways)
- legal accountability

✓ **Accountability** lies at the heart of New York
Nonprofit Law

CT Scan of the heart of NY Nonprofit Law →

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FIDUCIARY DUTIES OF NONPROFIT DIRECTORS

Fundamental Precepts:

1-Directors of Nonprofits have Legal Duties (Fiduciary Duties).

2-There can be Personal Liability to Directors for Breaching these Legal Duties.

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FIDUCIARY DUTIES

3 Fundamental Legal Duties of a Nonprofit Director Under New York Law:

- **Duty of Care**
- **Duty of Loyalty**
- **Duty of Obedience**

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Duty of Care:

- ❖ A director must discharge the duties of his/her position in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- NPCL § 717(a)
 - Oversight function: Requires familiarity with the organization's finances and activities, and regular participation in its governance.
 - ✓ **Healing Arts Initiative lawsuit (April 2016)/materials**

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Duty of Loyalty:

- ❖ A director must act in the interest of the organization.
 - Requires undivided allegiance to the organization's mission when using the power of his/her position, or information concerning the organization or its property.
 - Conflicts of interest; related party transactions.

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Duty of Obedience:

Least understood and most often neglected of the 3 primary legal duties

- ❖ to ensure that the organization complies with applicable laws and regulations and its internal governance documents and policies
 - Compliance with applicable laws and regulations is even more difficult than it sounds
 - Multiple layers of laws and regulations

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Duty of Obedience - Not-for-Profit Corporation Law:

- **Best efforts under difficult circumstances is not the compliance standard**
- **Law**
- **Mandatory requirements & procedures**
- **Bright lines**
- **Rigid**
- **Inflexible (cemetery pandemic example)**
- **Unforgiving**

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Compliance with

Internal Governance Documents and Policies:

- Certificate of Incorporation
- Bylaws
- Conflict of Interest Policy
- Investment Policy & more . . .

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Duty of Obedience

Traps for the Unwary

- Compliance with Certificate of Incorporation
- Compliance with Bylaws
- Compliance with Not-for-Profit Corporation Law

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- **Clear Roles & Responsibilities**
- **Engagement**

Use of Committees →

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Committees

- Necessary Division of Labor
- Board Committees vs. Committees of the Corporation
- Audit Committee
- Governance Committee

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Engagement: Flow of Information to the Board

- **Timely and adequate flow of information to the Board is required for the Board's mandatory oversight function.**
 - **Unintended Consequence: breach of fiduciary duty claim.**

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Flow of Information to the Board

- Adequate Oversight ≠ trust
- Volunteers doing good
- Smart and accomplished Board
 - ✓ Dowling; Adelphi

❖ QUALITY & TIMELINESS OF INFORMATION

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Flow of Information to the Board

Dowling College - 17 miles from where we are right now

- Dowling Complaint: Dowling's Board and Dowling's administration did not have the proper tools to evaluate Dowling's financial position or to make informed decisions.
 - Dowling's financial reporting under defendants' Board participation was woefully inadequate.
 - Dowling's data management system did not provide reliable or accurate information from which defendants could make informed business and financial decisions.
- 13 individuals were sued in their capacity as Board members (trustees) of Dowling College (and also as CFO)

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Duty of Care - A Roadmap:

- ✓ **Right From The Start: Responsibilities of Directors of Not-for-Profit Corporations (Charities Bureau, 2015)**
- ✓ **The Committee to Save Adelphi, et al. v. Diamandopoulos, et al. (Board of Regents, 1997)**
- ✓ **Unsecured Creditor Trustee of Dowling College v. 13 individuals sued in their capacity as Board members (trustees) of Dowling College (and also as CFO)**
- ✓ **Internal Controls**
 - ❑ **Internal Controls And Financial Accountability For Not-For-Profit Boards (Charities Bureau, 2015)**
- ✓ **Policies & Procedures**
- ✓ **Critical Role of Audit Oversight (Independence Requirement)**
 - ❑ **Audit Committee Requirements And Responsibilities Under New York's Not-For-Profit Corporation Law As Amended Through 2017 (Charities Bureau, 2018)**

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Three Takeaways:

- **Never lose sight of your fiduciary duties – not even for a minute!**
- **Information Is King – Information Flow; Quality & Timeliness of Information; Oversight**
- **Accountability is a 2-way street (Board member to organization and vice versa)**

Understanding Risk

- **The Economy**

- NY State Budget ... where's it going
- The Need for Contingency budgets
- Inflation and interest rates

- **Internal Financial Information**

- Budget is roadmap ... need to keep organization on track
- Budget for growth
- Fiscal stability = Opportunity
- Information is power ... need accurate, timely, and current information

- **Compliance**

- Grant compliance and Monitoring
- Regulations, audits, and takebacks ... oh my!
- Restrictions on funds
- QA function/compliance officer/other internal systems

Understanding Risk

- **Strong Control Environment**
 - Detect and prevent controls
 - Documented policies
 - Allocation methodologies
- **Cyber security/IT issues**
 - Cyber attacks on the rise in the nonprofit sector
 - HIPAA and FERPA Compliance
 - Donor and client information
- **Staffing Issues**
 - Difficulty hiring staff
 - Changing DOL, IRS, and other regulations
 - Pension lawsuits creeping to healthcare
 - Leadership retooling
 - Succession Planning

Understanding Risk

- **Insurance Exposure**

- When was the last time you reviewed your coverage and not just your pricing

- **Funding Levels**

- 2022 saw a decline in fundraising (4th time in 40 years)
- Bigger gifts/less people
- Wealth transfer – winner of loser
- Build a better mousetrap

- **Reputational Damage**

- Only as good as your weakest link

- **Risk Committee**

Key Takeaway

- Risk is a component of everything we do, the key is to understand your organization's risk, so you can properly make informed decisions

Thank you!



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