

#### **BOARD MANUAL**

SUBJECT:	The Heath Care Environment		NO.: 1-B-02
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See Chapter 1: Understanding Good Governance, Guide to Good Governance, Ontario Hospital Association, 2025 Fouth Edition.

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The Heath Care Environment Board Manual 1-B-02 Cambridge Memorial Hospital November 25, 2020

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# Chapter 1: Understanding Good Governance

The Guide to Good Governance (Guide) is designed to assist boards of public hospital corporations with implementing effective governance by reviewing leading governance practices adapted to the context and landscape applicable to hospital corporations in Ontario.

#### In This Chapter:

- > Defining Good Governance
- > Framework for Good Governance

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> Board Responsibility for Governance

### The Not-for-Profit Corporations Act

In October 2021, the Ontario government proclaimed into force the Not-for-Profit Corporations Act, which replaces the Corporations Act where it applies to hospitals. Minor amendments were made to the Not-for-Profit Corporations Act in October 2023. The Not-for-Profit Corporations Act in October 2023. The Not-for-Profit Corporations Act as it impacts corporate governance of not-for-profit corporations in Ontario. This Guide refers to some of the more significant changes that impact corporate governance.

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### **Defining Good Governance**

While the entirety of this Guide ultimately defines good governance, the next section of this chapter focuses on reviewing the core components. These core components include a review of corporate structure, fiduciary duty, and board culture.

#### Corporate Structure

Generally speaking, the affairs of a hospital corporation are governed by its board of directors. The regulations under the *Public Hospitals Act* confirm the role of the board by providing that "every hospital shall be governed and managed by a board".

Hospital corporations are non-share capital corporations generally incorporated by articles of incorporation under the *Not-for-Profit Corporations Act* (formerly letters patent under the *Corporations Act*) or, in some cases, incorporated by special legislation. A hospital's corporate structure is also subject to, and affected by, the provisions of the *Public Hospitals Act*. In addition to these two pieces of legislation,

a board should be more acutely aware of the requirements contained in the Connecting Care Act, the Commitment to the Future of Medicare Act, the Excellent Care for All Act, the Freedom of Information and Protection of Privacy Act, the Personal Health Information Protection Act, the Broader Public Sector Accountability Act, and the Broader Public Sector Executive Compensation Act.

The hospital's objects or purposes are set out in its constating documents: generally, its articles of incorporation under the Not-for-Profit Corporations Act (formerly letters patent under the Corporations Act), or under special legislation. While these purposes may vary among hospital corporations, they typically include the establishment, maintenance and operation of a hospital. These purposes are considered charitable.

Hospital corporations have members and not shareholders. Distinct from a business or share capital company in which shareholders are entitled to a share of the company's profits by receiving dividends, a hospital, as a non-share corporation, has members who are prohibited by the Not-for-Profit Corporations Act from receiving financial gain. Members elect

approve certain fundamental changes, including amendments members and directors. There are actions that must be taken directors, appoint auditors, receive financial statements and Ontario have established closed membership models where are important and extend beyond mere formalities. A board member should be aware when they wear a director hat and the directors are also the members, it remains fundamental or confirmed by directors. These actions and confirmations or confirmed by members, and actions that must be taken to understand the unique roles and obligations of both to by-laws. While many, if not most, public hospitals in when they wear a member hat.

#### Fiduciary Duty

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of conduct imposed at law. Among other things, directors are corporation. The fiduciary duties owed by a hospital director to the hospital corporation are among the highest standards Directors stand in a fiduciary relationship with the hospital required to:

- Act honestly, in good faith and in the best interests of the hospital;
- Comply with the Not-for-Profit Corporations Act;
- Comply with the hospital's articles and by-laws;

- Discharge accountability obligations; and
- Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### → Find Out More

discussed in Chapter 4. Directors' duties are discussed in Hospital accountability and stakeholder relations are Chapter 6.

of care but it is also context specific. The fiduciary duties owed person in comparable circumstances is an objective standard by directors to the hospital also include the duties of loyalty, Exercising care, diligence and skill of a reasonably prudent maintenance of confidentiality, avoidance of conflicts of interest, as well as the duty of corporate obedience. Directors are not accountable for errors in judgment provided the "business judgment rule". The business judgement rule discharged their fiduciary duties, pursuant to what is called and directors' duties are more fully discussed in Chapter 6. they have followed a reasoned and informed process and

#### **Board Culture**

efforts, the earned trust of management, and director candour board culture. Good board culture is more likely to exist when itself. A board actively seeking to understand, implement and best practices are followed, corporate and internal structures achieve good governance is more likely to demonstrate good will not, by itself, achieve good board culture. Board member are observed, and good governance is consistently a board's cohesion, board chair leadership, continuous improvement focus. That said, adherence to good governance practices outlined by focusing on the practice of good governance Exploring what constitutes good 'board culture' is best also contribute heavily to good board culture.

#### → Find Out More

Board culture is more fully discussed in Chapter 9.

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# Framework for Good Governance

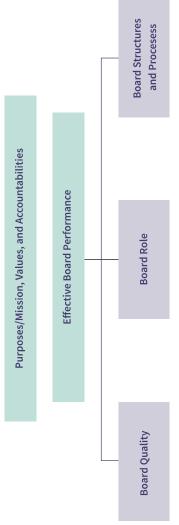
Effective board performance requires a board to understand the three framework conditions conducive to, and supportive of, good governance. These framework conditions are outlined below and shown in Figure 1.1: Framework for Good Governance

- Board Quality The quality and diversity of the individuals at the table and the collective impact of their knowledge (i.e., who is on the board)
- Board's Role The areas in which the board exercises a
  governance role and the approach the board takes when
  exercising its role (i.e., what a board does).

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 Board Structure and Processes – The structures and processes implemented and observed by the board to perform its governance role (i.e., how the board does its work).

## Figure 1.1: Framework for Good Governance



- Size
- Composition
- Recruitment

Term and Renewal

- Onboarding
  - Folloation
- Education

Evaluation

Director Development

Committees (mandates and membership)

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- Leadership Selection
- Meeting Processes

Management Oversight of chief executive officer and

chief of staff

Strategic Planning

Governance

- Board Policies
- Board Culture

Risk Management (financial,

Quality Oversight

reputational, etc.)

Stakeholder Engagement

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and board structures and processes). Due to this impact, it is paramount for boards to be attentive to their quality. Board The quality of a board inevitably impacts the effectiveness of the two subsequent framework conditions (board role quality includes the following dimensions:

- Board size;
- Board composition (including the knowledge, experience, and attributes of the board);
- Recruitment (including the processes that the board uses to recruit and train its directors);

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- Terms and renewal of directors;
- Onboarding and education;
- Feedback and evaluation of governance; and
- Individual director development.

#### → Find Out More

These elements are more fully discussed in Chapter 7.

### Condition #2 – The Board's Role

composition, fundamentally have the same role. Effective All corporate boards, regardless of industry, size, scope or performance of the board's role includes the following dimensions:

- Being explicit about the board's role as the governing body;
- Ensuring all directors understand the board's role and their individual duties as directors;
- Strategic planning;
- Ensuring individual directors discharge their own duties accordingly;
- Differentiating the board's role from the role of the chief executive officer, chief of staff, and management as clearly as possible; and
- Overseeing management, quality, risk management, and stakeholder engagement.

#### → Find Out More

These elements are discussed in Chapter 2, Chapter 3, and Chapter 6.

# Condition #3 – Board Structure and Processes

The structure and processes implemented and observed by a board are key to effective board performance. Relevant considerations when establishing and reviewing board structures and processes include the following:

- Leadership The board chair, and other appointed officers, take on board leadership roles.
- Consider the processes respecting the appointment qualifications of officers, setting term lengths, and of officers. This may include defining the roles and establishing the process for selecting officers.

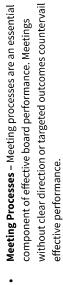
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- performing work the board may not otherwise have been Committees – Board committees assist the board in able to complete itself.
- include distinguishing between standing and ad hoc efficient practices for board reporting and oversight. committee terms of reference, reviewing committee committees, ensuring committees are not doing the composition and selection processes, and ensuring work of management, determining and reviewing formation, operation, and sunsetting. This may Consider the processes respecting committee

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- Consider how agendas are set, how directors have input into agenda setting, open board meeting and in camera meeting processes, how virtual meetings are managed, verification of minutes, and distinction between matters before the board (information, discussion, decision etc.).
- Relationships and Culture Although less tangible, relationships among board members, and with management, are an important element in creating effective governance.
- Consider how to build effective bonds between board members, how members interact on topical issues, assessing whether board members are comfortable sharing their opinions.

#### → Find Out More

Matters of board structure and processes are discussed in Chapter 8 and board culture is more fully discussed in Chapter 9.

# **Board Responsibility for Governance**

It is important that a board take ownership over the quality of its own performance. While external assessments exist through organizations such as Accreditation Canada and the Ontario Hospital Association, the board remains accountable to itself for ensuring the quality of its own performance. That said, while this accountability ultimately remains internal, its origins are externally tied through the fiduciary obligation of stakeholder accountability.

The entirety of this Guide is designed to empower boards to take ownership over the quality of their own performance. The chapters that follow will provide the insight, tools, and information necessary to action this element of good governance.

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#### → Find Out More

Hospital accountability and stakeholder relations are discussed in Chapter 4.

Directors' duties are discussed in Chapter 6.

Developing good governance is reviewed in Chapters 9.

