

# What Public and Private Boards Could Learn from Each Other

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The increased scrutiny of not-for-profit boards has engendered a whole new level of conversation about recommended governance practices. The number of publications and conferences aimed at enhancing governance effectiveness has become dizzying. Yet, there is an angle on this issue that seems not to have been sufficiently addressed: the strengths and weaknesses of public hospital governance (see sidebar for definitions). Given that 25 percent of the 4,250 U.S. not-for-profit acute care hospitals and health systems are government sponsored, this seems to be a missed opportunity.

**T**HE MISSED OPPORTUNITIES ARE actually on both sides of the ledger—practices that public hospitals can learn from private hospitals *and* those that public hospitals can teach private hospitals.<sup>1</sup> In our work with numerous public hospital boards, we have found that they often feel like governance stepchildren. This most often occurs when their scores on board self-assessment surveys are lower than those of their private hospital board peers. However, in our experience, there are lessons about effective governance that can be learned from both public and private hospital boards.

## What Public Hospital Boards Do Better

It may come as a surprise to some private hospital board members that there are a number of effective governance practices that are more often seen in public hospital

boardrooms than in private hospital boardrooms. It turns out that being “forced” to govern in the “sunshine” for years (to borrow a phrase from Florida’s “Sunshine Laws”) has often caused public hospital boards to become more transparent, accountable, and efficient than some of their private counterparts.

### Transparency

One of the advantages of being a public hospital board (with open meetings and records laws) in this day and age is that the board has always had to be transparent about its own governance functioning and the performance of the organization. Therefore, public hospital boards have not been troubled by the cries from Senator Grassley, the IRS, and others regarding the need for not-for-profit boards to be more open.

Public hospital board meetings are often attended by the public and the media, and the minutes from those meetings are posted on the hospital’s Web site (or available in some other fashion) for all to see. The public board’s own composition, its decision-making processes, and its governance documents are also all available for anyone who wants to be assured that the board is making decisions in the best interests of the public. Information on the performance of the organization (e.g., financial results, quality outcomes, patient safety record) and its executives (e.g., CEO performance) is also available to all who want to assess the progress toward the mission. This totally transparent approach is a “recommended practice” private boards can and should learn from public boards. Together, the CEO and board chair of a private hospital should talk to their colleagues at a public hospital for guidance on becoming more transparent.

### Independence

A transparency-related issue that has become vexing to many private hospital boards is

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### Definition of “Public” Hospitals

This article addresses issues related to “public” hospitals that are government sponsored, but are not federal, state, or public health hospitals. The types of organizations that are included are:

- County, city, or city and county-owned
- District/authority hospitals

A further complication in terminology is that the term “public” is used rather indiscriminately to refer to a variety of issues. Areas of potential confusion include:

- Actual ownership of the assets (i.e., to whom would the assets revert/be distributed if the organization no longer existed? The city, county, state, or a private 501(c)(3) organization with a similar mission?)
- Method of board member appointment/election (i.e., how do board members receive their positions? Do elected officials appoint them, or does the public elect them, or does the board itself select its members?)
- Open meetings and records (i.e., how are meetings and minutes handled? Must all meetings be advertised to the general public? Can the general public attend all meetings, with or without “invitation?” Must all governance documents be “public record?” Which, if any, topics can be discussed in closed sessions? What number of board members triggers the need for an open meeting?)

Any assessment of governance effectiveness of a “public” hospital should begin with a thorough understanding of the nature of the organization. The best method for clarifying these complicated and interwoven issues is to carefully study the legal documents that were developed to bring the organization into existence (e.g., enabling act, articles of incorporation, regulatory codes, bylaws, etc.). An organization is then in a better position to determine which of a variety of recommended governance practices are open to them, from a legal perspective.

<sup>1</sup> Note: The term ‘private’ is used in this article to refer to hospitals and health systems that are treated as 501(c)(3) organizations under the IRS not-for-profit code.

the need for a certain percentage of board members to be independent. Once the IRS released its final Instructions on the new Form 990 for 501(c)(3) corporations, many private hospital boards began trying to convince some of their board members of the need to change the way they view their service on the hospital board. At some private hospitals, board members with conflicts of interest continue to believe they can serve on key committees such as executive compensation and audit, despite the IRS' concern with their lack of independence.

**“We’ll be fighting the wrong war if we simply tighten procedural rules for boards and ignore their more pressing need to be strong, high-functioning work groups whose members trust and challenge one another and engage directly with senior managers on critical issues.”**

*(From Jeffrey Sonnenfeld, “What Makes Great Boards Great,” Harvard Business Review, September 2002.)*

However, many public hospital boards require that each board member be independent, defined as without any potential conflicts of interest. This requirement is sometimes written into the organizing documents, and is fully communicated to potential board members before they are considered for service.<sup>2</sup>

### Strategic Goal-Setting and Accountability

Of course, the true test of effective governance is whether the organization is achieving its strategic goals. Interestingly, public hospital boards often outshine private hospital boards in insisting that administration’s plans and goals are set, measurable, and feasible. According

to The Governance Institute’s 2009 Biennial Survey of Hospitals and Healthcare Systems (“TGI survey,” forthcoming), public hospital boards do a slightly better job in these important areas:

- The board requires that major strategic projects specify both measurable criteria for success and who is responsible for implementation.
- The board reviews the financial feasibility of projects before approving them.
- The board sets annual goals for both the board and committee performance that support the organization’s strategic direction.

Private hospital boards should ensure that they are paying as close attention to these important practices as are their public colleagues.

### Performance Discussions

Once strategic goals are set, an important role for any board is to monitor the executives’ and organization’s performance towards those goals. One key component of a healthy performance management and evaluation system is for the board to be honest with the CEO about what he or she should be doing differently to improve performance. A common practice of public hospital boards that should probably be used more often by private hospital boards is to engage the full board in conversations about the CEO’s performance.

Too often, private hospital boards leave all the discussions about the CEO’s performance to a small subset of the board, creating two groups: one that is “in the know” and one that is not. More importantly, under this scenario, not all board members can confidently state that they have performed their fiduciary duty of oversight.

### Orientation and Documentation

Many public hospital boards have relatively high turnover due to the method they must use to select board members. Because new public hospital board members are appointed by public officials or elected by the general public on a regular schedule, public hospital boards

have had to become very adept at orienting new members quickly and thoroughly. This is especially true for boards whose new members have had no experience serving on boards and/or in healthcare.

As a result, most public hospitals have developed more formal and comprehensive board orientation processes and documents than their private hospital peers. For instance, according to the TGI survey, more government-sponsored hospitals:

- Regularly review policies that specify the board’s major oversight responsibilities at least every two years
- Have specified minimum meeting attendance in a written policy

■ ■ Governance experts agree that what really makes a good board great is a healthy culture in which board members hold each other and senior managers accountable for their performance in furtherance of the mission.

The open records laws in most public hospitals have created the need for a much more rigorous approach to governance support and documentation. As a result, most public hospital boards have had at least one dedicated governance support professional for years. This individual is a full-time staff person who reports to the CEO and supports the board. Because they have been able to devote their attention to assisting with the effectiveness of the board, they have often developed more documentation of board agendas, minutes, policies, and procedures than governance support individuals at private hospitals. Given the increased complexity of and demands on governance, all boards would benefit from having full-time governance support individuals.

### Advocacy

Another area in which public hospital boards often surpass private hospital boards is in the board’s core responsibility of advocacy.

<sup>2</sup> Please note that public hospitals are not required to file IRS Form 990s unless they have opted to get an Internal Revenue Code 501(c)(3) determination.

**Table 1. Advocacy Governance Practices**

	Overall (all hospitals and health systems)	Government-Sponsored Hospitals
The board uses the ability to advocate to legislators, the community, or prospective donors on behalf of the organization as a criterion in the selection process of new board members.	45.7%	47.4%
The board identifies legislative goals and/or public policy advocacy priorities for board members every two years.	31.7%	36.8%

Source: 2009 Biennial Survey of Hospitals and Health Systems, The Governance Institute (forthcoming, November 2009).

**Table 2. Board Composition Governance Practices**

	Overall (all hospitals and health systems)	Systems	Independent Hospitals	Subsidiary Hospitals	Government-Sponsored Hospitals
Number of medical staff physicians on the board	2.1	2.4	2.6	2.8	0.7
Number of female voting board members	3.30	3.80	3.49	4.0	2.10
Number of ethnic minority voting board members	1.11	1.87	0.96	1.34	0.65

Source: 2009 Biennial Survey of Hospitals and Health Systems, The Governance Institute (forthcoming, November 2009).

**Table 3. Board Committee Governance Practices**

Respondents with this committee	Overall (all hospitals and health systems)	Systems	Independent Hospitals	Subsidiary Hospitals	Government-Sponsored Hospitals
Governance committee	72%	86%	80%	78%	42%
Quality and patient safety committee	70%	78%	74%	76%	53%
Audit and compliance committee	28%	51%	28%	26%	14%

Source: 2009 Biennial Survey of Hospitals and Health Systems, The Governance Institute (forthcoming, November 2009).

Specifically, according to the TGI survey (see [Table 1](#)), public hospital boards are more likely than the average private hospital board to emphasize the board members' responsibility to be proactive champions of the hospital and to help with public policy initiatives.

Since advocacy is the core responsibility in which TGI survey respondents rated their board's overall performance the lowest (out of all nine fiduciary duties and core responsibilities), this is another area in which private hospital boards should receive guidance from public hospital boards.

## What Private Hospital Boards Do Better

The first half of this article described the governance practices that private hospital boards could learn from public hospital boards. In this section, we flip over the coin and describe what private hospital boards "do better" than public hospital boards.

### Board Composition

One of the main governance differences between private and public hospitals is the

composition of their boards. According to public hospital board members, they do not have control over who serves on their board; the members are selected by appointment or election.

And yet, in our experience, public hospital appointing (and electing) bodies are often open to recommendations from the CEO and existing board members. Appointing officials often value a conversation about what types of skills and competencies the hospital board needs at a particular point in time. The public hospital board's governance committee can create list of all of the needed board competencies and then determine those that are missing, given who will continue to serve on the board.

When doing this work, the public hospital board should also review the TGI survey data on the board composition practices used by private hospital boards (see [Table 2](#)). In general, public hospital boards should consider:

- Increasing female and ethnic minority representation on the board
- Including more physicians in formal governance roles

Including more physicians in governance may be a bit trickier for public hospital boards, because many of their organizing documents forbid members of the active medical staff from serving on the hospital board. However, there are other ways to involve physicians in governance, to ensure the board considers their perspectives on quality and safety, including:

- Asking physicians who are not on the hospital's (or a competitor's) medical staff (e.g., a retired physician or one from an academic medical center) to serve on the board
- Adding physicians to each of the board committees (e.g., quality and safety)
- Including physicians in board educational sessions and retreats

In any event, public hospital boards should consider adding non-board members to committees for additional expertise and to develop a pool of potential board members.

## Board Committees

Another effective governance practice public hospitals can borrow from private hospital boards is the committee structure. In general, private hospital boards have moved more quickly to establish committees to handle newer governance-related issues. For instance, private hospital boards are much more likely to have created governance committees, board quality and patient safety committees, and audit and compliance committees (see [Table 3](#)).

Private hospital boards are finding that by establishing governance committees, they finally have a “vehicle” for ensuring that the board itself is effective. More public hospitals should create a standing committee to handle board member nominations (where possible), orientation, continuing education, evaluation, and leadership succession (see [Board Effectiveness](#) section below).

The importance of a board-level (versus hospital or medical staff) quality and patient safety committee was highlighted in a study conducted by AHRQ and The Governance Institute.<sup>3</sup> That research proved a statistically significant relationship between certain

board practices and the improvement of quality. One of the key practices was the implementation of a board quality (and patient safety) committee.

The Sarbanes-Oxley Act of 2002 demanded that corporate boards become more rigorous in their oversight of the audit function. One of the key requirements was that all the members of the audit committee be independent. Of course, neither private, 501(c)(3) hospitals, nor public hospitals, are subject to that law. However, the concept of a separate group of independent board members reviewing

the audit (and compliance matters) has been identified as a recommended governance practice by the IRS and the Senate Finance Committee’s Panel on the Non-Profit Sector for not-for-profit organizations. Therefore, public hospital boards might want to follow this practice.

## Board Effectiveness

Private boards tend to focus more on board effectiveness than do most public boards. The TGI survey results indicate that 79 percent of boards overall versus 55 percent of government-sponsored hospitals perform well on board self-assessment and development practices, which include but are not limited to:

- Attending external educational conferences
- Completing board self-evaluations and developing action plans based on the evaluations
- Using an explicit process for board leadership succession planning



## Consent Agendas

One way to save time for important discussions is to use a consent agenda covering routine actions that require board approval (e.g., approving minutes or committee recommendations). Any board member can request that an item be moved off the consent agenda and opened for discussion. The items that stay on the consent agenda are voted on together as a block, without any further discussion.

*(From “We’ve Got to Stop Meeting Like This: Creating Board Agendas that Work,” Pamela R. Knecht, Trustee Magazine, May 2001.)*

Admittedly, it is often more challenging for public boards to conduct self-assessments when their performance can become public information. However, public boards and CEOs who have taken the risk say it is well worth the effort. Jim Nathan, CEO of Lee Memorial Health System says, “The board

assessment and development retreats we have conducted over the last five years have allowed us to identify and create plans to address issues that were barriers to the board’s effectiveness. As a result, our system is better able to fulfill its mission.”

## Board Meetings

The last and perhaps most important set of lessons from private hospital boards have to do with board meeting effectiveness. Private boards are more likely than public boards to use the following practices to ensure effective and efficient meetings:

- Use consent agendas to free up time for discussions (see sidebar)
- Increase time spent on strategic discussions versus listening to reports
- Encourage open and candid conversations

It is more difficult for public board members to be totally candid when members of the general public and the media are watching and critiquing their meetings. However, most governance experts agree that what really makes a good board great is a healthy culture in which board members hold each other and senior managers accountable for their performance in furtherance of the mission.

## Summary

In summary, there are lessons to be learned about effective governance practices from both private hospital boards and public hospital boards. Perhaps all types of boards should network with each other and learn from each other. All members of not-for-profit healthcare boards agreed to serve because they wanted to support their organization’s provision of accessible, safe, high-quality healthcare in their communities. The best way to do that is to learn about and then implement the recommended practices in healthcare governance.

The Governance Institute thanks Pamela R. Knecht, governance advisor, for contributing this article. She can be reached at [pknecht@accordlimited.com](mailto:pknecht@accordlimited.com) or (312) 988-7000.

3 “Board Engagement in Quality: Findings of a Survey of Hospital and Health System Leaders,” *Journal of Healthcare Management*, Vol. 53, No. 2, March/April 2008.