

***Fiduciary Duty:
Governance as Leadership***
**Board of Regents
University of Minnesota**

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HUMPHREY SCHOOL
OF PUBLIC AFFAIRS
UNIVERSITY OF MINNESOTA

Board Duties

- 1. Represent Citizens of Minnesota**
- 2. Be a Fiduciary**
- 3. Authorize and Review Audits**
- 4. Advance Mission**
- 5. Set Policies**
- 6. Hire and Hold President Accountable**
- 7. Assess Controversial Issues**

1. Represent Citizens of MN

- **Under Section 7 of the University Charter the Regents of the University “constitute a body corporate, with the name and style of the ‘Regents of the University of Minnesota.’”**
- **“Policy Governance demands that boards’ primary relationships be outside the organization---that is, with owners.”**
(Carver Governance Model, 2001)
- **“Owners” are the citizens of Minnesota**

Governance Triangle

(Governance as Leadership, 2004)



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2. Be a Fiduciary

While the Board is not subject to the Minnesota Nonprofit Corporation Act, it is likely that a court would hold the Board members to the same standards of conduct set forth in MN Statute for directors of nonprofit corporations. **(Bill Donohue)**

- **Duty of Care**
 - Be reasonably informed
 - Participate in decisions
- **Duty of Loyalty**
 - Exercise power in interests of organization
- **Duty of Obedience**
 - Comply with laws and organizations governing documents

2. Be a Fiduciary

- Board of Regents have by policy recognized that they have a fiduciary responsibility. **(Bill Donohue)**
- Prevent theft, waste, or misuse of resources;
- Ensure the resources are deployed effectively and efficiently to advance the organizations mission;
- Safeguard the mission against both unintentional drift and unauthorized shifts in purpose; and
- Require that trustees operate solely in the best interests of the organization. **(Governance as Leadership, 2004)**

3. Authorize And Review Audits

- To determine “that the expectations are being met”, audits should be authorized, conducted, and reviewed holding the President accountable.

4. Advance Mission

- “While they [nonprofit boards] face increasing demands to oversee organizations' performance accountability, fiscal integrity and regulatory compliance, they also share a leadership role with agency directors to advance their organizations' missions.”
(**Pew Fund for Health and Human Services, 2007**)
- Board of Regents is responsible for the development of the mission of the University and has done so by policy.
(**Bill Donahue**)
- Be “strategic – the board’s attention shifts from conformance to performance.” (**Governance as Leadership, 2004**)

5. Set Policies

- Policies should cover:
 - Ends
 - Governance Process
 - Executive Limitations
 - Board-Staff Linkage.

(Carver Model, 2001)

- Be “generative – Discern problems, engage in sense making.”

(Governance as Leadership, 2004)

6. Hire and Hold President Accountable

- “We recommend that the board use a single point of delegation and hold this position accountable for meeting all of the board’s expectations for organizational performance.”
(Carver Model, 2001)
- “...requires the board (1) to be definite about its performance expectations, (2) to assign these expectations clearly, and then (3) to check to see that the expectations are being met.”
(Carver Model, 2001)
- Do not micro-manage or micro-govern.
(Governance as Leadership, 2004)

7. Assess Controversial Issues

- An addition to the Carver model, the board should assess those controversial issues that are of concern to the regents, staff, students, and/or the citizens to determine any policy changes and/or to advise the President.

Three Types of Governance

	Fiduciary	Strategic	Generative
Key Question	"What's wrong?"	"What's the plan?"	"What's the question?"
Board Focus	Define problems Review performance	Solve problems Shape strategy	Frame problems Engage in sense-making
Board Process	Parliamentary procedure	Logical and empirical discussion	More informal and creative
Problems Are To Be	Spotted	Solved	Framed
Decision Making	Resolution	Reaching consensus	Framing the question
Board Sees Their Role As	Oversight & authority	Strategist	Fresh perspective
Performance Metrics	Facts, figures, finances, reports	Strategic indicators, competitive analysis	Signs of learning and discerning

Questions and Comments

References

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- Donohue, B. (2013). Email Communication, January 30, 2014.
- MN Territorial Laws 1851, Chapter 3.
- Pew Fund for Health and Human Services (2007), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Pew_Fund_for_HHS_in_Philadelphia/Governance%20as%20Leadership%20summary%20final.pdf, 8.

Questions and Comments

1. The safeguarding of an institution's moral compass is considered by some to be one of the fiduciary responsibilities of a Board member - and perhaps even more so by members of audit committees. What are effective means available for Board members to align its moral compass and make sure it is understood by the University community?
2. There is the legal definition and understanding of fiduciary responsibilities (Duties of Care, Loyalty, and Responsibility). Are these becoming the floor of expectations for Board members. Are the expectations rising?
3. One of the areas that is raised frequently within the audit committee is reputational risk. The University's reputation is its greatest asset. Are there effective methods that could be employed by the committee (or Board as a whole) that would help manage that risk more effectively.
4. How is the Board meeting its strategic responsibilities?
5. Does the Board have generative discussions?