

## DIRECTORSHIP

# Considering Serving on a Nonprofit Board? Then Consider Duty of Care

While it is certainly an honor to be asked to serve on a nonprofit board, there are important responsibilities to acknowledge when considering whether to join.

One of these responsibilities, in legal terminology, is called the "duty of care."

**What Is Duty of Care?** Board members owe fiduciary duties to the organization on whose boards they serve. One of their fiduciary duties is the duty of care that must be exercised.

According to Massachusetts law, in essence, a board director/trustee must act with the level of thoughtfulness and care that could be expected from someone with common sense and wisdom acting under similar circumstances.

The duty of care standard also takes into account the skills and expertise that the individual director brings to the nonprofit board.

While experienced board members may provide guidance to new members, and larger organizations may provide prepared training or materials, it is ultimately the board member's own responsibility to ensure he or she knows what his or her role and responsibility is and adheres to applicable standards of conduct.

**How Is Duty of Care Exercised?** A board member should take an active role in managing and overseeing the nonprofit organization. Members should prepare for meet-



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ings by:

- Reading distributed materials in advance;
- Attending and participating in all meetings;
- Asking questions and requesting additional information and materials as appropriate;
- Carefully reviewing financial information, budgets and other reports;
- Ensuring that adequate internal accounting systems and controls are in place;
- Understanding the purposes of the organization and its governance documents (such as the articles and bylaws of the organization, and the conflicts of interest and confidentiality policies of the organization); and

- Acting with independent judgment.

In addition, a director should be careful when allowing the board to delegate powers to committees or other individuals.

A board member should exercise surveillance over delegated activities, asking focused questions and investigating any issues surrounding questionable information – particularly if that information will be relied upon by the organization or others.

Board members should be aware of and informed about every major action the charity takes. For example, board members should pay close attention to the selection of new board members as well as the organization's CEO, executive compensation, large or significant transactions, and all transactions involving real estate, borrowing and the sale/disposal of large assets.

**Is There Liability?** There are consequences to be aware of if the duty of care standard is not adhered to. The director may lose protection from liability afforded under Massachusetts law. Moreover, adhering to the standard will make the director a more valuable asset to the nonprofit.

A few questions to ask that will indicate whether a nonprofit board is considering the duty of care earnestly:

- Is there a board orientation for

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new members?

- Does the board meet regularly?
- Are meetings well attended?
- Does the board discuss critical issues like conflicts of interest, insurance and liability from the outset?
- How are committees utilized and do they report regularly to the full board?
- Do staff members regularly report to the board on major initiatives and challenges?
- Does the corporation utilize the services of a reputable auditing firm?
- Are financials presented monthly to the board, and does the

outside finance firm address the board?

If the answers to these questions are in the affirmative, you have some good telltale signs that the board is exercising its duty of care.

If answers are in the negative, it may be prudent to decline serving on the board or consider assisting the organization in becoming educated regarding the important obligation of duty of care.

**Resources on Duty of Care.** There are a number of helpful resources for directors of nonprofit boards which can provide information on a variety of issues pertaining to basic governance questions

and responsibilities, including the duty of care.

Resources include the following:

- <http://www.ago.state.ma.us/filelibrary/7-23%202007guide.pdf>;
- <http://www.abanet.org/dch/committee.cfm?com=CL260000>;
- [www.boardsource.org](http://www.boardsource.org);
- [www.managementhelp.org/boards/brdrspn.htm](http://www.managementhelp.org/boards/brdrspn.htm); and
- The Guidebook for Boards of Directors of Massachusetts Nonprofits published by MCLE, by Nancy E. Forbes et al.

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