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Health Law Connections

Key Considerations for Lawyers' Service on Boards of Health Care Organizations

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Throughout the United States, hospitals and other nonprofit health care organizations have lawyers serving on their boards of directors. This should not be surprising since some health care

organizations recruit lawyers for their boards because of their legal training and appreciation for issues that can arise in a highly regulated industry like health care. A lawyer considering serving on a board of a health care organization needs to consider the fiduciary duties imposed on all directors as well as the ethical duties imposed on lawyers. These two sets of duties can create conflicts and give rise to issues both the lawyer and the organization should consider prior to a lawyer becoming a director as well as during the time the lawyer serves as a director. [1]

Fiduciary Duties of Directors

The fiduciary duties applicable to the members of the board of directors depend on the legal type of the health care organization. This article focuses on health care organizations that are nonprofit corporations, but similar fiduciary duties are imposed on directors of public hospitals as well as for-profit health care organizations.

Generally, state nonprofit corporation statutes provide that members of a board of directors have two main fiduciary duties, which are the duty of care and the duty of loyalty. The duty of care requires the director to act with the care a person in a like position would reasonably believe to be appropriate under similar circumstances. The duty of care includes two important functions: decision making and oversight. In terms of decision making, which is usually in the form of voting on a matter, each director needs to have sufficient information to be able to make an "informed" vote. The oversight function relates to the board's responsibility for monitoring the operations of the organization. This means, among other things, that a director should have a general knowledge of the organization's operations and be aware of what the financial records disclose and take appropriate actions to make sure there are proper internal controls, including compliance programs. A director is also expected to make reasonable inquiries in appropriate circumstances such as when there is concerning activity. In addition, a director, upon becoming aware of reports of officer or employee theft or mismanagement, should ensure that a proper investigation is conducted and appropriate action is taken.

In carrying out the duty of care, a director may rely upon others—including officers, committees of the board of directors, lawyers, accountants, and other experts—as part of the information-gathering and decision-making process if the reliance is in good faith, unless the director knows or should know that such reliance is unwarranted. [2] The duty of care also requires that a director inform other directors about information that is not already known by them but is known by the director to be material to the discharge of the directors' decision making or oversight functions. There is an exception to this duty where the director reasonably believes disclosure is in violation of a legal duty or a legally enforceable obligation of confidentiality or the director has a professional ethical responsibility to not disclose. [3]

The duty of loyalty requires the director to act in good faith and avoid conflicts of interest. As a result, a director must exercise the director's power in the interest of the health care organization, and not in the director's own interest or the interest of another person or entity. Many states' nonprofit corporation statutes provide a process for handling conflict of interest situations, which generally requires, at a minimum, the disclosure of a conflict and the nonparticipation of the conflicted director in the action taken by the organization with regard to the conflict situation. [4]

Conflicts of interest are an issue of particular concern for the Internal Revenue Service, which has developed a Model Conflict of Interest Policy that has specific provisions applicable to hospitals. [5]

Another type of situation involving the duty of loyalty is when a director becomes aware of an opportunity made available to the health care organization that the director would like to pursue for the director's own personal benefit or the benefit of others unrelated to the organization. [6] Some nonprofit corporation acts and the Model Nonprofit Corporation Act provide that a director who engages in a transaction that may be of interest to the organization needs to disclose the transaction to the board of directors in sufficient detail and in adequate time to enable the board to act or decline to act with regard to such transaction. [7]

Finally, the duty of loyalty requires that a director generally not disclose information about the organization's legitimate activities except to the extent that they already are known by the public or are of public record. This duty of confidentiality exists because the disclosure of information can in certain circumstances be detrimental to the interests of the organization. [8]

The courts also recognize a third fiduciary duty, the duty of obedience, which some commentators view as part of the duty of care and the duty of loyalty. Under the duty of obedience, the directors must act in a manner consistent with the organization's mission or purposes as generally set forth in its articles of incorporation or bylaws. [9]

Ethical Duties of Lawyers

Most states' rules of ethical conduct are based on the American Bar Association's (ABA's) *Model Rules of Professional Conduct* (Model Rules). While the fiduciary duties of directors and the ethical duties of lawyers are not the same, they do have some common themes. The Model Rules do not use the phrase duty of care, but they do impose a requirement under Model Rule 1.1 that a lawyer provide competent representation, a requirement under Model Rule 1.3 that the lawyer be diligent in the representation, and a requirement under Model Rule 1.4 that the lawyer effectively communicates with the client. In addition, several Model Rules—particularly those addressing conflict situations—frame a lawyer's obligation to the client in terms of a "duty of loyalty" to such client, and Model Rule 1.6 imposes a duty to keep client information confidential.

In terms of the ethical obligations imposed on lawyers in their representation of clients, Model Rule 1.7 provides that a lawyer may not represent a client if such representation involves a concurrent conflict of interest. Such a conflict exists if the representation of one client will be directly adverse to that of another client or there is significant risk that representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. Important components to this rule are not only the duty of loyalty a lawyer has to the client but also the need for the lawyer to be able to exercise independent professional judgment. [10] As described below, a lawyer's fiduciary duties as a member of an organization's board of directors may create a material limitation conflict on the lawyer's duties to a client. [11]

Potential Ethical and Fiduciary Issues of Serving on a Health

Care Organization's Board

Ethical and fiduciary issues can arise for a lawyer serving as a member of a health care organization's board of directors even when the lawyer is not serving as counsel to the organization. For instance, a lawyer's service on the board of directors can pose an obstacle to the lawyer's law firm being adverse to such organization even if the law firm does not represent the organization. This was the situation in *Berry v. Saline Memorial Hospital,* when a hospital was sued by a party represented by a law firm in which one of the lawyers was a former member of the hospital's board of trustees. [12] The plaintiff in the case was seeking quality assurance and peer review records as part of a malpractice action, and the court found that the lawyer/former trustee was privy to confidential and privileged information about the hospital's quality assurance activities and peer reviews conducted by the medical staff when the lawyer served on the hospital's board. While the lawyer (and the lawyer's law firm) never represented the hospital, the Arkansas Supreme Court upheld a lower court's disqualification of the law firm on the basis that the lawyer, as a former hospital trustee, had a fiduciary relationship with the hospital and continued to owe the hospital a duty of loyalty. The court effectively imputed the conflict of the lawyer/former trustee to the lawyer's law firm and disqualified the firm in the case as a result. [13]

There is a question of how the Model Rule on imputed conflicts of interest (Model Rule 1.10) would apply given that the conflict is one from a non-legal representation duty to a third party that is personal to a lawyer. In this regard, some commentators have noted that in a situation like the *Berry* case, it should be permissible for the client to consent to having the firm be adverse to the organization. [14] Nevertheless, while there is a question of whether imputing a conflict in this situation is appropriate, some ethics opinions have determined that due to the rule on imputation of a conflict of interest, a lawyer or the lawyer's law firm cannot represent a party adverse to the organization in which a firm's lawyer is a current board member. [15]

Other types of conflicts can arise when the lawyer/director is representing a client that is involved in a transaction with the organization. For example, if a lawyer is serving on the board of directors of a hospital that is seeking to enter into an agreement with a public relations firm that is a client of the lawyer, the lawyer/director would have a conflict of interest. While some may argue that such a conflict should preclude a lawyer from serving on the organization's board, to the extent these situations occur infrequently, the organization and lawyer/director should be able to address them by following conflict of interest requirements that are imposed by the state nonprofit corporation act and by the organization's policies and ensuring the lawyer is not involved in any decisions regarding the conflicted transactions. [16]

There also can be situations where a lawyer, as a result of serving on an organization's board, becomes aware of an opportunity that might be beneficial to a client. For example, where a lawyer/hospital trustee becomes aware of an opportunity during a board of trustees' meeting, and the lawyer/hospital trustee believes the same opportunity also may be beneficial to a client. The lawyer must be careful to comply with the duty of loyalty to the organization and not disclose information about the opportunity to the client before the organization has decided whether to take advantage of it. [17]

A conflict can also arise when the lawyer/director becomes aware of information while representing a client that would be important for the organization and its board of directors to know. An example of this scenario is where a client supply company is planning to change the products it sells, and the health care clinic is a major purchaser of the products. In such circumstance, the lawyer/director has an ethical duty of confidentiality to the client under Model Rule 1.6 and may not be able to disclose the information to the hospital (without the client's consent) even though the fiduciary duty of care imposed on directors would otherwise require such disclosure. As discussed above, some states' nonprofit corporation acts recognize this circumstance and do not require the lawyer/director to disclose such information if doing so would violate a professional ethics rule. [18]

As a board member, regardless of whether a lawyer is serving as legal counsel to the organization, the lawyer is expected to use the lawyer's expertise in considering matters before the board. As noted above, lawyers may be particularly well-suited to understand the regulatory environment in which health care organizations operate. A District of Columbia Bar ethics opinion notes some courts have ruled that a lawyer/director for an organization can be held to a higher standard of care than a non-lawyer and, as such, must be careful to recognize "red flags" for personal legal issues in an organization's operations that may not be apparent to a non-lawyer. [19] The risk of being held to a higher standard of care can be even greater when a lawyer/director is also serving as counsel to the organization because the lawyer—in the dual roles—should have more information about the organization than would be the case if the lawyer was serving in only one role. [20]

Potential Issues of Serving in Dual Roles

Other issues can arise when the lawyer/director is also serving as counsel to the health care organization. The Model Rules do not prohibit a lawyer from serving as a director of a client organization. Still, the dual role can give rise to significant issues and a comment to Model Rule 1.7 sets forth various factors that should be considered.

Comment 35 to Model Rule 1.7 provides that a lawyer for an organization who is also a member of its board of directors needs to determine whether the responsibilities of the two roles may conflict. It further provides that consideration needs to be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the organization obtaining legal advice from another lawyer in such situations. The comment states that if there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the organization's lawyer when conflicts of interest arise.

An ABA Formal Ethics Opinion as well as some state ethics opinions have addressed various types of issues a lawyer might face if serving in a dual capacity. [21] One situation is when the lawyer is asked to pursue objectives of the organization that the lawyer, as a director, opposed. This could occur when an organization decides to pursue a lawsuit that the lawyer opposes. Under Model Rule 1.2, a lawyer is required to abide by the decisions of the client concerning representation. According to the ABA Formal Ethics Opinion, a lawyer needs to determine whether representation of the organization may be materially limited by the lawyer/director's opposition to the action the organization has decided to undertake such that Model Rule 1.7 precludes the representation. The ABA Formal

Ethics Opinion further notes that when a lawyer has participated in the decision-making process, there may be an increased risk that the lawyer will be tempted to "pull punches" in the representation of the organization going forward. A lawyer, in such a situation, needs to determine whether the lawyer can still meet the requirements of the Model Rules in providing diligent representation of the organization. [22]

The second situation where an issue can arise is when a lawyer is requested to provide advice to an organization on matters involving prior board actions in which the lawyer, as a director, participated. In this type of situation, the concern is that the lawyer/director lacks the independence of professional judgment required for such representation. Still, as noted by the ABA Committee on Lawyer Business Ethics of the Section of Business Law in its report, *The Lawyer as Director of Client*, the circumstances that require a lawyer to opine on the actions of the board should be infrequent, and in those situations it would be prudent, and even ethically required, that the organization be advised to seek the advice of other legal counsel. [23]

The third situation described in the formal ethics opinion is when the board is taking action affecting the lawyer's law firm, such as when the board is determining whether to retain the law firm. In this type of situation, it would be important for the organization and the lawyer/director to comply with the applicable conflict of interest procedures and make sure the lawyer/director is not part of the decision process.

The fourth situation described in the formal ethics opinion is when the lawyer or lawyer's law firm represents the organization in litigation that includes the organization and directors as defendants. Among other things, the opinion notes the need for the organization and directors to have independent representation in any controversy between the organization and its lawyers (including the lawyer/director).

Another situation that might arise is when a lawyer/director becomes aware that other directors are engaged in an action, intend to act, or refuse to act in a matter related to the lawyer/director's representation that is a violation of law. Under Model Rule 1.13, the lawyer/director has an obligation to proceed as is reasonably necessary in the best interests of the organization, which includes referring the matter to a higher authority within the organization and, if warranted, even outside of the organization. One ethics opinion notes that when a lawyer is also a director, it may be particularly uncomfortable and difficult to report on fellow directors. [24]

Establishment of Attorney–Client Relationship

Many lawyers join boards of organizations with the expectation of not serving as the legal counsel to the organization. Nevertheless, there may be situations where the lawyer is asked to provide some limited legal services, such as drafting an employment agreement for the CEO. Depending on the extent of the lawyer/director's involvement, the activity could be deemed to create a lawyer-client relationship with the organization. Unfortunately, it can be unclear when the lawyer/director has crossed the line from providing input as a director to the establishment of a lawyer-client relationship in which legal services are being provided. To reduce the risk of others viewing the lawyer/director as the legal counsel for the organization, the lawyer/director needs to make clear in

statements (preferably in writing) to the organization's management and other board members that the lawyer/director is not acting as a lawyer for the organization and, if appropriate, recommend that the organization seek legal advice from another lawyer or law firm.

To the extent the lawyer/director is willing to provide legal representation, then it is important the terms of engagement be agreed upon in writing by the lawyer/director and the organization. In addition, even if the representation is on a pro bono basis, the lawyer/director must be mindful of the ethical obligation of providing competent representation under Model Rule 1.2. As a result, a lawyer/director should ensure that the representation is limited to areas of the lawyer/director's legal expertise.

Attorney–Client Privilege and Confidentiality Concerns

If there is a lawyer-client relationship, the lawyer/director's dual roles can, in some situations, make it challenging to ensure that the attorney-client privilege protects communications between the lawyer and the health care organization. Important to the privilege is that the lawyer act as legal counsel rather than as a director. Communications from a lawyer/director that involve business advice (as opposed to legal advice) have been held not protected by the attorney-client privilege. [25]

Although the lawyer/director should understand when the lawyer/director is acting as legal counsel as opposed to a board member, these separate roles can be unclear to non-lawyer directors and officers of the organization. The other directors and officers may assume that the mere presence of the lawyer/director at the meeting protects their communications under the attorney-client privilege. Comment 35 to Model Rule 1.7 provides that a lawyer needs to warn a corporate client of the potential loss of the attorney-client privilege when the lawyer is also a board member.

As discussed above, a lawyer/director serving as counsel to an organization has both a duty to maintain the confidentiality of information relating to the organization (under the duty of loyalty) as well as an ethical duty to maintain the confidentiality of information under Model Rule 1.6. The lawyer/director needs to be mindful that the two duties are not necessarily the same and there may be situations where information about the organization that otherwise may be disclosed by a director still cannot be disclosed by the lawyer/director under Model Rule 1.6. In addition, given the different scopes of director fiduciary duties and the attorney-client privilege, the lawyer/director may be forced to turn over information during discovery or potentially testify as to information that would have been covered by the attorney-client privilege had the lawyer not been a director. [26]

Liability Protections for Lawyers Serving on Boards

The protections generally available to directors of health care organizations and their lawyers should also be available to lawyer/directors. Some states' nonprofit corporation acts provide various types of liability protections, including the business judgment rule. [27] Under the business judgment rule, a court must presume that disinterested directors acted on an informed basis, in good faith, and in the honest belief that their decision was in the best interest of the corporation. The purpose of the rule is to provide liability protection to directors and not to second guess a board's decision, even if it turned out to be unwise. [28] Many state nonprofit corporation acts protect directors from liability to

the organization and its members for money damages unless the directors' conduct is deemed to fall under an exception to the liability shield. The Model Nonprofit Corporation Act, for example, provides a general liability shield from monetary damages for a charitable nonprofit corporation director's actions, or failure to take any action, with exceptions for: (1) the amount of a financial benefit received by the director to which the director is not entitled; (2) an intentional infliction of harm; (3) an unlawful distribution; or (4) an intentional violation of criminal law. While the business judgment rule and liability shields may be helpful in ultimately protecting a director from liability, they do not prevent a director from incurring legal defense costs.

Most state nonprofit corporation acts allow organizations to indemnify their directors and officers. [29] The Model Nonprofit Corporation Act, for example, allows a nonprofit corporation to mandate that the nonprofit will indemnify its directors to the same extent that they are protected under the liability shield. Although indemnification rights are important, such protection is helpful only to the extent that the organization has the financial resources to provide the indemnification. [30]

Directors and officers (D&O) insurance coverage is extremely important in protecting members of a health care organization's board of directors given the limitations of statutory protections, including indemnification. To the extent a lawyer/director will be providing legal services to the organization, professional liability coverage is also a necessary protection. Still, because of the dual roles, there can be an issue of which coverage applies. Professional liability coverage generally does not cover claims arising out of a lawyer's service as a director, and D&O policies often limit claims to those arising solely out of service as a director or officer. In the dual service context, the carriers may take the position that their respective coverage does not apply if the role of the lawyer/director is unclear.

Considerations on Board Service

Before agreeing to serve as a director or officer of a health care organization, a lawyer should understand the risks and how to address or mitigate them.

Like any other prospective director, lawyers must determine whether they can commit sufficient time to serve as a board member. Health care organizations are increasingly facing significant and complex issues that require board members to invest considerable effort to fully understand and effectively address as a board. A discussion with the CEO or board chair can help a lawyer understand and assess the time commitment required and the work involved with being a director.

Service on the board of a hospital or other health care organization is generally recognized as presenting more risk to directors than other types of nonprofit organizations, and as a result, it is extremely important to consider all the liability protections available to the lawyer/director. A lawyer should review the organization's governance documents and applicable state nonprofit corporation act (or other relevant statutes) to determine what type of liability protection and indemnification rights are available to directors. The lawyer should also understand how the organization addresses conflicts of interest.

In addition, it is important to confirm that the organization maintains D&O liability coverage and to

be comfortable with the amounts and limits of the coverage and any coverage exclusions. [31] To the extent the lawyer is considering providing legal services to the organization, the lawyer should also review professional liability coverage in conjunction with the D&O coverage to understand the risks of coverage denial in the event a claim is made by the lawyer/director.

The health care organization's expectations of the lawyer/director regarding legal representation of the organization also should be considered. Relevant to such consideration is whether the organization has existing legal counsel that is separate from the lawyer or the lawyer's law firm. To the extent the lawyer will be asked to provide legal representation, then the scope of the representation should be addressed, and the lawyer and organization need to also consider the risks of the dual roles.

If a lawyer is affiliated with a law firm, the lawyer's proposed involvement as a member of an organization's board of directors should be vetted through the firm's client intake process to identify and analyze potential conflict issues. This step will help flag situations like the Arkansas hospital case discussed above where a lawyer's former role as a trustee of a hospital precluded the law firm from being adverse to the hospital.

In accepting a position on the board of directors of a client health care organization, a lawyer/director should provide to the organization a written explanation of risks associated with serving in the dual roles, including the potential conflicts and other issues that can arise and how they might preclude the lawyer/director from acting in either capacity on some issues. The parties should also consider whether safeguards, such as engaging the services of counsel other than the lawyer/director or the lawyer/director's law firm, should be put in place. It is also important to ensure all board members are aware of the potential conflict and to reflect that disclosure in board meeting minutes or other documentation. In addition, to address a potential conflict adequately, a lawyer/director should not participate in board or committee deliberations and actions on the relationship of the organization with the lawyer.

When a lawyer/director speaks to the board as a lawyer for the organization, the lawyer should communicate that fact upfront. If the minutes reflect that the lawyer/director communicated to the board as the organization's lawyer, that documentation strengthens the assertion of the attorney-client privilege as to the communication. The minutes need not (and should not) describe the substance of the legal advice. If the lawyer/director agrees to take on a specific limited representation of the organization, such as preparing restated articles of incorporation or an employment agreement for the CEO, the lawyer should make clear in a writing to the organization the extent of the representation. Moreover, the lawyer should not participate in board approval of any actions relating to the representation.

Conclusion

Service on a non-client organization's board of directors can be rewarding for both the lawyer/director and the organization but does present some risks including conflicts. Assuming the lawyer can devote the necessary time and effort, and the risk of frequent or significant conflicts is sufficiently low to allow the lawyer to participate fully as a director, a lawyer's board service can be

in the best interests of the organization. [32] If the lawyer will serve as both a director and counsel to the organization, the risk of possible issues increases, which the parties should recognize and discuss. To the extent that there are significant risks in the lawyer serving in a dual capacity, it may be better for the lawyer to serve either as the organization's legal counsel or as a board member but not both.

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1 The terms "board of trustees" and "board of directors" are generally interchangeable. For purposes of this article, the term "board of directors" is used.

2 *See* American Bar Association, GUIDEBOOK FOR DIRECTORS OF NONPROFIT CORPORATIONS 23 (Willard L. Boyd III & Jeannie Carmedelle Frey eds.) (3d ed. 2012); U.S. Department of Health and Human Services, Office of Inspector General and American Health Law Association, THE HEALTH CARE DIRECTOR'S COMPLIANCE DUTIES: A CONTINUED FOCUS OF ATTENTION AND ENFORCEMENT (2011); U.S. Department of Health and Human Services, Office of Inspector General and American Health Law Association, THE HEALTH CARE DIRECTOR'S COMPLIANCE DUTIES: A CONTINUED FOCUS OF ATTENTION AND ENFORCEMENT (2011).

3 *See, e.g.,* Nonprofit Organizations Committee of the Business Law Section of the American Bar Association, MODEL NONPROFIT CORPORATION ACT, § 830(b) (4th ed. 2022); D.C. CODE § 29-406.30; IOWA CODE § 504.831(2A); WASH. REV. CODE ANN. § 24.03A.495(2).

4 *See* MODEL NONPROFIT CORPORATION ACT, *supra* note 3, at § 833; IOWA CODE § 504.833.

5 *See* Instructions for Form 1023 (Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code), Appendix A (Sample Conflict of Interest Policy).

6 *See* GUIDEBOOK FOR DIRECTORS OF NONPROFIT CORPORATIONS, *supra* note 2, at 43-50.

7 *See* WASH. REV. CODE ANN. § 24.03A.620; MODEL NONPROFIT CORPORATION ACT, *supra* note 3, at § 879.

8 *See* GUIDEBOOK FOR DIRECTORS OF NONPROFIT CORPORATIONS, *supra* note 2, at 49-50.

9 *Id.* at 53.

10 *See* MODEL RULES OF PROFESSIONAL CONDUCT 1.7, Comment 35.

11 *See* Ohio Advisory Opinion 2008-02 (June 6, 2008).

12 907 S.W.2d 736 (Ark. 1995).

13 *Id.* at 740. The court also cited to the "appearance of impropriety" standard, which was rejected by the Model Rules drafters.

14 *See, e.g.,* RESTATEMENT OF THE LAW GOVERNING LAWYERS §§ 123 and 135; North Carolina State Bar, 2002 Formal Ethics Opinion 2 (July 19, 2002).

15 *See, e.g.*, Ohio Advisory Opinion 2008-2 (June 6, 2008); Illinois State Bar Assn. Op. 02-01 (2002).

16 *Compare* Iowa Opinion No. 94-4 (1994) *with* American Bar Association Business Law Section, *The Lawyer as Director of a Client*, 57 BUS. LAW. 387, 390 (Nov. 2001).

17 *See The Lawyer as Director of a Client*, *supra* note 16, 57 BUS. LAW. at 388.

18 *See supra* note 3.

19 *See* District of Columbia Ethics Opinion 382 (Aug. 2021).

20 *See* American Bar Association Section of Litigation, Task Force on the Independent Lawyer, *The Lawyer-Director: Implications for Independence* (1998).

21 *See* ABA Ethics Opinion 98-410, District of Columbia Ethics Opinion 382 (Aug. 2021).

22 *See* MODEL RULES OF PROFESSIONAL CONDUCT 1.3 (Diligence).

23 *See The Lawyer as Director of a Client, supra* note 16, 57 BUS. LAW. at 388-389.

24 *See* District of Columbia Ethics Opinion 382 (2021). In addition, courts have determined that in the for-profit context, there can be a risk that the lawyer's law firm can be held vicariously liable for any actions/inactions of the lawyer/director on the basis that it authorized the lawyer's service. To the extent that the lawyer/director's law firm does not represent the organization, the risk of such a claim should be significantly reduced. *See Deutsch v. Cogan*, 580 A.2d 100 (Del. Ch. 1990).

25 *See, e.g., S.E.C. v. Gulf Western Indus., Inc.*, 518 F. Supp. 675 (D.D.C. 1981).

26 *See id.*

27 *See, e.g.*, D.C. CODE § 29-406.31; MODEL NONPROFIT CORPORATION ACT, *supra* note 3, at § 831.

28 *See* American Bar Association, Corporate Laws Committee, LEGAL GUIDEBOOK FOR CLOSELY-HELD CORPORATIONS at 29 (2d ed. 2023).

29 *See, e.g.*, 805 ILL. COMP. STAT. 105/108.75; MINN CODE § 317A.521.

30 *See* MODEL NONPROFIT CORPORATION ACT, *supra* note 3, at 202(b)(8).

31 *See* Susan R. Huntington, Matthew B. Roberts, and Kenneth White, ISSUES AND CONSIDERATIONS IN AN EVOLVING LIABILITY ENVIRONMENT: SUMMARIES AND CHECKLISTS REGARDING PROTECTIONS FOR BOARD OF DIRECTORS AND EXECUTIVE OFFICERS (American Health Law Association 2018).

32 *See The Lawyer as Director of a Client, supra* note 16, 57 BUS. LAW. at 396.

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