

The Role of an Ontario Hospital Board Director: Responsibilities and Liabilities

Hospital Board Directors play a major role in how a hospital functions – this includes operations, quality of care and financial success. Strong leadership and excellent skill sets are required from Directors in order to provide high quality care to the community which that hospital serves and the health system as a whole.

In January 2017, a high-level outline of the role of Hospital Board Directors became available on www.askckha.com under the “Governance” page. The following is a precise summary of the “Role of a Member of the Board of Directors” document that states the key responsibilities and liabilities of a Director. [Click here](#) to view the full document on ASKCKHA.

Ultimately, Directors are responsible for the governance and management of the hospital’s operations. The *Public Hospitals Act* (Ontario) requires that every hospital be governed and managed by a Board of Directors. To perform their responsibilities in the best possible manner, the *Not-for-Profit Corporations Act* (Ontario) requires that Directors must act honestly, in good faith and strictly in the best interests of the hospital.

The best interests of the corporation and highest standard of care are required when a Director makes decisions on a hospital’s behalf. There is also an element of subjectivity to each Director’s required expectations. Dependent on the Director’s knowledge and experience, a higher standard of care may be expected in respect to matters that would require that particular Director’s specialized expertise.

The level of trust required, otherwise known as “fiduciary duties,” holds Directors personally accountable to perform their duties to the best of their abilities. If a Director breaks their fiduciary duty or fails to meet the appropriate standard of care while completing their fiduciary duties, civil liability will be put upon them. Civil liability includes the potential responsibility for payment of damages or other court-enforcement in a lawsuit.

The statute – a written law passed by a legislative body – holds Directors personally accountable for all of their performed duties. Directors may be held personally liable for failing to follow their own statutory obligations or failing to ensure the hospital follows its statutory obligations. Depending on the statute, non-compliance with a statutory obligation may result in either civil or criminal liability.

It’s important to note that Directors are afforded protection under the *Public Hospitals Act* – if a Director’s actions are defensible as acts done “in good faith” no action or other proceedings for damages shall be instituted against them. However, this scope of protection is dependent on the specific “good faith” defense under the authority of the *Public Hospitals Act*. An important precedent for hospitals and their boards was set in *Rosenhek v. Windsor Regional Hospital* – in this case the failure of the hospital board to comply with their hospital’s own by-laws was considered bad faith, and the board was held civilly liable for failing to act in good faith even when exercising their statutory powers. In conclusion, Directors should note that failure to observe all their fiduciary and statutory duties, including compliance with their hospital’s governance materials, could forfeit their protection under the *Public Hospitals Act*.

In Ontario, there are over 200 statutes that impose a form of liability on Directors. A few examples are listed below:

Wages and related benefits – Directors and officers may be held personally liable to hospital employees for unpaid wages and related benefits under federal, provincial and territorial legislation.

Source Deductions – There are primarily three statutes in Ontario that govern source deductions – the *Canada Pension Plan*, the *Employment Insurance Act* and the *Income Tax Act*. The hospital is required to deduct, withhold and then remit payments on behalf of its employees. If these deductions are not made and remitted, the Directors of the hospital can be held personally liable.

Sales tax – Directors may be held liable for retail and goods and services taxes that are required to be remitted by the hospital under the *Goods and Services Tax/Harmonized Sales Tax* and *Retail Sales Tax* (Ontario) statutes.

Workplace Safety and Protection – The *Criminal Code* established rules for attributing criminal liability to organizations for acts of their representatives and a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public. Recent provisions of this legislation raise a new area of concern for Directors in relation to the scope of their oversight and its potential implications for criminal penalties.

Environmental Law – Under the *Environmental Protection Act* (Ontario), Directors have a duty to take reasonable care to prevent a hospital from harming the environment. Directors may also be personally liable under the *Ontario Water Resources Act* in the event that the hospital engages in any activity which results in a discharge that impairs water quality, and where the Director or officer fails to prevent the commission of an offence.

The move towards greater accountability for Directors and adopting Board-wide governance best practices has been in place for some time – a trend largely in response to several corporate scandals in the United States and Canada. The Ontario Hospital Association’s (OHA) “Guide to Good Governance” emphasizes the need for hospital boards to move towards nominating and electing board members who collectively have the required skills, experience and time to govern hospitals due to the complex nature of their operations.

In order for Directors to make the best decisions possible on behalf of the hospital’s stakeholders – this includes staff, physicians, patients, families and the community as a whole – a skills-based model for board governance is crucial. In the current governance environment, selecting individuals as Directors when they do not have the required skills and experience can be viewed as a disregardful decision that leaves the board and the nominated person susceptible to a higher risk of liability. Selecting the right people with the proper mix of skills will ensure better outcomes for all stakeholders, build trust in the healthcare system and most importantly, ensure the delivery of high quality of care to the hospital’s patients.