



# HEALTHCARE BOARD COVID-19 OVERSIGHT CHECKLIST

The extraordinary consequences of the Coronavirus (COVID-19) crisis calls healthcare boards to exercise greater engagement with both the affairs of the company and the portfolio of the executive team. Key areas for board focus may include the following:

- 1 Preserving Board Functions.** The board's ability to exercise its established functions becomes critical in times of extreme crisis. The board should take steps to ensure appropriate levels of intra-board communication, committee activity, and board and committee meetings by whatever means state corporate law allows. Crisis does not excuse lapse of board activity.
- 2 The Board/Management Dynamic.** Successful crisis response requires the board and its management teams to fully appreciate their unique respective duties during such circumstances. The board should aim to maintain an atmosphere of collegiality and support of the management team, while avoiding excessive deference to or reliance on management.
- 3 Management-to-Board Reporting.** To allow the board to exercise enhanced oversight during a crisis, the regular management-to-board reporting system may require adjustment to ensure an appropriate flow of information. Any adjustment should balance the board's critical "need to know" with management's understandable time pressures.
- 4 Quality and Patient Safety.** Board oversight of quality of care during a pandemic presents uncommon challenges. These include, for example, the status of screening and treatment contingency plans, the availability of PPE, bed capacity, elective surgery scheduling and the effectiveness of infection control protocols on an organization-wide basis.
- 5 Financial Performance.** The institution-specific financial impact of the pandemic is a special area of oversight. The board may direct particular focus to levels of reimbursement, availability of special funding, the status of debt covenants, short-term debt risks, near-term liquidity matters, the financial impact of delayed surgical procedures, force majeure application and the post-containment transition to normal operations.
- 6 Audit Functions.** The audit committee may extend special attention to the potential impact of the crisis on the quality and transparency of the organization's financial statements and the strength of its system of internal financial controls. The committee may wish to maintain close communication with the external auditor throughout the crisis.
- 7 Compliance Functions.** Financial crisis and operational uncertainty often prove to be breeding grounds for employee/executive conduct that may "push the edge of the envelope." The audit and compliance committee should ensure the vitality of the compliance program and the sufficiency of its staffing, and the reliability of its internal hotline reporting mechanisms.
- 8 Workforce Support.** Consistent with its obligation to exercise oversight of workforce culture, the board should monitor a variety of health, safety and benefits-related indicators of likely concern to employees (especially those working in clinical settings). The board also should engage with management concerning the overall stability of the organization's workforce.
- 9 Role of the General Counsel.** The current crisis is generating substantial legislative and regulatory activity, along with other legal developments, that deserve governance attention. The board and key committees need increased access to the general counsel, who can provide key updates while also providing advice on the application of directors' fiduciary duties.
- 10 "Flag Watching."** Governance law expects directors to be attentive to the warning signs of corporate risk. For liability prevention purposes, directors and the general counsel should review the elements that courts have found to constitute "red flags" of risk, as well as the actions that courts have deemed proper board responses to such red flags.

A healthcare company's ability to respond effectively to the COVID-19 crisis depends in part upon increased board participation in the affairs of governance and in monitoring management's response plan. The company's general counsel can be an important resource to the board as it seeks to satisfy its fiduciary responsibilities, which are enhanced in crisis circumstances.

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