



**Strengthening Oklahoma's Safety Net,
One Community At A Time**

Board Bulletin

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Protective Measures for CHC Boards

CHC boards are continually advised to exercise their “duty of care,” “duty of loyalty,” and “duty of obedience.” Not only are the three duties essential to the well-being of the health center, diligence to “duty of care” also protects volunteer board members from being individually liable.

Corporate Liability vs. Individual Liability

◆ **Corporate Liability** - does not require that an individual board member repay money or suffer personal financial or legal consequences. Different standards of corporate liability can apply depending on the situation. *Strict liability* holds the health center liable even if it claims to have acted in a reasonable manner (e.g., grant fund expenses that cannot be properly documented results in the health center having to repay the funds). A *negligence standard* applies if the health center board members, employees and contractors do not exercise “reasonable care.”

√ *Avoid corporate liability by adopting a comprehensive compliance program, adopting bonding and insurance policies and documenting employee licensing and insurance.*

◆ **Individual Liability** - can be imposed on individual board members if the board did not exercise its “duty of care” and ensure that solid policies were in place and being followed. Board members may be personally liable if 1) there is gross negligence; 2) a “disqualified person” engages in an excess benefit transaction with a tax-exempt organization which could subject board members to IRS tax sanctions; and 3) the health center does not pay its taxes. A “disqualified person” is someone in a position to influence financial decisions of the health center. The IRS tax sanctions punish the individual abusers rather than the organization.

√ *Avoid individual liability by fully exercising “duty of care” and documenting receipt of reports via minutes that reflect proper action (e.g., financial statements that show payment of taxes).*

Protect Your Organization by...

◆ **Being guardians of the mission-** Study your CHC reports and community outreach information.

◆ **Understanding the health center's legal status** - Ensure filing requirements are met (e.g., Form 990, taxes withheld, laws respected); review bylaws for compliance; conduct and study annual independent audit.

◆ **Showing collective and individual vigilance** - Compile a board book to include a board roster, organization articles, bylaws, IRS determination letter, other legal documents, recent board meeting minutes, most recent Form 990, the latest financial statements, board member job descriptions & expectations, and a board decision tracking tool.

◆ **Securing Directors & Officers (D & O) Insurance** - CHC boards are advised to secure D & O insurance that meets the particular protection needs of the organization. D & O insurance will not protect against criminal law liability and generally excludes libel, slander, intended discrimination and antitrust matters.

Other Protective Measures

◆ **Indemnification (one party promises to protect another party from losses while carrying out specified duties)** - Bylaws generally state that board members are indemnified by the organization against judgments incurred when they are acting in the service of the organization.

◆ **Federal Tort Claims Act (FTCA)** - Malpractice liability protection for medical, surgical, dental and related functions for ‘deemed’ health centers that extends to governing board members.

◆ **Volunteer Protection Act of 1997 (VPA)** - Created to “provide certain protections to volunteers, non-profit organizations and governmental entities in lawsuits based on activities of volunteers” acting within the framework of his/her duties. VPA does not offer comprehensive umbrella coverage.

To review OPCA's entire *Board Bulletin* series, visit the ‘CHC Boards’ section of www.okpca.org.

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