The Board Member's First Duty: Accountability

Use this checklist to evaluate your own performance.

BY FISHER HOWE

Nonprofit organizations, because they are supported by public contributions and enjoy favorable tax treatment, are accountable to the public. (In contrast, businesses answer only to their stockholders, while government agencies answer to the electorate.)

Just what nonprofit accountability is, and how it operates, is by no means clear or simple. Yet your first job as a board member should be to explore this concept of public trust and how it relates to you.

To help you do so, let's look at the crucial notion of accountability from a variety of perspectives. As you will see, it goes to the very heart of your duty as a board member.

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THREE TYPES OF NONPROFITS

For purposes of accountability, there are three kinds of nonprofit organizations:

1. Public service organizations, such as hospitals, schools, museums, theaters, community service agencies, and advocacy groups, exist to provide a public service.

2. Membership organizations, such as labor unions, trade organizations, and professional associations, exist to serve their members. (Religious organizations for this purpose can be considered membership organizations.)

3. Grant-making organizations, such as foundations and United Ways, exist to support other nonprofit organizations or individuals.

WHO IS HELD ACCOUNTABLE

By the articles of incorporation required of all nonprofit organizations, the board is held responsible for the organization. The board as a whole, and its individual members, are answerable for all that the organization does, and how it does it. The board therefore is the locus of accountability.

The executive officer and staff answer to the board. While the executive and staff must obey laws and regulations, conform to the principles and policies the board lays down, and have their own integrity and standards, they are accountable only to the board. It is up to the board to see that they conform. Executives and staffs, though they must act responsibly, do not have a separate accountability to the public.

This much, therefore, is straightforward: It is the board that is held responsible. The board is called to account for the organization. The board and its members hold a fiduciary trust to see that the organization functions properly.

TO WHOM THE BOARD IS ACCOUNTABLE

Nonprofits are subject to laws and regulations related to their mission. They are thus answerable to federal, state, and local governmental agencies (notably, state attorneys

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general or other agencies responsible for administering specific laws and regulations). On occasion they must answer to congressional or legislative committees.

All nonprofit organizations, except religious institutions and those with budgets under $25,000, must annually file Form 990 with the IRS, disclosing financial and organizational leadership information.

Your organization must also answer to the following:

Your supporters. Your donors, including foundations, corporations, government agencies, other nonprofit organizations (such as United Ways, religious institutions, unions, and associations), and individual contributors, have a right to know how their money is spent. They should receive reports on the activities and management of organizations they support.

Your members. A membership organization is answerable to its members for its performance on all aspects of its operations.

Your beneficiaries. Recipients of the organization's services—students, theater and museum goers, patients, the homeless, the battered—have a right (in varying degrees depending on the service) to know about the organization and its activities. Admittedly, some beneficiaries (such as the general public that benefits from scientific research or environmental advocacy) are so large and ill defined that direct accountability to beneficiaries is hard to achieve. Still, the organization has a duty to try.

Your employees. Paid and volunteer staff members have a stake in the organization's performance. The organization is accountable to them.

Your collaborators. Other organizations that cooperate on programs represent a constituency to which your organization is accountable.

In addition to these specific constituencies, boards and individual board members stand accountable in a fiduciary sense to the public at large. The concept of a public trust, though ill-defined, is compelling. It goes to the conscience of all board members. They have themselves to face.

The audit belongs to the board.

FIVE PERFORMANCE RESPONSIBILITIES

If the board alone stands accountable for the organization, it follows that the board must answer for the effectiveness of the organization's performance. There are five performance responsibilities—only five, but all five—for which the board has a fiduciary charge:

1. The mission. The board determines the organization's mission—its purposes, programs, priorities, and vision—what it wants to be and do in the coming years. The mission is usually the product of periodic strategic planning.

2. The chief executive. The board selects, compensates, evaluates, and, if necessary, dismisses the chief executive. Selecting and dismissing an executive are difficult and sensitive actions only the board can take. In addition, evaluating the executive regularly is an often-overlooked but important responsibility for which the board is accountable.

3. Finances. Assuring the integrity and reliability of the organization's finances falls to the board, even though financial management—the actual handling of the day-to-day accounts—is the executive's responsibility. The board's financial role is of three kinds:

- ***The budget.*** Approving the budget, and overseeing adherence to it, is an instrument of board control over financial expenditures, conformity to policy, and conservation of assets.
- ***The audit.*** Contracting for and approving an independent audit is a fundamental element of accountability for the board. While the staff will work closely with the auditors in making available all financial figures, the audit belongs to the board. Boards should recognize that audits are their strongest protection and most useful instrument in fulfilling their financial oversight responsibility.
- ***Investments.*** Controlling investments of capital funds, such as endowments or reserve funds, is a responsibility for which board members are held fully accountable.

4. Program oversight and support. Board members have an obligation to support staff in carrying out programs. As part of this duty, board members must act as advocates in the community. They must also *oversee* (not manage) the executive's administration of the organization. This oversight role is at once critical and difficult. The board must keep an eye on how well programs are performing, including how well they are gaining earned revenues. But it must do so without invading the executive's management responsibility. Moreover, evaluating performance—especially identifying useful evaluation criteria—presents a board challenge. Public-service effectiveness must be gauged with more than just financial or other quantifiable measures.

5. Fundraising. While the board is ultimately responsible for attracting contributed income, it is helpless without staff support. Fundraising is thus a partnership of board and staff; neither can do it alone. Board and staff members must work together to identify, cultivate, and solicit support.

> ***The accountability process offers a way to see when integrity is missing.***

TWO ASPECTS OF ORGANIZATIONAL ACCOUNTABILITY

In terms of organizational matters, accountability is of two kinds:

1. Individual board member accountability. Each member has responsibilities: attending board meetings, serving on committees, being knowledgeable about the organization, and making a personal financial contribution every year.

2. The board's collective responsibility. The effectiveness of the board as a whole is a key factor in the organization's overall effectiveness. To assure its own efficacy, the board as a whole should constantly examine these elements:

Participation. Do all members attend board meetings, take part in committee work, and keep informed about all matters related to board decisions?

Financial contribution. Does every board member make a financial contribution—personally and annually? This is an act of commitment for which many constituents, including major donors, believe an organization stands accountable.

Composition. Is the board the right size? Are there enough members with the needed skills—public relations, financial management, fundraising, knowledge of programs, and so on? Is there appropriate diversity of membership—age, gender, ethnicity, and constituency representation? Is the committee structure effective?

Tenure. Do the bylaws call for healthy membership rotation?

Recruitment. Are board members selected and oriented effectively?

Officers. Are the selection and terms of officers most conducive to strong leadership? Is the relationship of board officers to the executive and staff productive?

Meetings. Are the schedules, agendas, and paper preparation for board meetings as they should be?

Self-assessment. Does the board look candidly at itself to assure effectiveness? Does it evaluate itself on a regular basis?

THE BOARD'S LEGAL ACCOUNTABILITY

Lawyers contend that trustees have a *duty of care*, which requires them to exercise careful oversight, and a *duty of loyalty*, which requires them to exercise their powers *in the interest of the organization* rather than in their own or anyone else's interest. Avoiding conflicts of interest, or the appearance of conflict, within the board and throughout the organization is a prime element of accountability.

Fundraising presents a special case, in part legal, in part ethical.

Organizations soliciting contributed funds must exercise control over staff, volunteers, consultants, and contractors to assure the following:

Donors' wishes about how their gifts are used must be honored. Requests for confidentiality must be respected.

Commission fundraising, or percentage-based compensation, is not acceptable.

Solicitations must be conducted on the basis of clear description of programs and without undue pressure.

Fundraising expenses must be reasonable and available to the public on request.

In a larger sense, boards and board members have a responsibility to uphold a level of integrity. Like beauty, integrity can't be described but you know it when you see it. The accountability process offers a way to see when integrity is missing.

A NONPROFIT'S PUBLIC ACCOUNTABILITY

Nonprofit organizations must provide the public with information on their mission, program activities, leadership, and finances. They have an obligation to be accessible and responsive to anyone interested in the organization.

Accordingly, you must see that the organization makes information about operations and procedures fully available. Specifically, check that your organization does the following:

Prepare an annual report, if possible, that sets out the organization's purposes, programs, leadership structure, and finances, and make it available on request.

Make the organization's IRS Form 990 available to the public.

Be sure that fundraising information, including sources of gifts and costs of fundraising, is open to the public.

The Freedom of Information Act may introduce some difficulty. While the need for openness is indisputable, the requirement that board meetings be open to the public can inhibit free discussion of sensitive matters. Its terms nevertheless must be observed.

Evaluate Your Board's Performance

Give yourself a score from 0 (low) to 5 (high) for each of the following questions to see how well your board performs.

____ 1. Does your board assume responsibility for the organization's mission?

____ 2. Does your board hold periodic strategic planning to review the organization's purposes, programs, priorities, and vision for the future?

____ 3. Does the board select, compensate, and regularly evaluate the chief executive?

____ 4. Does the board approve and oversee adherence to the organization's budget?

____ 5. Does the board take full responsibility for arranging and overseeing an annual audit?

____ 6. Does the board take full responsibility for investing the organization's funds?

____ 7. Does the board oversee and evaluate (but not manage) the organization's programs?

____ 8. Does the board support the organization's staff?

____ 9. Are board members advocates for the organization in the community?

____10. Do board members partner with staff in raising funds for the organization?

____11. Do board members attend all board meetings and participate actively in committees?

____12. Do board members contribute personally to the organization at least once a year?

____13. Do board members constantly review the board's composition, including its size, tenure of members, and rotation?

____14. Do staff and board leaders work productively together?

____15. Do board members continually recruit new members?

____16. Is the board diverse in terms of age, ethnicity, and other factors?

____17. Does the board contain people with all the required skills, such as fundraising, finances, and marketing?

____18. Are new board members given a rigorous orientation before attending their first meeting?

____19. Does the board's committee structure work well?

____20. Are board officers' terms and selection process effective?

____21. Are board meetings held often enough to be productive?

____22. Do board members receive an agenda in plenty of time to review it before a board meeting?

____23. Do board members always fully disclose and try to avoid conflicts of interest?

____24. Does the organization's fundraising conform to approved practices?

____25. Are the organization's annual report and Form 990 available to the public?

WHO KEEPS WATCH

Two independent watchdog agencies, the Council of Better Business Bureaus (CBBB) and the National Charities Information Bureau (NCIB), have established standards of public accountability, use of funds, informational materials, fundraising practices, and governance. They regularly review organizations throughout the country and issue statements on their conformity or nonconformity to the standards.

Their standards—general principles and criteria of accountability, ethics, integrity, and excellence—require nonprofits to have the following:

- an adequate board of unpaid volunteers in full charge of the organization
- clearly defined purposes and programs with appropriate use of funds
- sound financial management in compliance with legal and regulatory requirements
- fundraising in accord with acceptable ethical standards
- willingness to provide information to the public about the organization's governance, mission, policies, programs, finances, and fundraising. ■

Without Trust

The concept of trust—a belief in and reliance on integrity of certain institutions and relationships—is a central pillar of human society. It enables governments, businesses, churches, hospitals, and other institutions to function. Without trust society's fabric would begin to unravel.

—*Board Member,* National Society of Nonprofit Boards

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To order these references, call the Society's Resource Center at 608-274-9777.

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