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## USE and ABUSE of Executive Sessions

Improving  
Communications by  
Closing the Doors

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Governing boards traditionally call executive sessions from time to time to discuss confidential, proprietary or personnel related matters in closed session. In recent years, however, the increasing emphasis on board independence and vigilance has triggered a new use for executive sessions. Now, many boards hold *regular* executive sessions—sometimes with the CEO and sometimes with only the outside directors—to encourage more open and candid discussions.

In the past, chief executives would grow understandably anxious when board members closed the doors and excluded the chief executive. Even when the CEO was included, many execs disliked not having their senior team in the room to hear directors' views first hand and to answer specific questions in their areas of expertise.

Boards that unexpectedly excused the CEO and then didn't report what had gone on behind locked doors were even more troubling. Except in rare circumstances, such as a discussion of potential CEO malfeasance, secret deliberations can weaken trust and communication between the board and the senior executive team.

One problem is that boards use the term executive session too loosely, to describe two different types of meetings: executive sessions with the CEO but without other senior management, and executive sessions without the CEO or any other inside directors, respectively. If a board plans to incorporate regular executive sessions into its routine, board members need a clear understanding and policy about the ways executive sessions will – and will not – be used.

*continued on page 2 →*

→ continued from page 1

## Executive Session with the CEO

In many organizations, the board meeting has become a well-attended affair. Many boards invite a wide variety of stakeholders, including senior executives, medical staff leaders, and representatives of the foundation and subsidiaries, to foster communications, team building, and alignment.

However, broader communication can come at the expense of candor and board cohesiveness. With many non-members present, board members may feel restrained from candidly challenging the CEO or raising concerns about a well-hyped strategic initiative, because they don't wish to undercut the CEO's authority. Candid board-CEO dialogue is intrinsic to effective governance. That's why some boards are scheduling regular executive sessions—often at the end of board meetings—with only the chief executive officer present (even if the CEO is not a board member) in order to foster timely and frank communications.

Our board ... needed time by themselves to bring up thoughts or concerns they didn't feel comfortable discussing in the larger forum.

— Chandler Ralph, president and CEO, Adirondack Medical Center, Saranac Lake, NY

For example OhioHealth, a 15-hospital system based in Columbus, OH, allows time for an executive session with the CEO at the end of every board meeting agenda, and it typically invokes the proceeding at least twice a year, says President and CEO David P. Blom. “We find executive sessions with the CEO to be extremely beneficial. They afford the board one-on-one, direct dialogue with each other and others present. Candid, confidential discussions are critical to maintaining trust among the members.”

At Adirondack Medical Center, in Saranac Lake, NY, the seven-member executive management team routinely participates in board meetings. About three years ago, Adirondack added an executive session with the CEO present, but without the management team, on the agenda at the end of every board meeting. “Our board felt they needed time by

themselves to bring up thoughts or concerns they didn't feel comfortable discussing in the larger forum,” says President and CEO Chandler Ralph. “It might be some news they've heard in the community, or just a simmering question. For a process like this to work effectively, you need a healthy board and a healthy executive team. You need a situation where everyone feels comfortable in their proficiency and expertise in the various roles they play. In our experience, this has worked very well.”

An executive session is a standing agenda item for the board of St. Vincent Health System in Erie, PA, and also for its principal hospital, St. Vincent Health Center. “Executive sessions actually take place more frequently at the hospital level,” says President and CEO Angela Bontempo. “Usually the board meets two or three times a year with (just) the CEO to deal with major issues such as

changes in the strategic direction of the hospital or issues that could have a significant public relations impact.”

Mountain States Health Alliance (MSHA), in Johnson City, TN, puts an executive session with the CEO on every board agenda and actually has an executive session about ten times a year, estimates President and CEO Dennis Vonderfecht. “We're a fast-growing, dynamic organization, and we have sensitive negotiations under discussion much of the time,” he says. In addition to the CEO, MSHA's executive sessions typically include, by invitation, managers who are familiar with the specific topic under discussion, such as the chief financial officer and/or the attorney responsible for legal services.

continued on page 3 →

→ continued from page 2

Most board members interact with the CEO only at board or committee meetings, and these exchanges are generally limited by the formal agenda. There is little opportunity for discussion or questions on matters that may concern directors but seem too intrusive to raise during a busy open board meeting. An executive session allows the CEO to offer explanations before misunderstanding or mistrust develops.

A regular executive session with the CEO is a two-way street. If the CEO has concerns about the performance of a subordinate or a major program, he or she can share this confidentially with the board, and not publicly.

## Executive Sessions Without the CEO

A board should meet at least once a year without its CEO present to discuss the executive's performance evaluation. In addition, some boards are also scheduling regular sessions without the CEO to encourage dialogue amongst the outside board members.

The "outside directors only" meeting has gained popularity in the corporate sector in the wake of the Sarbanes-Oxley Act. When the CEO is also the board chair, or a board has a large number of "inside" directors, then periodic meetings of only the outside directors may help build board cohesiveness and actually strengthen the board's relationship with the CEO.

The board of Providence Health & Services, a five-state system based in Seattle, WA, has a scheduled executive session with the CEO, and another without the CEO, at every one of its quarterly, day-and-a-half meetings, says chair E. Kay Stepp. The executive session without the CEO typically lasts 30 – 45 minutes and is intended to provide a candid atmosphere to address specific questions, such as "How did the meeting go? Was management responsive to our concerns? What issues do we want on the next agenda?" The chair shares the outcome with the CEO.

On most not-for-profit hospital boards, executive sessions without the CEO are used sparingly,

*continued on page 4 →*

## Other Types of Boards Ponder CEO Participation in Closed Sessions Too

In a Frequently Asked Questions item on its website, the National Association of Independent Schools had this to say about the relationship between a board and the head staff person of a school: "A board that [excludes the senior executive from discussions] should ask itself why trustees cannot discuss difficult questions with the head present, even if the issue under discussion concerns a decision the head made. If the board cannot communicate openly and candidly when the head is in the room, the relationship is broken in some way and needs to be addressed by both [the executive] and board together. If a board wants to hold a number of executive sessions without the head during the year or at the end of every meeting, all parties should agree to the process and the purposes should be limited. Such sessions should not become a regularly scheduled gripe fest. Making this work takes a skillful, experienced chair and other board leaders, as well as a head with full confidence that the chair will let him or her know the gist of the meeting the very next day."

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— E. Kay Stepp, board chair of Providence Health & Services, Seattle, WA

→ continued from page 3

primarily for executive evaluation and compensation matters. The boards of Ascension Health and Catholic Health East, large systems with prestigious independent members, do not have regular executive sessions without the CEO except for CEO evaluation and compensation discussions, meetings with the external auditors, and unusual circumstances.

MSHA's Vonderfecht comments that given the issues the MSHA board is facing, "if you held an executive session with just independent directors, it would be a very quiet session. They wouldn't be familiar enough with the material on hand to discuss it."

Chester B. Kaletkowski, CEO of South Jersey Healthcare, Vineland, NJ, agrees. While executive sessions without the CEO may be appropriate for very large health systems with extremely sophisticated independent board members, they would not work well in smaller community hospital settings, with well-intended but less-experienced board members, he says. "Of course every board should have the opportunity of going into executive session when circumstances warrant. However, if you

frequently schedule executive sessions without the CEO, it does open a channel for issues to be inappropriately brought to the highest level."

That, of course, is what's understandably behind many CEOs' reluctance to have board meetings conducted in their absence.

One CEO described an occasion when his board went into executive session because a physician trustee wanted to raise serious questions about hospital operations, without the CEO in the room. The chair complied, and the physician recounted a series of small-scale disagreements, in his eyes demonstrating that management was only concerned with the bottom line, not quality of care.

The board formed a subcommittee to investigate, the CEO responded to the specific issues, and the "serious questions" proved to be groundless.

### Time Well Spent

Traditionally, board members and CEOs have been reluctant to call a special executive session unless they need to discuss a matter of great importance. As a result,

## How should EXECUTIVE SESSIONS be DOCUMENTED?

In today's increasingly litigious environment, questions arise about how detailed the minutes of executive sessions should be. In an October, 2005 article for The Governance Institute, Michael Peregrine and Russell Hayman of the law firm McDermott Will & Emery wrote, "It may be less necessary to take detailed minutes of executive sessions as long as some written record is kept confirming that the session was held, the participants, and the date, time, location, and duration of the meeting." If the CEO is not present, the board chair generally should brief the CEO after the meeting.

It is also advisable for bylaws to spell out the process for calling an unscheduled executive session. Some bylaws simply say that this power is reserved for the chairman of the board. However, other board members as well as the CEO should be able to call an executive session when necessary. The bylaws should specify the number of board members needed to call an executive session if one is not called by the chair. For example, according to the corporate bylaws of OhioHealth, executive sessions of the board may be called by the chair, the vice chair, the CEO, or a majority of the directors.

some boards almost never have executive sessions; others call them only to address highly confidential business matters or egregious personal misconduct. Directors and executives are reluctant to "make a federal case" out of lesser matters. In contrast, the regularly scheduled executive session prevents serious conflicts down the road by addressing matters at an early stage. Just a few minutes scheduled regularly at the end of

board meetings can act as a safety valve, educational forum and team-building tool for the board and its chief executive.

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