

Enhancing Governance and Leadership in Current Environment



JAMES F. FLYNN

BRICKER GRAYDON LLP
jflynn@brickergraydon.com

ARTURO POLIZZI

PROMEDICA HEALTH SYSTEM
Arturo.Polizzi@promedica.org



May 19, 2025

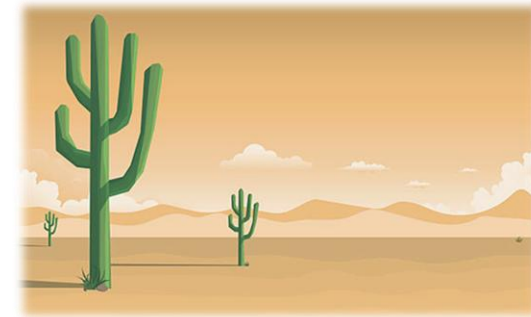
Disclaimers

- We have no real or perceived conflicts of interest that relate to this presentation.
- The information provided in this presentation does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available in this presentation are for general informational purposes only.
- Audience members should contact their legal counsel to obtain any advice with respect to the information contained herein.

Current Environment

Hospital Pressure Points

- Closures (e.g., Memorial (Hicksville), Trumbull, Hillside, East Ohio, etc.)
- Labor and delivery “deserts” –
 - Staffing ⇔ Costly services ⇔ declining birth rate
 - 38 (or more) rural hospitals that don’t offer L&D
 - 10 hospitals ceased in one-year span post-COVID
 - Nationally, 100 or so rural hospitals have ceased delivering babies since 2020
- Work force – burnout, retirements, shortages. costs
- Negative or razor thin operating margins
- Cybersecurity and breaches



Executive Orders vs. DEI

- January 20, 2025 - "Ending Radical and Wasteful Government DEI Programs and Preferencing" - EO 14151
 - Successful challenge has been appealed to the Fourth Circuit
- January 20, 2025 - "Initial Rescissions of Harmful Executive Orders and Actions" - EO 14148
- January 21, 2025 - "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" - EO 14173
 - Successful challenge has been appealed to the Fourth Circuit

DEI – Other Guidance

- February 5, 2025 – US Attorney General Pam Bondi issues a memo to DOJ entitled "Ending Illegal DEI and DEIA Discrimination and Preferences"
- March 19, 2025 – Two technical assistance documents released:
 - "What To Do If You Experience Discrimination Related To DEI At Work"
 - "What You Should Know About DEI-Related Discrimination At Work"



DEI – State Action

- Some states have begun to address "illegal DEI"
 - Florida AG announced a new policy to prohibit public entities from contracting to obtain legal advice from “Mansfield Rule” law firms
 - Other states are considering bills that would require vendors to certify that they are not engaging in "illegal DEI" before they may contract with public entities



Hospitals in court

- Bellevue – in bankruptcy court
- Trumbull and Hillside (via Steward) – in bankruptcy court
- Community Memorial Hospital – sued by OPERS
 - Receiver and other legal issues since May, 2024 closure
- East Ohio Regional
 - Mass layoffs 3/14/25 ⇔ Closure 3/21/25 ⇔ litigation for unpaid employees
- Trumbull, Hillside – class action lawsuit vs. Insight (buyer)

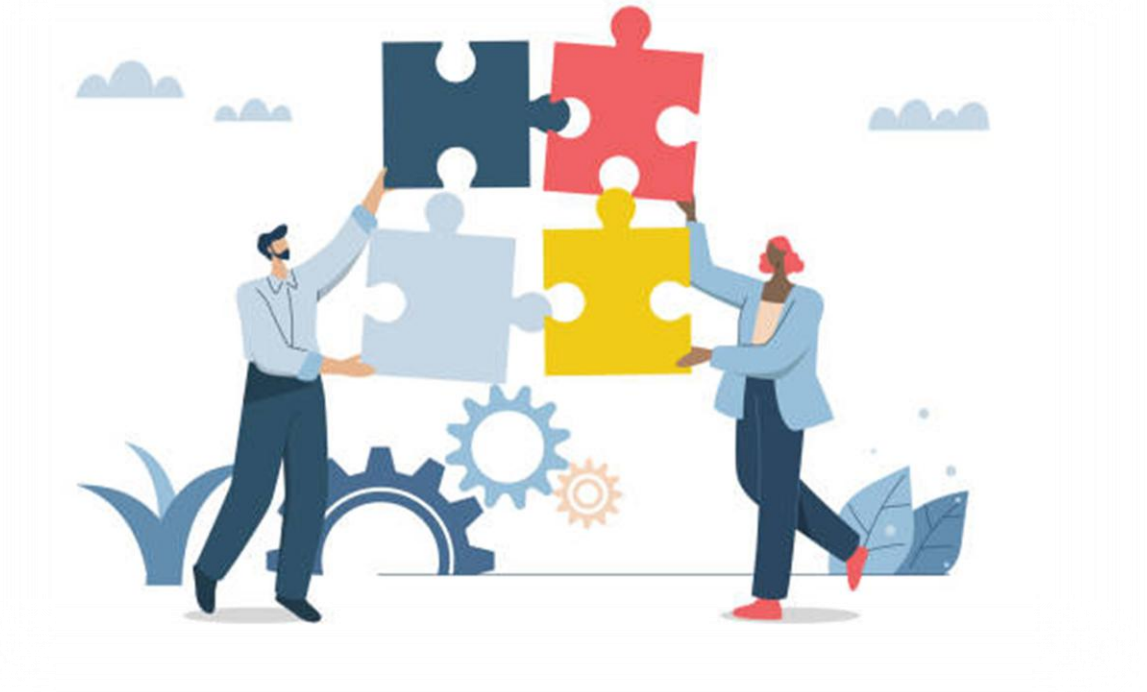
Hospitals in court

- MetroHealth and individual Board members
 - Violation of the Open Meetings Act case – Board win 10/7/24; appealed to court of appeals
 - Wrongful termination of CEO Boutros
 - Originally filed in 2022 => Dismissed in Dec. 2023 => Refiled Nov. 2024
 - Wrongful termination, discrimination of CEO Steed
 - Filed Feb. 2025, removed to federal court



Expansion of fiduciary duty concepts

- Social Responsibility, via social media
- Medicare Conditions of Participation
- Model compliance programs
- The McDonald's Case
- The Caremark Case
- The Silicon Valley Bank and Signature Bank cases



The CEO Perspective

Leadership Styles

- The Mission
- Hierarchies
- Situational – esp. crisis management
- Growth mode
- Servant leadership



Managing in crisis

- The value of calm and confidence
- Communication and transparency
- Decision-making
- Outside advisors
- Risk management
- Organizational belief in mission, objectives, priorities



Talent management

- Objective and subjective criteria; bias mitigation
- “Peter Principle” cautions
- Team dynamics
- “Skip level” meetings
- “The Incomplete Leader” (Harvard Business Review)



Teamwork and the Importance of Culture

- No “I” in “team”
- Conducive environment to challenge ideas, elicit real input
- Conducive environment to feedback, all directions
- Decision-making, through the team
- Team accountability and ownership
- Role of good governance
- Importance of constant communication



Tips and Best Practices

Thank You

