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Emerging Topics in Governance, Including AI

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May 2026

Disclaimer



We have no real or perceived conflicts of interest that relate to this presentation.



Today's Topics

- **Board Fiduciary Duties**
- **Board Structure/Operations**
- **Director Skill Sets/Competencies**
- **Board Education**
- **Enterprise Risk Management Programs**
- **AI Oversight**



Discussion Overview

Governance Role

- Structure
- Ethical Considerations
- Staying Informed

AI in Healthcare

- Regulatory/Compliance/Risk
- Enforcement
- Care continuum
- Competition
- Management/Staff/Operations

Board Fiduciary Duties

Board Fiduciary Duties



Duty of Care – Serve in good faith and with the care that an ordinarily prudent person in a like position would use under similar circumstances



Duty of Loyalty – Act within the best interest of the organization



Duty of Obedience/Compliance – Faithful to purpose and mission of the organization (nonprofit)



Duty to Manage Accounts – Responsible for financial stability and accountability of the organization (nonprofit)

(ORC §§ 1701.59; 1702.30)

Board Structure/Operations

Role of Governance: Board Structure and Operations



Structural mechanisms to oversee complex, high-stakes decisions

- Use of full board participation and committee delegation
- Key performance indicators / dashboard metrics



AI governance responsibilities in bylaws, committee chapters, and governance documents



Balancing the role of Chief Legal Officer

Board Operations: Sample Agenda Topics

Business Items

- President's Report
- Chairs' Report
- Committee Reports
- Elections
- Budget Approval
- Medical Staff Report

Strategic Topics

- Access & Consumerism
- IT Investments
- Workforce & Staffing
- Clinical Quality
- Financial Review

Dashboard Review

- Key Metrics & KPIs

Board Skill Sets/Competencies

Role of Governance: Board Skill Sets/Competencies



Emerging governance responsibilities require a broad range of skill sets, background and perspectives to ensure proper fiduciary oversight



Draft skill set matrix to ensure diverse skill sets tailored to Board oversight responsibilities and Board Committee's subject matter



Governance Committee/Board Leadership recruit diverse skill sets and competencies

Top Five Competencies for Board Member Selection

Figure 5.3 Top Five Competencies for Board Member Selection

Indicate the top 5 essential knowledge, skills and behavior competencies you used most recently when selecting board members.

	All	System Board	Subsidiary Board	Freestanding Board
Knowledge of business and finance	62%	68%	53%	59%
Strategic orientation	59%	82%	36%	34%
Community Orientation	52%		78%	65%
Innovative Thinking	41%	58%		
Collaboration	34%	37%	32%	30%
Impact and influence			32%	
Professionalism				30%
Quality and safety expertise		35%		

Source: American Hospital Assn. 2022 National Health Care Governance Survey Report

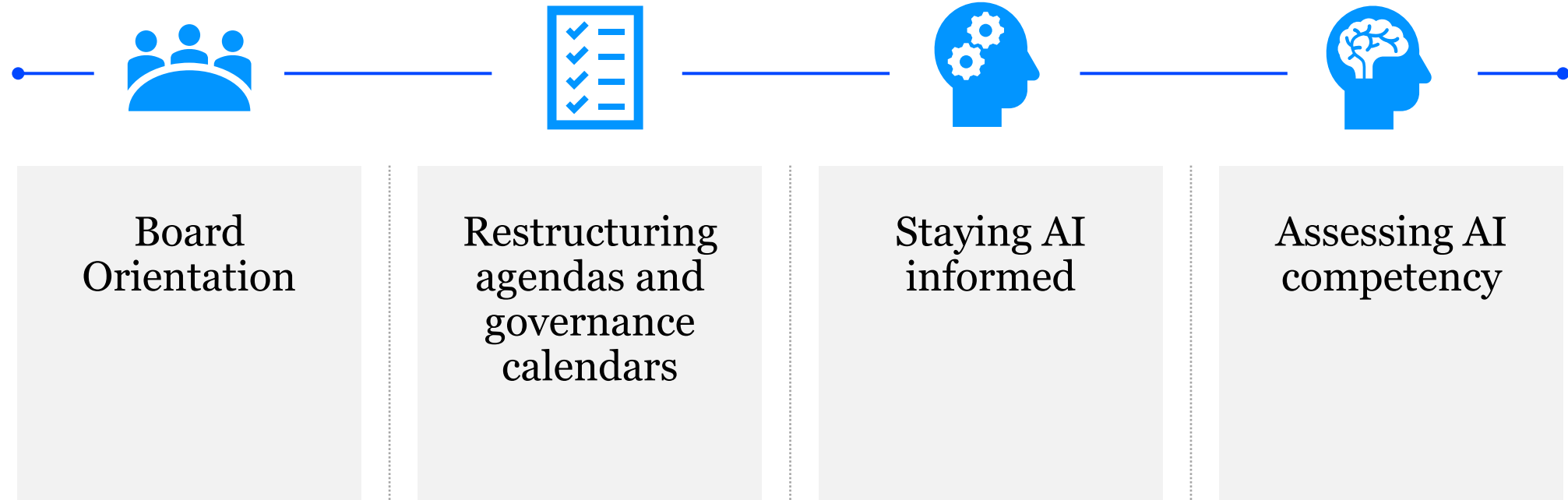
Board Competencies/Skill Sets

Board of Directors		
Competencies/Skill Sets	Primary Competency	Secondary Competency
Clinical		
Finance/Accounting		
Fundraising		
Governance		
Healthcare Management		
Health Insurance		
Human Resources		
Information Technology		
Legal		
Marketing/Consumerism		
Population Health		
Quality		
Real Estate		
Strategic Planning		
Total		

Board Education

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Role of Governance: Education



Board Education

{Frequency should be regular, every meeting if possible}

RECURRING SUGGESTIONS

- Fiduciary duties refresher
- Conflict of interest refresher
- Governing documents review
- Financial statements & 990 refresher
- Compliance program refresher
- Board self-assessment
- Podcasts on governance

EPISODIC SUGGESTIONS

- Case studies (*e.g. McDonald's, Silicon Bank, etc.*)
- Latest OIG guidance (*e.g., executive compensation pilot program*)*
- Understanding ESG as applied in health care
- Artificial intelligence
- DEI sensitivity & awareness
- Health equity initiatives

Enterprise Risk Management Programs

Role of Governance: Enterprise Risk Management Programs



Identify material risks to the organization, including both internal and external threats through a robust risk assessment process



Assign Executive Leader to define mitigation plan to best address enterprise risk



Present mitigation plans to Board/Board Committee to ensure fiduciary oversight of material risks

Enterprise Risk Management Priorities

ERM Priorities			
Risk Item	Accountable Executive	Risk Event(s)	Presentation Schedule
Geopolitical Threats		Supply Chain	
Business Continuity		Epic/Clinical IT Systems Outage	
Cyber Security		Business Shut Down	
Professional Liability		Severity of Medical / Malpractice Judgements	

AI Oversight

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Role of Governance: Ethical Considerations



Use in clinical Care



Addressing ethical issues prior to AI adoption



Use in business operations



Chain of accountability



Maintenance of patient/physician autonomy

AI in Healthcare: Regulatory Landscape and Compliance Obligations



Immediate regulatory development



FDA guidance on AI/ML



Patient Data



OIG and CMS scrutiny



States AI-specific legislation

AI in Healthcare: Risk Management – Identifying, Assessing, and Mitigating AI Risk



Significant AI-related risk being overlooked



AI risk assessment process



Vendor contracts



Incident response responsibilities



Cyber risk & AI risk

AI in Healthcare: Management and Staff



- Maintaining partnership
- Channeling physicians and clinical staff feedback
- Considerations when the organization participates in AI development and research
- Maintaining the role of patient advocate and community stakeholders

Closing Thoughts / Questions