

Board Members' Duties – Business Judgment Rule

Duties:

- ▶ Duty of care
- ▶ Duty of loyalty
- ▶ Duty of fidelity to purpose

Good faith requirement

Reasonable, prudent person standard

Presumption: In making decisions, volunteer leader acted on an informed basis, in good faith, and in honest belief that action was in ASHA's best interests

- ▶ If all 3 prongs are met, decision is given respect and deference
- ▶ Does not apply to criminal activity, fraud, or willful misconduct

Duty of Care

- ▶ Be informed
- ▶ In good faith
- ▶ With level of care of ordinary prudent person in like position would exercise in similar circumstances
- ▶ In best interest of ASHA

Steps to Satisfy Duty of Care

- ▶ Attend Committee/Board/Council meetings
- ▶ Be informed & exercise independent judgment
 - Ask for clarification if necessary
 - Use common sense and be diligent
 - Independently evaluate position taken by other volunteer leaders, senior management, and consultants
 - Review financial records
- ▶ Rely on competent help (consultants, accountants, appraisers, attorneys)
- ▶ Rely on staff subject matter experts
- ▶ Use committees
- ▶ Delegation, not abdication
- ▶ Create minutes demonstrating reasoned decisions
- ▶ Promote open debate and record dissent

Duty of Loyalty

- ▶ The standard for the duty of loyalty: a volunteer leader is obligated to act in ASHA's best interests and not use his or her position to advance the interests of third parties (*e.g.*, family members, competitors, or another organization the member is associated with).
- ▶ These interests may be financial, but they can also be personal – enhancing prestige and one's own professional reputation.
- ▶ Must further the best interests of the organization as a whole, not benefit a particular constituency.
- ▶ Covers both affirmative acts and refraining to act.

Duty of Loyalty Covers Three Related Areas

- ▶ **Conflicts of interest (“Self Dealing”)**
 - Where a volunteer leader has a direct or indirect interest in a transaction involving the organization.
 - Concern is that member may advocate for approval of a transaction for reasons other than the benefits that would accrue to ASHA.
- ▶ **Corporate opportunities**
- ▶ **Confidentiality of non–public information about ASHA**

Steps to Satisfy the Standard of Duty of Loyalty

- Be sensitive to conflicts.
- Disclose even the appearance of a conflict.
- Abstain from discussion and vote if the conflict of interest is strong enough to influence the member or reasonably appears that way.
- Disinterested members decide if conflict exists.
- Consult with counsel as needed.
- Act on perceived failure of another member to disclose.

Duty of Loyalty – Steps to Avoid Usurping ASHA’s Opportunities

How can a volunteer leader avoid “usurping” ASHA’s corporate opportunities or competing with ASHA?

- When a volunteer leader is presented with a business opportunity, and he or she knows or reasonably should know it would be of interest to ASHA’s present or future activities, the volunteer leader must disclose to ASHA so disinterested members can decide whether ASHA should act/decide to not act.
- Does not matter whether he or she learned of it through his position with the organization or otherwise.
- If ASHA declines, can then take advantage of opportunity.
- Ask
 - Would ASHA likely be interested?
 - Has ASHA expressed an interest?

What Must Be Held Confidential?

- ▶ ASHA's internal activities
 - unless there has been general public disclosure, or
 - information is a matter of public record, or
 - the information is a matter of public knowledge.

Duty of Fidelity to Purpose

- ▶ The standard for duty of fidelity to purpose: a volunteer leader must follow ASHA's purposes and goals as set out in bylaws, articles, mission statement.
- ▶ ASHA's mission
 - empowering and supporting speech–language pathologists, audiologists, and speech, language, and hearing scientists by: advocating on behalf of persons with communication and related disorders advancing communication, science, promoting effective communication (<http://www.asha.org/about>)

Duty of Fidelity to Purpose (cont'd)

- Article II of ASHA's bylaws state that the purposes of the Association shall be:
 - To encourage basic scientific study of the processes of individual human communication with special reference to speech, language, hearing, and related disorders;
 - To promote high standards and ethics for the academic and clinical preparation of individuals entering the discipline of human communication sciences and disorders;
 - To promote the acquisition of new knowledge and skills for those within the discipline; and
 - To promote investigation, prevention, and the diagnosis and treatment of disorders of human communication and related disorders.