CHAPTER 2

CORPORATE GOVERNANCE

INTRODUCTION

This chapter explores a range of issues that are affected by the relationship between managers and their boards. Although the settings for the cases differ, the principles of the cases tend to be universal simply because boards of directors are a fact of life for managers of corporations, in both health care and other industries. State statutes usually set some requirements for corporate boards, such as age or number of members on the board. These same statutes then enfranchise the board with the legal responsibility and authority for the operation of the enterprise. The board, in turn, normally delegates significant amounts of their powers to a full-time managerial staff headed by a chief executive officer (CEO).

Although problems with boards are not a new issue, the last few years have seen considerable controversy over the role and functioning of boards of both for-profit and nonprofit corporations in and out of the health sector. This controversy has led to

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increasing literature about boards, CEOs, and governmental oversight, including the passage of the Sarbanes–Oxley Act of 2002, a landmark piece of corporate reform legislation directed at the accountability of public corporations. The reality is that managers almost invariably work with the board they find in place when they are hired, leaving us with the fundamental question: How can a manager have an effective relationship with a board? At one extreme, the manager must cope with what some perceive as a necessary evil; at another, the manager is able to utilize the resources that a board can offer.

Many managers view their relationship with the board as somewhat adversarial. This was well articulated by one chief executive who claimed to work more than 400 hours per month and who said that his board couldn't be smarter than him on any issue simply because they had not put in the time that he had. And although this executive claimed to keep his board fully informed, they simply did not have the volume of material or assistance that he had for examining any given situation. At the other extreme was an organization in which I worked where the board chairman refused to share any meaningful information with the board, thus concentrating all power in his own hands. Most boards operate with digests or summaries of information, which are often poor substitutes for the full scope of information.

In my experience, even well-meaning boards and managers often have difficulty managing their information. For example, I once served on a board of a foundation grant program. Our 15-person board was responsible for allocating $50 million to community hospitals that were developing hospital-based group practices. Our job involved reviewing scores of complex applications plus staff-written field visit reports about the applicants. The typical package per applicant was an inch thick. At any given board meeting, we reviewed 7 to 10 applications, and those documents usually arrived at the board members' offices about 3 days before the meeting. Frankly, I doubt if all the members carefully reviewed the hundreds of pages presented to them. I suspect most of us instead turned to the executive summary and listened to the staff presentations and recommendations at the board meeting. In the course of the 3 years of this program, not one staff recommendation was disapproved. Although we did have a top-flight staff, it must also be acknowledged that the essential decision-making power truly resided with staff because they were in control of the information.

Effective relationships are of major concern in healthcare organizations. On the one hand, the board is necessary for fund-raising

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and community contacts, while on the other hand, the board can rarely match the professional expertise or time invested in the organization by its professionals. From a managerial perspective, boards become problematic in a variety of ways. First, they simply do not do their homework. If a manager sends out material for a board to review prior to a meeting, he or she expects the board member to review the material and be able to discuss the subject intelligently. As a board member and CEO, I have too often attended meetings where one or more board members were sitting reviewing the material while the discussion was in progress and would then ask questions that were profoundly stupid.

A second problem is those board members whose success in one industry gives them the sense that they could run the health facility or programs with their eyes closed. This arrogance of board members often translates into disrespect for the management and second-guessing of managerial decisions. My favorite example is that of a board member who owned a pizza franchise and wasted 30 minutes at a board meeting belaboring a managerial decision to hire a new snow removal company to clear the hospital grounds.

A third problem involves board members who directly or indirectly use their positions for personal gain. When this occurs, the manager is often put into the position of walking on eggshells. Over the years, I have seen board members insist on jobs for their family members, use institutional monies for essentially private parties, promote their businesses through the institution, insist that the institution use their companies as a primary purveyor, hire the board members for professional services, or use suppliers that would benefit a board member. For example, at one medical center, the owner of a large restaurant was also treasurer of the board. He demanded that certain food service suppliers be used by the medical center—the same ones he used for his restaurant, who then provided him with much better prices because of the deal he could deliver with the medical center.

The question is as follows: Why does management go along with a board that cannot behave in a professional manner? The answer is probably ego and job security. In my own experience as CEO, I found that I had a board that, while personally quite congenial, was also quite dysfunctional. When I joined the organization, there were 200 people on my board. Most of them liked being on the board, but few had any clue as to their responsibility or authority. When I was hired, it was agreed that I could reshape the board into a smaller, more effective group, that the longtime chairman would retire, and that we would have a board with a rotating executive group.

In the first few months of my tenure, I learned that all board meetings were essentially Sunday morning breakfasts with 60-minute show-and-tell reports scripted by the public relations department. The social nature of these board meetings was emphasized by the tradition of bringing family and friends to the breakfasts and the total lack of any financial reporting. Occasionally a vote on an issue was taken, and all of those votes were unanimous. Hundreds of bagels, Danish, omelets, cups of coffee, and pounds of halvah later, the meeting was over and no real business had been transacted. All of the major decisions were made in smaller meetings of the board chairman, board president, and a handful of trusted advisors.

My ego told me that I could change this system. So shortly after I arrived, I began educating the board with mailings about current issues, including various reports about board functioning from the American Hospital Association. I also made myself available to board members for meetings on a variety of subjects. Finally, I made it a point to attend all of the meetings of the various board committees. I thought that I could change a 40-year-old system by the power of education and my personality. I, like many other CEOs, found that it is not very easy to change what are essentially the board habits of a lifetime. In this case it was a board that had learned to go to the party and neither pay the bill nor clean up afterward. As a group they had long ago ceded their power to an inner circle, and now they were coasting. It did not take long before I went from the white knight to the intruder; the next step was for me to leave. While there were a few board members who wanted to see the organization change, they were clearly in the minority and were unwilling to speak up in public for even the simplest of changes, such as board reports on the organization's finances.

Clearly, many managers continue to work for years with less-than-optimal boards. Some do it simply for the money; a job is a job, and most boards are problematic, so why trade the devil you know for the devil you don't know? Others persist with a spirit of hope for the future. Over the course of years, the fortunate few are able to influence the selection of board members with whom they can work successfully, while others live with the vagaries of the board selection process. In one midwestern city, I met with the CEO of a nonprofit geriatric system who was pleased with his new board chairman. I had lunch with the chairman, a young self-made millionaire, and concluded that his arrogance and lack of respect for nonprofit organizational managers boded poorly for this CEO. Within a year he was out of a job. If there is an analogy,

management board relationships are like boating: the wind, the currents, and unexpected weather all affect the outcome at the end of the day. The smart manager realizes that board management relationships change constantly and that the most he or she can do is act professionally and competently and offer his or her best judgments on the issues of the day.

A final thought: despite the high salaries, perks, and titles, the board does not forget that management works for them. A medical center CEO I am friendly with is an avid golfer. I once asked him whether he was a member of the country club in his community. He told me that it was a perquisite available to him with the job but he hadn't joined. He preferred to play at the local municipal course because that way he never confused himself; that is, he reminded himself that he was an employee of the medical center.

A Final Thought Before the Cases: The Business Judgment Rule

Nothing is more important for board members and managers to understand than the business judgment rule. In 2006, the Brooklyn Hospital Center and Caledonian Health Center, Inc., which had filed for bankruptcy protection in 2005, found itself in the U.S. Bankruptcy Court in New York on an issue involving an attempt by the hospital's directors and others to implement a key employee retention plan (KERP) to ensure that key staff remained with the organization as it tried to dig its way out of bankruptcy (which it later did). In analyzing the facts in this case, the court adopted the business judgment rule as its standard. In essence, this rule asks whether the board has acted in the best interests of the corporation, which means that they followed a process that is based on good faith and rational decision making and that the issues have been fully and fairly aired; that is, due care has been used in the decision making.

Part of that due care involves no abuse of discretion and loyalty to the organization for which the director is a fiduciary—that is, no self-serving behavior, in particular, trading on non-public information. Just as insider trading is clearly illegal in public companies, such behavior is also an issue in nonprofits. For example, if a board member knows from meetings that the medical center is planning an expansion into a certain neighborhood (and the information has not been released to the public), the duty

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of loyalty would, like the insider-trading rule, preclude him or her from buying up property in that neighborhood with the goal of later selling it to the institution at an inflated price.

Thus, when considering how well a board member is carrying out his or her job, one should keep the following keywords and phrases in mind: good faith, conflict of interest, duty of loyalty, duty to disclose, affirmative misrepresentations, due care, self-dealing, and due diligence. It all boils down not to whether the decision of the director or directors was correct (based on 20-20 hindsight), but rather to whether the directors acted with care and in the best interest of the organization.

CASE 2-1 Board Restructuring

Since its founding just after World War II, the Watergate Home and Hospital for the Aged has been structured with a two-tiered board. The executive committee, which is the de facto power group, consists of Wayne Brewster, chairman of the Watergate's board; Pete Johnson, the president of the board; John Peterson, the vice president of the board; Wylie Foxx, the treasurer of the board; and Huey Duckman, the board secretary. Each of these five people has served on the board for more than 30 years and has never been in danger of not being reelected to his post. The chairman has served in that capacity for close to 40 years.

The second tier is the theoretical board of directors, which is made up of 125 people. They are all initially appointed by the executive committee and subject to reappointment every year based on the recommendation of the executive committee. The entire board meets eight times per year, always on a Sunday morning for a breakfast meeting, and they are always invited to bring along spouses or friends. Typically, reports that speak to new developments in the organization and upcoming events are presented at these meetings. No financial reports are ever presented, and when votes are taken, they are simply to ratify decisions made by the executive committee. Rarely are any dissenting voices heard. Indeed, it is rumored that if anyone offers any dissent during one of these board breakfasts, he or she will not be reappointed the following year.

Although this system is clearly autocratic, it did work rather effectively for many years. However, in the past 12 months there have been two major changes in the organization. First,

Chairman of the Board Wayne Brewster died, and his cousin Robin Brewster, who is a longtime board member, has replaced him. Unfortunately she simply does not have the time to devote to Watergate as did Wayne. Second, Watergate CEO Dean Johnson left, and his deputy, Nix Dickson, has become Acting CEO. Dickson has proposed a number of changes to the board, including the following:

1. Cutting the board size from 125 to 18
2. Educating the board
3. Providing the board with a broad range of financial decisions
4. Making the board responsible for annually reviewing and approving the operating and capital budget of the organization
5. Having the board involved in all major policy discussions
6. Eliminating the social nature of board meetings
7. Moving ultimate power from the executive committee to the board

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QUESTIONS

1. In light of the history of this organization, do Dickson's suggestions make sense? Why? Why not?
2. From an organizational politics standpoint, is the proposal feasible?
3. Is there anything inherently wrong with the way Watergate is doing business?
4. Assume you are a consultant. What type of educational program would you develop for the board? How could this program be effectively delivered?

CASE 2-2 Gelt and Jeffe

For most of the 4 months prior to his being fired, Ira M. Gelt, CFO of the Mercury Medical Center (MMC), had been having a testy relationship with Len Jeffe, chairman of the board of trustees of MMC. Allie Baker, the CEO, although usually agreeing with

Gelt, always tried to be the organizational peacemaker. This generally meant that Baker would spend her time first trying to appease Gelt and then trying to appease Jeffe.

The ostensible basis of the conflict was the financial shape of MMC. Gelt's view was that the operating funds were too reliant on the growth of the endowment and its income. Jeffe's attitude was that it was not Gelt's concern. That is, as chair of the board, money was his exclusive concern. Gelt, he said in not so many words, was merely the chief bookkeeper. Baker told Gelt to ignore Jeffe, that he was just a full-of-himself bigmouth who was born with a silver spoon in his mouth and knew nothing about healthcare management. To Jeffe she would say that Gelt was a bit compulsive but a solid man who was needed by MMC.

Gelt's view was that the board was too involved in spending the money. Jeffe actually had total control of one of the MMC operating accounts. Some have speculated that the conflict ran deeper since they were both football players on rival schools at the same time.

Gelt's firing resulted from an altercation at a board meeting. Although there are conflicting opinions about what occurred, the following is certain. Jeffe was sitting between Gelt and Baker while Baker was pushing through a minimal agenda for the meeting that included eliminating Gelt's financial report. In response to Jeffe's comment, "I think we will skip the finance report tonight because nothing much is happening," Gelt stood up and said, "Just a minute, Len. There is some important financial business to discuss, including your proposal to purchase the naming rights of the new ambulatory care center so that you might name it for your wife. In my judgment, we need to discuss the donation you will make and whether we can raise more money with an auction or at least by soliciting other donors."

Jeffe was obviously embarrassed and told Gelt to sit down and that he would handle the matter. Gelt said that he would not sit down and that it was his fiduciary responsibility to bring this matter to the attention of the board. At this point Jeffe put his hand on Gelt's shoulder and was heard to say, "When I say sit down, you sit down." Gelt responded by saying, "Take your hand off of me. As long as I am CFO here, I will make my report." Jeffe replied, "That's easy to deal with,

you blockhead! You're fired." As he said this, he still had his hand on Gelt's shoulder. Gelt then brushed aside Jeffe's hand and shoved him away. Next, Jeffe took a swing at Gelt. Gelt ducked and punched Jeffe in the face, knocking him down. Gelt then turned away and walked out. The board meeting was immediately terminated.

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QUESTIONS

1. What are the issues in this case?
2. Has Baker been operating appropriately?
3. What about Gelt? What about Jeffe?
4. What should Baker do about Gelt's firing?

CASE 2-3 Organizational Tragedy

As the board of directors sat down for their emergency meeting, a profound sense of sadness and gloom permeated the room. Less than 24 hours earlier, JP Jones had been their dynamic CEO on the third year of his second 5-year contract, and Bobbi Ann Jones (no relation) had been their equally dynamic 47-year-old CFO.

Now Bobbi Ann was dead, and JP was in the intensive care unit as a result of a drunk driver hitting them as they were returning from a chamber of commerce dinner. The board chairman, Commander Matt Perry, U.S. Navy (Ret.), opened the meeting.

Perry:

Let us begin with a moment of silent prayer for the soul of our dearly departed Bobbi Ann, and let us also pray for the recovery of JP.

After a minute of silence, Perry opened the meeting.

Perry:

Folks, we have a serious problem. Obviously it could be months, perhaps longer or maybe not at all, before JP can return, and Bobbi needs to be replaced as soon as possible.

Board member #1:

Do we have anyone in the bullpen?

Perry:

Not really for the long haul. Right now Myron Appelbaum is the assistant VP, but he is still too young and has no leadership experience. In finance, basically everyone there is a technician—in fact, Bobbi was the only CPA.

Board member #1:

So why not start a search for Bobbi's job?

Board member # 2:

Might as well search for both jobs.

Board member # 3:

It seems to me we are in a pickle because we don't want to hire a CFO without the CEO recommending it. Basically we would wind up selecting a CFO who would report to the CEO. I think that could be a problem.

Perry:

Folks, I have a proposal. Why don't we use an interim management firm for both jobs until we can sort out what is happening?

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QUESTIONS

1. What are the costs and benefits of using an interim firm for both jobs?
2. Are there other alternatives that make sense?
3. Has this board dropped the ball by not having a succession plan?
4. Is this just an example of an unpredictable organizational tragedy, or are there organizational rules that could prevent such a situation?
5. Does it matter whether the organization in this case is a not-for-profit or for-profit corporation?
6. This case does not state the type of organization where the tragedy happened. Does the analysis change if this is a medical center, hospital, nursing home, home care agency, or medical group practice?

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CASE 2-4 Board Fees

At a recent meeting between Nancy Jones, CEO of Community Medical Center (a 501[c] 3 corporation), and Charlene White, chairperson of the board, the following conversation occurred:

White:
Nancy, I am interested in your thoughts about providing our board members an annual honorarium.

Jones:
Are you serious? Why would you want to do this? We've never paid board members before. Why start now?

White:
Several reasons. First, I think our board members put in a lot of time and we should recognize their effort by something more than our monthly dinner meetings. Second, if we gave them some money, I would feel more comfortable asking them to work. Finally, I think it would increase our pool of potential board members.

Jones:
Interesting thought. What kind of honorarium are you thinking about?

White:
Not much, maybe $3,000 per year. For our entire board of 12 people, that works out to $36,000 a year, and I bet we get some of that back in contributions. So what do you think?

Jones:
This is certainly a fascinating idea. Let me do some research and thinking. I will get back to you on this next week.

White:
Great! I look forward to your report.

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QUESTIONS

1. What is a 501(c) 3 corporation?
2. Is paying a fee (no matter what you call it) to the board of a 501(c) 3 company legal?

3. Other than the discussed issues, what other issues might arise from paying board members?
4. Assuming you are going ahead with paying the board members, do the annual fee and the proposed amount make sense? Any other options?
5. What is your recommendation? Why?

CASE 2-5 Firing The CEO

On the morning of November 1, Paul Blackman, administrator of the Crescent City Nursing Center for the past 23 months, received a call from Roger Johnson, former president of the nursing home's board, who told him that, on behalf of the other former presidents of the board, Johnson was asking for Blackman's resignation by the end of the year. Blackman was stunned by this call and immediately telephoned Angela Fisher, the home's board president, and received assurances from her that, despite the fact that he had no employment contract, his job was secure.

The Crescent City Nursing Center is a 250-bed skilled nursing home that has a reputation for being the finest in the region. Since its founding shortly after World War II, the home has been under the direction of a 24-member self-perpetuating board of trustees. The original board comprised a number of people who were instrumental in the founding of the home, including members of the Johnson family, who were not only involved in the home's founding but also provided close to $3 million of the home's total $5 million endowment. The most important of the Johnson family members were two brothers, Roger and William. The 24 members of the present board consist of 7 former presidents and at least 10 other people who have been involved with the home for over 15 years. The board is now dominated by Roger's son Kenneth and William's son John. In addition, five other Johnson family members are on the board, along with several board members who have significant business involvement with the Johnson family.

Since the home opened, there have been three administrators. The first administrator also served as director of nursing and held the job until 1965, when she was replaced by

Mac Davidson, who administered the home for the next 30 years. Davidson's training was in social work, and he came to the home at a crucial time in its evolution. He was responsible for its growth from a 100-bed old-age home to the high-quality home it is today. Davidson and his wife Leslie were intimately involved in all aspects of the home. Although Leslie was only a part-time receptionist, she made her presence felt throughout the home by being there a significant part of each day, visiting the residents daily, participating in the various resident shows, and socializing with many of the volunteers and board members. Mac Davidson also kept a very high profile in the home through various means, including early morning rounds of all the resident units, close contact with family members, and an active series of social engagements with many of the board members, especially the Johnson clan. In contrast, Paul Blackman has spent more time in his office and less time visiting with residents or socializing with the board. Mrs. Blackman, who is an accountant with a certified public accounting firm, has also been quite uninvolved with the home, in sharp contrast to Leslie Davidson.

The last few years of Davidson's tenure were both professionally and personally difficult for him. On the professional side, he faced a broad range of challenges, including an attempted unionization at the nursing home, a decrease in the home's ability to raise funds, and a decrease in income from residents due to a declining private-pay census as well as Medicaid cutbacks. On the personal side, Davidson had a series of medical problems, including a heart attack, bypass surgery, and a bout with prostate cancer. After enduring these problems for 3 years, the board prevailed on Davidson to retire. Because of Davidson's health problems, he retired in January and his longtime assistant, Alvin Jakes, who for 27 years was the home's personnel manager, took over as the acting administrator.

The board recognized Jakes's limitations and agreed among themselves to increase their supervision of the home, particularly in the area of finances. The increased supervision provided the board with some unexpected and unpleasant information about the facility's fiscal health, such as an undisclosed (by management) deficit of close to $1 million. They also learned that the home was overstaffed and that its salary and benefit structure was exceedingly problematic.

The board decided to find a new CEO to solve the problems and bring the home's finances into line. After a 6-month search, they hired Paul Blackman, a 39-year-old experienced nursing home administrator with an MBA in health administration. On January 1, Blackman took over the job and set about identifying and rectifying the problems. The first of these involved low morale among the staff, largely due to Davidson's long history of favoritism, which had resulted in inequitable pay and fringe benefits. For example, in the food service department, a cook with 20 years of seniority was paid less than another cook who had been with the home only 7 years. Also, the 20-year veteran was entitled to only 3 weeks of paid vacation, whereas Davidson had negotiated a 4-week vacation package for the new cook after 5 years of service. The food service example was not an isolated case. There were numerous inequities throughout the organization, many of which apparently resulted from Davidson's desire to control staff through a series of private negotiations. The individual staff member would thus become beholden to Davidson because he had bent the personnel rules to accommodate the employee's desires.

Other problems included the huge deficit resulting from overstaffing and state Medicaid cutbacks. Blackman dealt with these problems by undertaking a thorough review of personnel policies and actions as well as staffing levels. In addition, Blackman decided to replace a number of senior management personnel with people loyal to him. In one conversation with Angela Fisher, he stated that the home was still full of Davidson loyalists who ran to him with every complaint or controversy. A further problem was that many of those who were likely to lose from Blackman's policies had cordial relationships with the board. This was another legacy of the Davidson years, when the CEO often hired people at the suggestion of board members, particularly the Johnson family.

In pursuing his policies, Blackman felt considerable pressure to get things in order as soon as possible. He also felt that every change he made reflected poorly on his predecessor, and that frequently either Davidson or one of his friends on the board would react to a proposed change with the question, "How come we never had this problem when Mac ran the home?"

Blackman's analysis of the situation was that Mac Davidson was an out-of-touch and manipulative manager who ran the home by keeping the board in the dark, and that the board was complicit by choosing to stay in the dark. John and Kenneth Johnson, both former board presidents, viewed Blackman as the key problem. From their perspective, Blackman was doing a respectable job of dealing with the home's fiscal problems but was making a mess of the staff situation. Specifically, they believed he was wrong to fire or force into retirement so many top management staff, including the director of nursing, the director of the physical plant, the food service director, the personnel manager, and the purchasing agent. In addition, while they applauded his efforts at developing a more equitable system of wages and benefits, they were concerned about its costs as well as its potential for labor strife. Other matters that concerned these board members included Blackman's active participation on the state nursing home association's board of trustees and his lack of time to socialize with the residents.

Angela Fisher found herself in the middle of this dispute. On the one hand, she personally liked Paul Blackman and respected what he was trying to accomplish. On the other hand, she felt that he should probably spend more time at the home and perhaps be more diplomatic about board relationships. Her main concern, however, was how to deal with the powerful group of former board presidents who had announced that they were going to fire Paul Blackman.

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QUESTIONS

1. In light of Roger Johnson's personal and financial involvement with the nursing center, was it wrong for him to fire Paul Blackman?
2. What does this case imply about the structure and operation of the board of directors of the nursing home?
3. Assuming Angela Fisher will have a talk about this matter with Mr. Johnson, what responses should she be prepared to handle?

4. If Ms. Fisher were to bring in a consultant to deal with the conflicts on the board, as exemplified by this case scenario, what issues should the consultant be prepared to tackle?

CASE 2-6 Luke Mackenzie

Luke Mackenzie is being considered for the position of CEO of the Scott Vista Home Health Center for the Elderly, a 300-bed facility located in a suburb of a major metropolitan area. The facility has had decent but not great managerial leadership for a number of years, but the untimely death of the 59-year-old CEO has resulted in the availability of the position.

The board's executive committee, consisting of seven individuals, decided to hire an executive search firm to find candidates for the job. Mackenzie, an experienced nursing home administrator, presently working for a private nonprofit foundation, was one of the three they recommended for the position. The preliminary interview was positive, and now Mackenzie has been invited back to Scott Vista for a second interview.

In preparation for the interview, he has asked for and received the organization's financial statements and various documents related to the strategic plan.

Mackenzie is quite interested in the job for a variety of professional and personal reasons (he has school-age children and Scott Vista is located in one of the best school districts in the country), but based on his analyses, he feels that the organization is at a crossroads financially. In his opinion, it is significantly overstaffed, many of its programs are running at significant deficits, and with the way these programs are structured, it would be extremely difficult to turn them around. Additionally, fund-raising, which has been able to cover the deficit in the past, has diminished more than 70% in the past decade. Finally, based on his first trip to the health center, he found a board that was living in the past and was quite poorly educated about the challenges facing both the industry and the Scott Vista Home.

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QUESTIONS

1. What options does Mackenzie have in approaching the second interview?
2. Would Mackenzie be wise to present the board with his bad news analysis of the organization?
   a. If yes, how should this be presented?
   b. If no, what should he say about the problems?

CASE 2-7 Cardiac Innovation

The Metropolitan University and Medical Center is one of three medical schools and university-based hospitals in the city. Ostensibly, the relationship between all three organizations is cordial, but in many ways they are quite competitive, with Metropolitan usually perceived as being in third place.

Three weeks ago, Franklin Benjamin, MD, chairman of the Cardiac Surgery Division, met with Jeff Thompson, the CEO, to continue discussions about the possibility of Metropolitan becoming a provider of care using the Edwards Life Sciences Sapien Heart Valve. The conversation between them went as follows:

Benjamin:

Jeff, I think we need to go ahead and get the Sapien system. This will be our opportunity to take the lead in the region in cardiac surgery.

Thompson:

Frank, I would certainly like to be the leader in your area of work. But frankly they make it quite hard to get into their system. I would have a team of people pulling data together for months for them to peruse, and then, if accepted, we have site visits and oversight in the OR. Also, we would have to do some upgrading of one of our OR suites, and we just don't have the money.

Benjamin:

I hear you, but we have a golden opportunity to take the leadership role. We will be helping patients who otherwise might not get help.

Thompson:

Frank, I am definitely sympathetic to your concerns, but other similar products are coming down the road, and it doesn't appear that the other companies are going to make us jump through as many hoops as Edwards. And don't forget one of those hoops is selection of patients for the valves. I think the uptick we would get for being innovative might be offset by the downside of raising hope for some patients and not being able to deliver.

Benjamin:

So, what is your decision?

Thompson:

I've thought long and hard about this. In fact, I was up most of last night thinking about it and searching the Internet for any data. My conclusion is that we should not pursue it. I don't think the costs are worth the benefits at the present time. Let's revisit this in 6 months.

Dr. Benjamin left the meeting totally frustrated. That evening at the Metroplex Country Club he ran into the chairman and the treasurer of the Metropolitan University and Medical Center board and started telling them of his frustration over this matter. The next morning, the chairman called Mr. Thompson and said the following:

"Jeff, I ran into Frank Benjamin last night and he told me about your decision regarding the Sapien system. It sounds to me like this is our shot at becoming the leading center in the region for cardiac surgery. Why are you so against it? You are not afraid of taking a chance are you?"

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QUESTIONS

1. Is this a board or a management issue?
2. Is this board member acting responsibly?
3. What should Thompson do about Dr. Benjamin going to the board?

4. What are the costs and benefits of going with the Sapien system?
5. Is Thompson's conclusion reasonable?

CASE 2-8 Board Breakfasts

At the State Hospital Association's annual meeting, June Bookman, the CEO of the 130-bed MacIntosh Memorial Hospital, located 47 miles from a major metropolitan area, heard a presentation from JJ Kimberly, a hospital consultant. The consultant was speaking about the importance of an educated board and presented examples from hospitals with which he worked. Bookman spoke with Kimberly and arranged for him to visit the hospital with the idea of developing such a program.

A week later, Kimberly visited and toured the facility. What he found was a small community hospital with 600 employees. According to Bookman, the hospital served a growing exurban community that was rapidly developing its own hi-tech industry center around Josephs Robotics. This, she thought, would result in a major expansion of the hospital, which she was already planning. Bookman also told him that she thought the board was out of touch with what was happening in health care and was not prepared for the challenges and changes she foresaw. For example, she was very disappointed that the board was strident about staying independent of any of the three regional medical school networks. Bookman thought this was because of the physicians on the board who were concerned that any network affiliations might hamper their long-standing referral connections. She was also concerned that the board was not ready for a major expansion and all that it implied, particularly in terms of fund-raising. Kimberly agreed to undertake a series of bi-monthly 90-minute breakfast seminars for the board.

At the first seminar, Kimberly was introduced by Bookman, who, after making some introductory remarks, excused herself,

saying that she had a schedule conflict. Kimberly began by telling the board members of his background and then went around the room asking each of the members to introduce themselves and say something about their own businesses. He was particularly interested in listening to Juan Josephs, whom Bookman had told him about. Josephs, an inventor and entrepreneur, had moved to the area 12 years earlier and had begun a small company that made robots that were used in certain limited areas of surgery. As the robots proved themselves, the company grew, went public, and became the largest employer in the region, with close to 1,300 staff, many of whom were technicians and engineers. All of the Josephs Robotics employees were insured through a generous indemnity plan.

Juan introduced himself in a very modest way as an executive with the local robotic company. Kimberly asked him why he had picked the MacIntosh community for his company. He answered that he liked the school system for his kids, the cost of living was dramatically less than in the city, and he felt that if his company ever took off, he wouldn't have trouble recruiting engineers or technicians to work on the robots. Then he dropped the bombshell that he was going to be sorry that the company was moving most of its manufacturing operations to another state because of taxes, the need to expand, and the desire of his major stockholders to start mining the South American market from a better location. Kimberly asked how many jobs were staying and how many leaving. Rather casually, Josephs answered, "Just the executive and marketing group are staying . . . probably 25 to 30 people. The rest will move, or at least have the opportunity to move, to Texas as soon as the factory is finished, in about 14 months." Kimberly was stunned but soldiered on with his first presentation.

After the breakfast, he waited for Bookman to have a break and then shared with her what he had learned from Mr. Josephs. Bookman sat quietly, thanked him, and said, "See you next week."

* * *

QUESTIONS

1. What does this case say about June Bookman? Why?
2. What should Ms. Bookman do with this information?
3. Assume the board president also just learned at the breakfast about the Josephs Robotics plan. What should the president do?
4. What does this incident say about board administration relations at MacIntosh?
5. Are the problems in this case remediable?

CASE 2-9 The Bad Barber

Subsequent to a scandal that focused on the poor quality of physician care at a neighboring hospital, the chairman of the board of directors asked the CEO at Tober-Mory Community Hospital to undertake a study of their own quality of care in order to find out if they had any rotten eggs.

The CEO and the chief of the medical staff met privately and identified five physicians about whom they had concerns. They went ahead and hired the Yithro Group, a nationally recognized independent medical review organization, to examine the cases of these physicians. The reviewers were empowered to do a thorough medical records-based analysis on each physician under review.

The conclusion of the Yithro Group was that four of the physicians were functioning within acceptable parameters, but with regard to the fifth, Dr. Jarad Barber, his clinical management, professional conduct, and medical record keeping were below par. Specifically, they noted that Dr. Barber was performing numerous high-risk procedures, he was often disruptive by screaming at staff and patients, occasionally using profane language, and he typically refused to function as a member of the patient care team (all documented in nursing and social worker notes).

Unknown to the reviewers was the additional information that Dr. Barber admitted more patients per year to the

hospital than other doctors—indeed more than the next four highest-admitting physicians combined. Although he behaved in the manner that the group identified, he could also be quite charming and generous with the staff (bringing in candy and donuts and giving generous Christmas presents).

* * *

QUESTIONS

1. What does the CEO tell the chairman of the board?
2. Assume the CEO wants to get rid of Barber. What does he have to do?
3. What message is sent to the staff if Dr. Barber is not reappointed? What message is sent if he is reappointed?
4. Are there any good options?