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Pharmacy Law Brief: Contemporary Legal Issues for Leadership in Non-Profits - IV

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Pharmacy Law Brief: Contemporary Legal Issues for Leadership in Non-Profits - IV

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Question: I am new to serving on the board of a non-profit community health agency in my area. During one of the meetings an experienced board member mentioned something called “fiduciary obligations” that I have in that role. We had no orientation session for new board members. What is that?

Response: At the outset it should be noted that an earlier column in this series, appearing in the November 2008, issue, was entitled “Potential Legal Exposure with Community Service as a Board Member of a Non-Profit Agency.” Further, a column entitled “Contemporary Legal Issues for Leadership in Non-Profits-I” appeared in the September issue and that was followed with “II” and “III”. This installment addresses issues related to the IRS Form 990 filed by tax exempt non-profit organizations and will supplement or extend those earlier discussions.

The official title of IRS Form 990 is “Return of Organization Exempt from Income Tax.” In recent years the Internal Revenue Service has placed increased emphasis on the role this form plays in the governance of tax exempt organizations. During 2011, it was announced that more than 3,000 formerly tax exempt organizations in Kentucky had lost this favored status because they had failed to file a Form 990 for three consecutive years.

The IRS has enhanced the Form 990 with several goals in mind: [1] enhance transparency to provide the IRS and the public with an accurate and realistic snapshot of the organization; [2] promote compliance with the tax laws; and [3] minimize the burden on tax exempt organizations.

The revised form collects expanded information regarding governance of the organization, such as identifying who

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has voting rights on the governing body. It also embodies an expectation that members of the governing board review the content of the form before it is filed and that the board be primarily composed of independent board members. Some of this can be traced back to a piece of federal legislation known as the Sarbanes-Oxley Act of 2002. While rooted in the Enron financial scandal and aimed primarily at the functioning and organization of publicly traded for-profit entities, this legislation had a spill over impact on nonprofit organizations.

The IRS expects that a nonprofit will have a policy in place to protect individuals who come forward to report suspected irregularities, known as a “whistleblower” policy, as well as a policy regarding retention of documents of the organization. Board members should be expected to know about and review these policies.

Board members are expected to be actively engaged in independent and informed oversight of the organization’s activities. The board should adopt a conflict of interest policy as discussed in an earlier installment in this series.

The bottom line is that pharmacists can make very substantial contributions to the nonprofit organizations in their communities, be they health-related, youth or elderly service oriented, or religiously affiliated through service as a member of the governing board. But such responsibilities should not be undertaken lightly and the time commitment should be understood before entering the relationship. The days of “lending my name” to be on a board are no longer here.

Disclaimer: *The information in this column is intended for educational use and to stimulate professional discussion among colleagues. It should not be construed as legal advice. There is no way such a brief discussion of an issue or topic for educational or discussion purposes can adequately and fully address the multifaceted and often complex issues that arise in the course of professional practice. It is always the best advice for a pharmacist to seek counsel from an attorney who can become thoroughly familiar with the intricacies of a specific situation, and render advice in accordance with the full information.*

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