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

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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 2012, issue. This installment addresses fiduciary obligations other than potential conflict of interest board members may encounter and supplements or extends those earlier items.

Directors of non-profit organizations, irrespective of how one arrived in that position – whether directly elected, appointed or designated by an affiliated organization to serve in that role – have a fiduciary obligation to exercise their powers and judgment in the best interest of the organization of whose board they serve. A fiduciary duty may be described as an obligation to use the faith and trust accorded an individual in the best interest of the organization or entity extending that trust. One’s fiduciary obligations are based on and performed for advancing the interests of the organization, not one’s personal interests. The fiduciary relationship comes into existence when an organization places confidence in a person and that individual accepts that grant of trust.

The fiduciary obligation can be broken down into three main categories:

Duty of Care – Discharging duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances in a manner he or she reasonably believes to be in the best interest of the organization.

Duty of Confidentiality – Highly confidential information will be made available to members of the organization’s governing body in conjunction with such service. It is the duty of a member of the board to maintain such confidentiality.

Duty of Loyalty – A director may not disclose confidential information, compete with the organization or assist others who so compete, usurp a business opportunity of the organization, or obtain unfair or secret profits through a transaction with the organization.

Perhaps the most succinct and best description of fiduciary duty is that one must put aside personal interests to focus on advancing only the interests of the organization being served.

Some organizations will ask that members of the board of directors execute a document on an annual basis acknowledging their fiduciary obligations and pledging to abide by them.

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.