

ROLE AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

HealthTrust, Inc.
Board of Directors Meeting
February 8, 2024

PRESENTER:

Jeanne Herrick, *General Counsel*

BOARD ROLES AND RESPONSIBILITIES - OVERVIEW

HealthTrust Directors as a whole are fiduciaries responsible for steering and overseeing the organization by adopting sound, ethical and legal governance and financial management policies and ensuring that HealthTrust has adequate resources to further its mission.

HEALTHTRUST PURPOSE AND MISSION

- *HealthTrust is a New Hampshire voluntary corporation organized to for the purpose of providing health benefits for employees of New Hampshire's schools, towns, cities, counties, and other public entities.*
- *HealthTrust's mission is to provide high quality, cost-effective employee benefit products and services for public employers and employees in New Hampshire in order to reduce costs through pooling strategies with a commitment to education, health promotion and disease prevention.*

RSA 5-B – STANDARDS OF ORGANIZATION AND OPERATION

- *Majority of board must be elected or appointed public officials, officers, or employees.*
- *Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses.*
- *Board members shall comply with provisions of RSA 15-A.*
- *HealthTrust shall be governed by written bylaws which shall detail terms of eligibility for participation by political subdivisions, governance of program and other matters necessary to program's operation.*

RSA 5-B – STANDARDS OF ORGANIZATION AND OPERATION

- *Return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance.*
- *Provide for annual financial audit by independent CPA.*
- *Provide for annual actuarial evaluation, which shall assess adequacy of contributions required to fund the program and reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of plan.*
- *Conduct 2 public hearings to advise of potential rate increases, reasons for projected rate increases, and to solicit comments from members regarding return of surplus, at least 10 days prior to rate setting for each calendar year.*

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Just as for any corporation, HealthTrust board has three primary legal duties:

- **Duty of Care:** Ensure prudent investment and use of all assets
- **Duty of Loyalty:** Ensure that activities and transactions are, first and foremost, advancing the mission; Recognize and disclose conflicts of interest; Make decisions that are in the best interest of HealthTrust; not the individual director (or any other individual, Member Group or entity)
- **Duty of Obedience:** Ensure compliance with applicable laws and regulations; follow HealthTrust bylaws; and adhere to HealthTrust corporate purposes/mission.

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Make Well-Informed Decisions Based on Reliable Information

- Review and understand information, opinions, reports or statements prepared or presented by:
 - Officers or employees of HealthTrust who are reasonably reliable and competent in the matters presented
 - Legal counsel, public accountants, or other persons as to matters reasonably within their professional or expert competence
 - Committee of the Board of Directors as to matters the committee's presentation reasonably merits confidence

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Avoid Conflicts of Interest

- Put the interests of HealthTrust first, not the individual constituency that you represent.
- Because each director represents a Member, or entity eligible to become a Member, the risk of a conflict of interest exists when making decisions – both as the representative of a Member and an individual who may be covered by a HealthTrust benefit product or service.
- A conflict of interest exists when a director's personal or financial interests influence the director's responsibility to act in the best interest of HealthTrust. A conflict of interest may make it difficult for a director to make decisions objectively and effectively and in the best interest of HealthTrust.

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

To Disclose and Not to Disclose

- A director has an obligation **to disclose** to the board:
 - information not already known by the board but known to the director to be material to the discharge of the board’s decision-making or oversight functions unless there is a legal obligation to not disclose
 - any possible conflicts of interest
- A director has an obligation **to not disclose** HealthTrust’s proprietary, privileged or confidential information.

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Fulfilling the Responsibilities of a Director

- Obtain sufficient information to make decisions
 - Attend Board and Committee meetings regularly
 - Review Board/Committee materials and minutes
 - Participate actively in discussions
 - Request information from staff
 - Request information and guidance from outside advisors (accounting, actuarial, legal)
- Critically assess information
 - Ask questions of staff and outside advisors; challenge assumptions
 - Seek clarification of confusing or incomplete information
- Exercise independent judgment about information presented to make good faith decision
 - Guided by mission and duty of loyalty
- Comply with statutory and contractual obligations
- Identify areas of risk and ensure appropriate policies and procedures are in place
 - Investments, fiscal management and controls, audit plan, etc.
 - Recording of board minutes, decisions and corporate records, regulatory filings, reporting, reserves, etc.

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Director Limitation of Liability and Indemnification

- **Limitation of Liability:** Generally, a director will not be personally liable for their decisions if they fulfill their duties of care and loyalty. See Section 9.9 of Bylaws.
- **Indemnification:** HealthTrust will indemnify and defend directors from liability if they:
 1. Acted in good faith;
 2. Reasonably believed that their conduct was in the best interest of HealthTrust; and
 3. Reasonably believed their conduct was not unlawful.The Presumption is that directors have fulfilled their duties of care and loyalty when acting in their role as directors.
- **No Indemnification Permitted:** HealthTrust will not indemnify and defend directors from liability in connection with any proceeding charging improper benefit to the director, *i.e.*, when the director has not observed the conflict of interest policy and statutory restrictions on pecuniary benefit transaction.

LEGAL DUTIES IN CARRYING OUT ROLE AND RESPONSIBILITIES OF A DIRECTOR

Summary

- The best protection from liability is to make informed, independently reasoned decisions, which you believe further the mission of HealthTrust and constitute a prudent investment of resources.
- You must be active in fulfilling your duties. Declining to partake in discussion or voting will not protect you from liability.
- In all conduct related to HealthTrust, remember that as a director you owe a duty of care (prudent investment and use of assets), duty of loyalty (act to further purpose and mission of HealthTrust) and duty of obedience (comply with bylaws and applicable laws and regulations).
- When making a decision, ask yourself: Do I have a conflict of interest that impairs my judgment of what is in the best interest of HealthTrust? Is this decision in the best interest of HealthTrust? Is it a prudent use and/or investment of HealthTrust assets?

QUESTIONS?