Board Culture—How Things Get Done

Fundamentals of Effective Decision Making for Boards of Commissioners

Presented by:
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and

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WELCOME TO THE WEBCAST

HIGH PERFORMING BOARDS

webcast series

AWPHD

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Questions and Comments

• This is **NOT** an Operator Assisted Webcast … so there will be no opportunity to call in with questions

• **RATHER** … to ask a question or make a comment … use ‘Chat Function’
  – Click ‘**Type Here to Chat**’ box in lower, right of screen
  – Type your question/comment, and
  – Click ‘Send’

• Questions will be collated and answered at end of presentation
Access Later

• A copy of the presentation slides will be available on the AWPHD website tomorrow

• http://www.awphd.org/Publications/resources_web.aspx
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- MRSC provides legal and policy assistance to local governments, including Public Hospital Districts
- Call on Lynn and MRSC consultants with questions related to governance laws and for assistance with sample policies and other research
Overview

1. Commissioners—Key to Community Accountability
2. Open Meetings—The Law
3. The Balance Between Policy & Administration
4. Importance of Process
5. Additional Resources
Commissioners—Link to Community

“I hate posterity - it's so fond of having the last word.” H.H. Munro
Legacy

» Est. 1945
» 58 Statewide
» 70% of State
» 2012—Tekoa
Legacy

Residents are Owners

• Created by Residents
• Supported by Residents
• Residents Elect Board
Legacy

Residents Expectations

• Access
• Quality
• Effective Decision Making
• Transparency
Legacy

Fiduciary—A Definition

“Held or founded in trust and confidence”
Open Meetings—The Law

“Truth never damages a cause that is just.” Mahatma Ghandi

“Sunlight is the best disinfectant.” William O. Douglas
Basic OPMA Requirements

- Under the Open Public Meetings Act (OPMA), all meetings of a governing body of a public agency must be open and all persons permitted to attend.

- All final actions must be adopted at a public meeting or such actions are invalid.

- Secret ballots are prohibited.

The OPMA is codified in chapter 42.30 RCW.
What is a Meeting?

• A meeting of a quorum (i.e., majority) of the governing body where action is taken.

• Definition of Action:
  – Includes discussion, deliberations, public testimony, review, evaluations.
  – Includes final action – a collective decision or voting on motions or resolutions.
  – Is not limited to final action, however…
“Meetings” also include:

- Retreats, work sessions, and study sessions
- Telephonic meetings
- Email meetings

**But note:** Administrative staff can meet and not violate the OPMA
Regular and Special Meetings

Regular Meetings:
- Done at a regular date/time established by the Board
- Notice requirements are minimal

Special Meetings:
- Agenda items must be included in meeting notice; no final action may be taken on a topic unless the topic was listed in the notice for the meeting
- Notice must be delivered in person, by mail, fax, or email at least 24 hours in advance of the meeting.
Executive Sessions

Board can meet in private (Executive Session only to discuss specific topics:

a. Potential litigation
b. Clinical or staff privileges
c. Quality Improvement Committee
d. Real estate
e. Complaints against employees
f. Employee performance
g. Vacancies in elective office

Find a complete list of allowable reasons for Executive Sessions in RCW 42.30.110
Can a majority of the Board participate in a training webcast (or a social gathering, or travel occurrence) and not violate the OPMA?
A:

YES.

If a majority of the Board participates in a training webcast, commissioners are free to ask questions and participate fully in the webcast without implicating the OPMA as long as they don’t transact district business among themselves.
Penalties under the OPMA

- Resolutions or orders adopted at an illegal meeting are **void**
- A Board commissioner who knowingly participates in an illegal meeting is subject to a **$100 fine**
- Judge may award **costs and attorneys fees** to a citizen who prevails against a public hospital district to enforce the OPMA
Perfection of means and confusion of ends seem to characterize our age."  Albert Einstein
Q: What is the distinction between “policy” and “administration”?
There are no "black and white" answers. There will always be some overlap.
Key policy-making activities of the board include:

- The development of a vision for the organization
- The adoption of goals and objectives
- The adoption of long range plans
- The adoption of budgets and capital plans
The CEO and staff are charged with **carrying out** your policy decisions

- Administer the budget
- Supervise contracts
- Manage personnel
- Generally conduct the day to day business of the hospital

*These are clearly administrative matters*
Q: What about the “overlap” that was mentioned?

A: “Overlap” can be accidental, intentional or systemic.
Overlap Defined

- **Accidental overlap** can be the result of failure to agree to some clear roles between the elected board and staff.

- **Intentional overlap** is usually the result of a member of the governing board taking management responsibility away from the appropriate staff member or the board acting as individuals rather than as a body.
Preventing Overlap

- **Accidental** overlap can be prevented with a simple set of ground rules in the form of a policy and procedure resolution or bylaws – MRSC has many examples available on its web site.

- **Intentional** overlap is intentional by definition. The adoption of ground rules is effective when the members subscribe to them and hold each other accountable.
Think.....

*Separation of Powers*
OK, but this isn’t Washington DC. What are some of the issues that create conflict for us?

Q:
Common Sources of Conflict

- Failure of the board to “act as a body” – Individual board members giving directions to the staff rather than the board, acting as one, giving policy direction through majority decision.
  
  - Imagine the potential for confusion for the staff. Which one of the 3, 5 or 7 “bosses” do they answer to – which board member or manager?

- This problem also arises when individual board members make public statements – Who’s words are the “official” position?
DON’T MAKE INDIVIDUAL REQUESTS FOR ACTION…

USE YOUR GOVERNANCE STRUCTURE
Article VII
Relationships of the Board

...as an elected Board of Commissioners for a municipal corporation, necessitates that there be a variety of relationships established among itself, its Director and professional staff,... The following gives some specific guidelines as to how to ensure that these relationships can best be developed and maintained.

The Director is responsible for the day to day administration...
The Director serves as an intermediary between the Board and the District employees on issues of an operational nature.

The formulation and adoption of written policies shall constitute a basic method by which the Board shall exercise its leadership...
The development of such policies is recognized as being a primary function of the Board.

Relation of Individual Commissioners to the Whole Board
Individually, Commissioners have no legal authority except as they contribute to any action by the entire Board... individual Board members are usually contacted by [constituents], who want and expect immediate action, such problems or suggestions should be brought before the entire Board or to the attention of the Director....

General Relationships
It shall be the policy of this Board to maintain an open, cooperative, working relationship with those special interest groups which utilize the Districts lands and facilities.

http://www.mrsc.org/subjects/governance/council/councilrules.aspx
"It has been said that democracy is the worst form of government except all the others that have been tried."

Winston Churchill
Meetings
Not a Conversation

- People must feel free to express opinions
- Focus should be on issues at hand
- Maintain courtesy and respect
- Ensure structure

From “Mastering Council Meetings”
Ann G. Macfarlane and Andrew Estep
The Agenda

- Provides structure to the meeting
- Informs the board and the public
- Can be modified
  -- Have some rules
  -- Use them
The Agenda

A systematic order of business may be the difference between haphazard wrangling and a well-run, well-timed meeting

• Give adequate information

• Prioritize and organize items

• Allocate adequate time to major issues

• Use a “consent agenda”
The Agenda

• Keep things off that don't belong there.

• The agenda is the place for formal actions.

• Every regular agenda item should include an instrument for action.

• Information and advice items should be provided outside the formal agenda process.
Minutes

• General rule – minutes of all regular and special meetings must be promptly “recorded” and open to public inspection

• “Recorded” means that written minutes must be taken of what was done at the meeting and the minutes must be retained and available for public inspection

• Exception for executive sessions - no minutes required

Rules for minutes are in RCW 42.32.030
The significant role of the chair...*

- The Chair is at once most important and least important
- Chair must be strict on procedure
- The chair is not responsible for the group’s decision
- Chair must balance the emotional and procedural aspects of every meeting

*Ann G. Macfarlane, PRP, CAE
Boards of Commissioners Speak as a Group

“All government - indeed, every human benefit and enjoyment, every virtue and every prudent act - is founded on compromise and barter.” ~ Edmund Burke
Disagree Without being Disagreeable

• Majority Rules/ Minority Rights

• Essential that Everybody be Heard

“The best collective decisions are the product of disagreement and contest, not consensus and compromise” ~ James Surowiecki
4

Decorum in Discussion*

- Remarks must be relevant to the topic at hand.
- Members may not speak about the motives of other members.
- No arguing.
- A member may not criticize a prior action of the group.

*From Robert’s Rules of Order
And Most Importantly…..

❖ A member must support the group.

The willingness to engage in honest debate and lose on issues you care deeply about reaffirms our commitment to common citizenship.

~ Cornell W. Clayton
Public Participation

❖ Opportunity may be provided for appropriate public participation.

❖ Citizens may address the board on other subjects of interest.

❖ Limiting the time for public comments during a meeting may be necessary to allow the board time to conduct the district’s business.

❖ Limiting the public comment period is not a violation of the First Amendment.
Creating a Productive and Constructive Culture

- When new members join the board they will get an orientation.

- Will it be intended to give them the tools they need to be effective as board members? or

- Will it be learned on the fly, from old habits good or bad?

- It’s your choice. AWPHD and MRSC have tools that can help you be more effective, printed materials as well as a wealth of material on our web site and regular printed and electronic newsletters all for your benefit as board members of Washington’s Public Hospitals.
Additional Resources

• **MRSC Website**
  - [Open Public Meetings Act](#)

• **MRSC Publications:**
  - [The Open Public Meetings Act - How it Applies to Washington Cities, Counties, and Special Purpose Districts](#) (updated May 2008)
  - [Knowing the Territory - Basic Legal Guidelines for Washington City, County, and Special Purpose District Officials](#) – discusses the purpose of the OPMA and its application to Washington cities, counties, and special purpose districts
Additional Resources

• Washington State Attorney General’s website:
  – [www.atg.wa.gov](http://www.atg.wa.gov)
  – [Open Government Internet Manual](http://www.atg.wa.gov), prepared with the oversight of the Attorney General’s Office (with assistance from Bob Meinig, MRSC Legal Consultant) – provides an excellent overview of the OPMA and executive sessions
Additional Resources

Mastering Council Meetings: A Guidebook for Elected Officials and Local Governments

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