



**“Does Your Doctor Board Need A Doctor?”  
Healthy Corporate Governance**

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**Park Dental**

**In 2012, dental firms with 20 or more employees accounted for a larger share of receipts than in 2002, while dental firms with 5 or fewer employees accounted for a smaller share”**

- ADA Health Policy Institute 2014

## Structure and Process

### Corporate Governance

**Board of directors** – manages the business and affairs of the corporation. Retains the ultimate responsibility for the actions of the corporation.

## Business formation

1. Articles of incorporation
2. Bylaws

### Directors

1. **Qualification** Minn. Stat. 302A.205
2. **Number** Minn. Stat. 302A.23
3. **Term** Minn. Stat. 302A.207
4. **Classification** Minn. Stat. 302A.213
5. **Election of a director** Minn. Stat. 302A. 215 subd. 1
6. **Resignation of a director** Minn. Stat. 302A.221

## Meetings of the board of directors

To discuss the business and affairs of the corporation and make recommendations or take actions for the corporation

**The board only exists when it is meeting.**

## Fiduciary Duties

“A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” Minn. Stat. 302A.251 subd. 1

## Duty of Loyalty

**Requires the director to act in the best interest of the corporation, rather than his or her own personal interest**

## Duty of Care

**Requires a director to act with reasonable care when making corporate decisions.**

**Evaluated by the “business judgment rule.”**

*Black v. NuAire*, 426 N.W.2d 203 (Minn. Ct. App. 1988)

## Duty to Treat Shareholders Equally

**Generally directors must treat all shareholders fairly and evenly.**

*Wenzel v. Mathies*, 542 N.W.2d 634 (Minn. Ct. App. 1996)

**“Enhanced scrutiny” to transactions if a corporation deems in necessary to treat a shareholder differently.**

*Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 1946 (Del. 1985)

## Duty Not To Waste Corporate Assets

Directors must have a legitimate business purpose for engaging in a transaction and must ensure the benefit to the corporation.

*Saxe v. Brady*, 184 A.2d 602 (Del. Ch. 1962)

## Duty of Confidentiality

1. Business and financial matters
2. Information relative to competitive positioning
3. Information that might be harmful to customers
4. Business, stock and valuation information

## Director Conflicts of Interest

Minn. Stat. 302A.255 where a director has a material financial interest, a transaction is not void or voidable if...

1. Transaction fair and reasonable
2. Disclosed and approved by shareholders
3. Disclosed and approved by disinterested directors

## Liability of Directors

1. Any breach of duty of loyalty to corporation or the shareholders
2. Any acts or omissions not in good faith
3. Illegal distributions
4. Transactions involving improper personal benefit

## Board Committees

A director may rely on "information, opinions, reports, or statements, including financial statements and other financial data...prepared or presented by...a committee of the board upon which the director does not serve...as to matters within the committee's designated authority, if the director reasonably believes the committee to merit confidence." Minn. Stat. 302A.251

## Special Committees

1. Independent
2. Fully informed
3. Able to negotiate at arm's length
4. Independent legal and financial advisors

## 9 Key Responsibilities of the Board

1. Institutional mission and goal setting
2. Relations with the CEO
3. Relations with other leadership groups and constituents
4. Quality of care
5. Financial planning and cost containment
6. Relationships with the community, media, and government
7. Self-evaluation
8. Organizational monitoring and development
9. Mission evaluation

## Board of Directors Best Practices

### 1. Tripartite meeting format

Board and management

Board only

Executive session

### 2. Post meeting surveys

### 3. Board education

## When Advising a Board

**“In rendering advice, a lawyer may refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to a client’s situation.”**

(MRPR Rule 2.1)

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