



RESPONSIBILITIES OF THE BOARD OF TRUSTEES OF THE AMERICAN ACADEMY OF PEDIATRIC DENTISTRY FOUNDATION

Charitable organizations recruit board members for a variety of reasons. Some individuals are talented fundraisers and are sought to help raise money. Others bring credibility, prestige or expertise to an organization. Whatever the motivation of the individual or the charity, joining a board of trustees is a decision not to be taken lightly.

The principal role of the AAPD Foundation Board of Trustees is to act as the steward of the charitable assets. The charitable assets are a "public trust" placed in their "private hands" to be used only for the organization's approved mission. The charity may not be operated for private benefit. The Board of Trustees is legally responsible for the management of the affairs of the AAPD Foundation. Stewardship requires active participation. People who do not have the time to regularly participate should not agree to serve on a board.

One of the most important functions of the Board is to keep the resources and efforts focused on the Foundation's mission. This requires the Board to have an adequate understanding of the organization's programs, people and resources available to achieve the organization's goals. As a starting point, every trustee should be familiar with the organization's articles of incorporation, its bylaws, and its financial statements.

All trustees, officers, managers, professional fundraisers, professional fundraising counsel or other persons having access to the money of a charitable organization intended for use for charitable purposes shall be held to the standard of care defined for fiduciary trustees under common law.

THE LEGAL DUTIES

Trustees of a charitable organization have specific legal duties to the organization. The primary duties are:

1. The duty of care
2. The duty of loyalty
3. The duty of obedience

1. THE DUTY OF CARE

The duty of care describes the level of competence that is expected of a board member, and is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances." This means that a board member owes the duty to exercise reasonable care when he or she makes a decision as a steward of the organization.

The duty of care requires active participation in the organization's affairs by attending board meetings and meetings of committees on which the trustee serves. Each trustee must stay informed to determine if the board's policies are being followed and to understand how the organization is functioning.

Boards may establish committees having the authority of the board and may rely on information, opinions, or reports of these committees as the basis for a formal board action. However, the committees remain subject to the direction and control of the board. As a result, individual board members are responsible for the work of the committees.

The duty of care must be discharged diligently and in good faith. Trustees must act with knowledge and, after deliberation, and should carefully establish policy and regularly oversee its implementation and administration by a competent staff. Trustees, who are regularly absent from meetings, are inactive, or who fail to conduct adequate research prior to making decisions, have breached their duty of care.

Board members must conduct themselves with the level of care, skill, and diligence exercised by "prudent persons" in the handling of their own affairs. Generally, a trustee who knows the facts, analyzes the probable result of an action, exercises sound judgment, keeps reasonable records, and acts prudently will fulfill this important duty of care.

2. THE DUTY OF LOYALTY

The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This

means that a board member can never use information obtained as a member for personal gain, but must act in the best interests of the organization.

The duty of complete and undivided loyalty requires that the interest of the AAPD Foundation and, as a consequence, the interest of the public, take precedence over the trustee's personal interests. A trustee must, loyally and without self-interest, further the charitable objectives of the organization by acting fairly and in the best interest of the charity.

Trustees may breach the duty of loyalty when they engage, directly or indirectly, in transactions between themselves as trustees and themselves as individuals or with family members or businesses in which they hold an interest. Board members should not engage in any transaction that is adverse to the charity, engage in any competing enterprise to the detriment of the charity, divert an organizational opportunity for personal gain, or derive any kind of secret profit or other advantage in dealing with or on behalf of the charity. Caution should be exercised in entering into any business relationship between the organization and a board member, and should be avoided entirely unless the board determines that the transaction is clearly in the charity's best interest.

The following are specific actions trustees should take to ensure that their duty of loyalty is being fulfilled:

- Always put the interest of the organization first.
- Establish a written conflict of interest policy, which should include procedures for written disclosures from board members concerning any business dealings with the charity. (NOTE: This separate form with instructions is completed annually by AAPD Foundation Trustees).
- Disclose his or her financial interest whenever the charity proposes to enter into a business relationship with the board member, a member of his or her family, or a business in which the board member holds an interest. The board member should not vote on the transaction or participate in any debate on the merits of the transaction.
- Refrain from diverting a business opportunity available to the charity for his or her own gain.
- Avoid transactions involving potential conflicts of interest and self-dealing situations.

3. THE DUTY OF OBEDIENCE

The duty of obedience requires board members to be faithful to the organization's mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds to fulfill the organization's mission.

Board members have a duty to be faithful to the organization's purposes and comply with the charity's governing documents. They are also under a duty to be familiar with the laws that apply to the charity and to comply with those state and federal laws that relate to the charity and its business operations.

The following are specific actions trustees should take to ensure that their duty of compliance is being fulfilled:

- Familiarize themselves with and follow the provisions of the organization's articles of incorporation, constitution, by-laws, or other governing documents.
- Familiarize themselves with state and federal laws relating to nonprofit entities, fundraising, and tax related issues.
- Comply with state and federal registration and reporting requirements.

Background material in these areas is regularly provided to AAPD Foundation trustees in meeting materials, e-mail updates, and the “Communities of Interest” section for trustees on the AAPD website.

THE REWARDS OF SERVICE

When you agree to serve on a charity's board, you accept stewardship responsibility for the funds donors have contributed. Donors are placing their trust in you, the public who benefits from the charity's services is depending on you, and regulators are watching you.

These responsibilities need not frighten off any prospective trustee. Board members need only be active and involved, use sound judgment, responsibility, and always have the charity's best interests foremost in all actions. For board members who take their responsibilities seriously, the rewards of voluntary service are immeasurable.