

Role of the Board

June 18, 2021

Prepared by: Elizabeth Voudouris,
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AGENDA

8:30 a.m.

Small Group Breakouts

Lead by panelists (Melony, Alex and Carrie)

The Role of the Board: An Overview

Elizabeth Voudouris, *President and CEO* BVU

Duties of Care, Loyalty, and Obedience

Alexander Campbell, Partner, Schneifrt Smeltz Spieth Bell LLP

Panel: The Role of the Board

- Melony Butler, Executive Director, Dress for Success
- Alexander Campbell, Partner, Schneifrt Smeltz Spieth Bell LLP
- Carrie Carpenter, SVP, Corporate Affairs, Huntington National Bank

11:00 a.m. **Adjourn**

The background of the slide is a collage of two images. The top image shows a modern university interior with a staircase and glass railings. The bottom image shows a group of students sitting at tables in a library or study area, some working on laptops and others reading. The text '1' is overlaid on the left side of the top image.

1

HOW BVU WORKS

How BVU Engages Professionals

Board Connect

- ▶ Recommends and prepares candidates for board positions
- ▶ Based on needs expressed by nonprofit organizations, and interests and abilities of individual candidates

Skills Connect

- ▶ Engage skilled professionals to help nonprofit organizations address specific operational or functional issues
- ▶ Greatest demand from nonprofits in the areas of human resources, marketing, finance, legal, IT, business planning, facility management and process improvement
- ▶ Get involved either on an individual basis or with a group to tackle a larger and/or multifaceted project

Volunteer Connect

- ▶ HandsOn Team Volunteer Projects

How BVU Serves Nonprofits

CONNECT

- ▶ BVU is committed to strengthening diversity, equity and inclusion on nonprofit boards.
- ▶ BVU refers business professionals to serve on nonprofit boards, committees, and young professional groups through the Board Matching and Linking New Leaders programs.

CONSULT

- ▶ Nonprofit Consulting Center - BVU staff provides: Governance consulting; Leadership Succession and Executive Transition consulting; Strategic Planning consulting; and merger feasibility consulting.
- ▶ Customized Board Trainings to address particular and timely issues.
- ▶ Skills-Based Volunteering connects business professionals to nonprofits where they use their professional expertise to deliver on high-priority projects.

EDUCATE

- ▶ Over 40 trainings and networking events that address nonprofit governance and management topics.
- ▶ Resources on the nonprofit sector, volunteerism, and corporate community involvement.

The background of the slide is a collage of two images. The top image shows a modern building with a glass facade and a staircase. The bottom image shows a library or study area with several people sitting at tables, working on laptops or books. The overall theme is academic or professional.

2

Sector Trends

1

Proliferation of Nonprofit Organizations

Over 1.3 million active nonprofit organizations

- Provide 11.4 million jobs
- 5.4% of GDP (\$887 billion to US economy)

Nonprofits in Ohio: 40,521

- 3rd largest industry employer in the state

Nonprofits by county:

Cuyahoga	15,599
Summit	4,640
Lorain	2,037
Lake	1,591

State of the Sector in Ohio

Ohio's Attorney General and Philanthropy Ohio conducted a 2nd statewide survey in August 2020

Ohio NPO COVID-19 Survey STATS:

- ▶ 61% operate at moderately or severely reduced capacity
- ▶ 2/3 deliver services differently
- ▶ 14% cut or furloughed staff
- ▶ 86% saw decrease in earned revenue
- ▶ 50% saw decrease in donated revenues
- ▶ 15% of board seats filled with people of color

BVU conducted a 3rd survey of nonprofits in NEO in January 2021

BVU NONPROFIT STABILITY INDEX:

- ▶ 58% will make long-term changes to how they deliver services
- ▶ 89% are able to deliver services through virtual platforms
- ▶ 54% cut or furloughed staff (July survey)
- ▶ 92% reported that COVID has had a negative impact on revenue streams
- ▶ 71% saw decline in earned revenue
- ▶ 84% saw decline in event revenue
- ▶ 71% are dissatisfied with the diversity of their Board of Directors

3

Strategic and Financial Pressures

- Increasing demand
- Shrinking resources
- Reduction in government funding
- 501-C3 “nonprofit” is tax status, not business model

Financial Models

FOR PROFIT:

- Customer buys product
- Price includes cost of doing business
- Overhead and profits seen as necessary
- On average, successful for-profit companies allocate 25% of budget to overhead.*
- **Success=financial results**

NONPROFIT:

- Client pays partial or nothing
- Rely on 3rd party to cover cost (donors and funders)
- Overhead and profits seen as unrelated to achieving mission
- **Success=mission impact**

4

Strategic Alliances

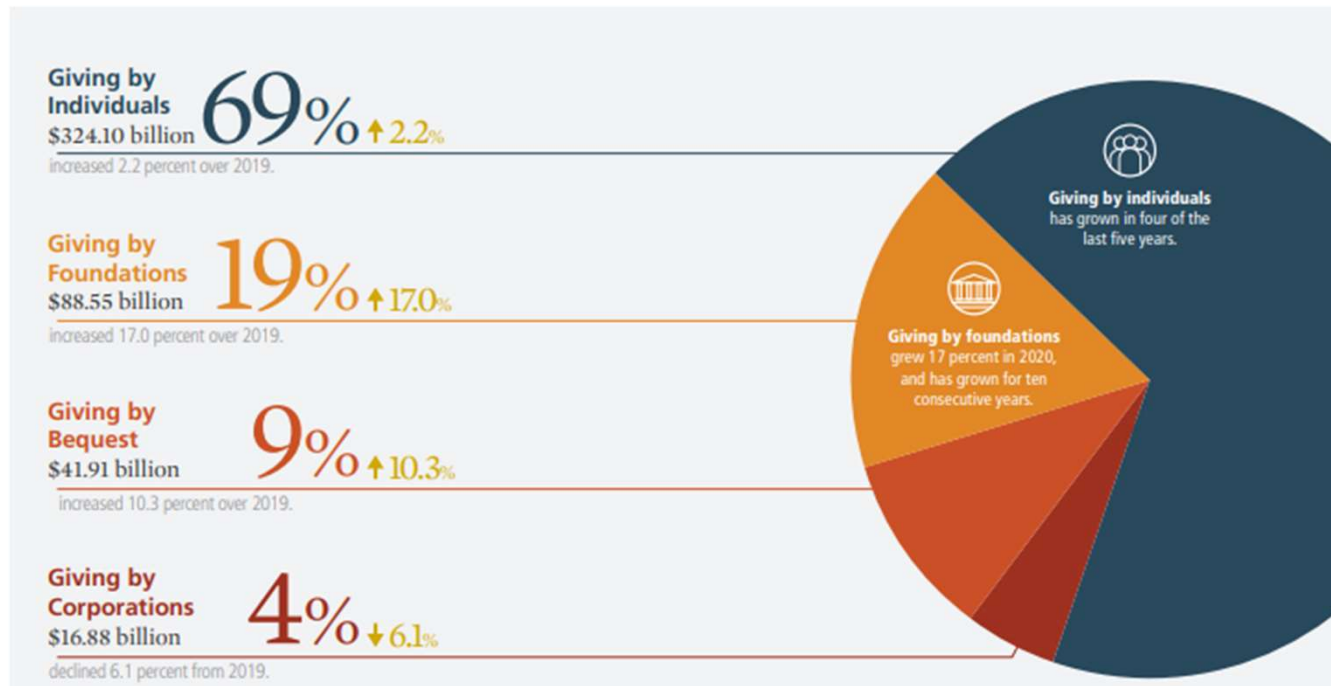
- Economies of scale
- Avoid duplication
- Sustainability
- **68%** collaborate to provide programs

5

Increased Scrutiny and Transparency

- Outcome metrics
- 990
- Executive Compensation

Funding Trends - Charitable contributions are significant source of revenue



*All figures on this infographic are reported in current dollars unless otherwise noted.

\$471.44 billion

In 2020, Americans gave \$471.44 billion to charity, a 5.1% increase over 2019.

SOURCE: Giving USA 2021

Funding Trends - Charitable contributions are significant source of revenue



\$471.44 billion

In 2020, Americans gave \$471.44 billion to charity, a 5.1% increase over 2019.

2020 contributions by destination
(by percentage of the total)

SOURCE: Giving USA 2021

3

The Role of the Board of Directors



Authority

The board of directors bears the primary responsibility for ensuring that a charitable organization fulfills its obligations to the law, its donors, its staff and volunteers, its clients, and the public at large.

Basic authority (§1702.30(A), O.R.C.):

“all of the authority of a corporation shall be exercised by or under the direction of its directors.”



The Board Functions as a Team

The role of the board refers to the board as a whole, a unit, a team. Individual board members do not have authority or individual rights

Accountability and responsibility rests with the full board...

Not the Chair

Not the CEO

Not individual board members



1

Determine mission, vision and strategic direction

- Scan internal and external environment
- Ensure effective planning - review & modify strategic plan
- Monitor performance based on key milestones and success factors

2

Establish and strengthen community relations

- Enhance the public standing of your organization
- Ambassadors
- Talking points
- Crisis/transition communications strategy

3 Select and support the chief executive

- Partnership
- CEO performance evaluation and process to set compensation (990 requirement)
- Succession plan
- Open doors

4 Develop funding resources

- Ensure adequate resources
- Individual, annual, financial contribution
- Donor identification
- Donor cultivation

5

Provide financial oversight

- Adequate accounting skills
- Annual budget
- Regular financial statements and cash flow reports
- Annual audit
- Investment policies

6

Ensure legal and ethical integrity

- Duties of care, loyalty and obedience
- Board has the authority as a group, not as individual members
- 96% of nonprofits carry Directors and Officers Liability Insurance for their boards

7

Develop the board

- Ensure a competent board
- Governance Committee
- Adopt best practices
- Review and update bylaws periodically

There Is a Great Difference

Between **Sitting** on a Board
and **Serving** on a Board.



4

Best Practices of Governance



1 Define the unique “work” of your board

- Lifecycle of nonprofit

2 Strengthen board member engagement

- Clarify expectations and accountability (81% have written job descriptions for board members; 52% conduct annual assessment)*
- Orientation
- Engage new board members on at least one committee right away
- Buddy system

*excerpt from BoardSource’s Leading with Intent.
(2019)

3

Build constructive partnership with the CEO

- Annual compensation and evaluation process – 80%
- Open and honest communication
- Annual one-on-one meeting

4

Structure effective meetings

- Set dates early; begin and end ON TIME
- Engaged board members do their HOMEWORK BEFORE board meetings
- Board portal
- Consent agenda – 57%
- Dashboard report – 44%
- Executive Session – 61%

5

Ensure relevant board and committee structure

- Average number of committees – 4.8
- Average number of board meetings – 6
- Executive Committee – 78%
- Average board tenure – 6 years (2 three-year terms)

6

Seek competent and diverse board composition

- Average board size – 15 members
- Race/ethnicity – 84% Caucasian
- Age – 17% under 40 years old

Why is Diversity Important in the Nonprofit Board Room?



**Better
decision-
making**

Diverse perspectives are better qualified to identify the full range of risk and opportunity



**More
responsive**

Diverse boards reflect the communities they serve, which improves the ability to comprehend and respond to environmental and external changes and trends



**Stronger
access**

To resources that are important to achieving the mission diverse connections with policy makers, donors and collaborative partners



**Better
pipeline**

Boards that are not diverse risk becoming stagnant



**Mission
alignment**

Diversity is part of the organization's mission and essential to develop and deliver programs that support the mission

*excerpt from BoardSource's Board Governance Index: Is Your Board "Normal"?,
(by Ruth McCambridge, January 2015)

7

Effective communication and deliberation

- Create culture of trust, transparency and inquiry
- Ensure that board functions in all three modes:
 - **Fiduciary:** Legal responsibility for oversight and stewardship
 - **Strategic:** Ensure a winning strategy; decisions about resources and programs
 - **Generative:** Serve as source of leadership & deeper inquiry; explore root causes, values, optional courses and new ideas

8

Succession plan for the chief executive and the board chair

- 34% have a written CEO Succession Plan
- Qualities to seek in a board chair:
 - Ability to build constructive partnership with CEO
 - Fosters trust
 - Resolves conflicts, builds consensus
 - Frames and discusses strategic questions
 - Establishes clear expectations for board members



**“ Board members should not feel like
“docile mushrooms
(warm and in the dark).” ”**

McFarlan and Epstein
Nonprofit Boards: A Guide, 2009



Resources for Board Members

**Business Volunteers
Unlimited (BVU)**

www.bvuvolunteers.org

BoardSource

www.boardsource.org

Independent Sector

www.independentsector.org

**Nonprofit Finance
Fund**

nonprofitfinancefund.org

Board Service Readiness? YES/NO

1. I am interested in advancing a cause that I feel excited about.
2. I am curious to learn about issues facing our community.
3. I am interested in learning about leadership in a new environment.
4. I am interested in meeting people outside my usual professional and social circle.
5. I am comfortable making a personal contribution to a nonprofit organization.
6. I can imagine asking others to contribute financially to a cause that I am passionate about.
7. I have enough autonomy in my schedule to accommodate board and committee meetings.
8. I am patient and collegial when working as part of a team.
9. I can commit the time necessary to be an exceptional board member.

*excerpt from BoardSource

Sample Question to Explore Board Opportunity

Meeting with the chief executive and board chair to discuss:

- ✓ Mission and scope of programs
- ✓ Revenue structure and key funding sources
- ✓ Key challenges facing the organization in next 3 years
- ✓ Key opportunities for organization growth
- ✓ Strategic plan
- ✓ Relationship between chief executive and board
- ✓ Role of the board
- ✓ Expectations of individual board members (\$, time, events)
- ✓ D&O insurance
- ✓ Tour of facilities



Thank you

BVU connects businesses and nonprofits, creating connections to better our community.



@bvuvolunteers



[linkedin.com/company/bvu](https://www.linkedin.com/company/bvu)



[facebook.com/bvuvolunteers](https://www.facebook.com/bvuvolunteers)



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The Legal Responsibilities of Nonprofit Board of Directors

Business Volunteers Unlimited
The Role of the Board
June 18, 2021



Schneider Smeltz Spieth Bell LLP

1375 E. Ninth Street, Suite 900 | Cleveland, OH 44114
(216) 696-4200 | www.sssb-law.com

Overview of Presentation

- What are the directors' legal (aka “fiduciary”) duties?
 - Duty of Care
 - Duty of Loyalty
 - Duty of Compliance
 - Duty to Maintain Accounts
- What liabilities may directors face?

Sources of Legal Duties

- ❑ State: Chapter 1702 of Ohio Revised Code (Nonprofit Corporation Law)
 - Note that nonprofits can also be unincorporated associations, trusts, limited liability companies, or partnerships
- ❑ Federal: Section 501 of the Internal Revenue Code

Sources of Legal Duties

- **Directors' Authority:** “Except where the law, the articles, or the regulations require that the action be otherwise authorized or taken, *all of the authority of a corporation shall be exercised by* or under the direction of *its directors.*” R.C. 1702.30(A)

Sources of Legal Duties

- The **Directors** are responsible for the actions of the corporation.
 - Not the CEO or Executive Director
 - Not the Chairperson
 - No one individual director

❖ Note: Prior to 2000, the statute referred to “directors” as “trustees”

The Duties of a Director

DUTY OF CARE



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Duty of Care

- A director must discharge his or her duties in *good faith* with the care that an *ordinarily prudent person* in a like position would use *under similar circumstances*.

(Ohio Revised Code § 1702.30(B))

Duty of Care

- Conduct themselves with the level of care, skill, and diligence exercised by *prudent people in handling their own affairs*

(Ohio Attorney General definition)

Duty of Care

Dos and Don'ts:

- **Do** be informed and involved
- **Do** actively participate in discussions and meetings
- **Do** rely on dependable sources of information
- **Do** hold staff and other board members accountable
- **Don't** be afraid to ask questions

The Duties of a Director

DUTY OF LOYALTY



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Duty of Loyalty

- A director must discharge his or her duties in a manner the director *reasonably believes to be in or not opposed to the best interests* of the corporation.

(Ohio Revised Code § 1702.30(B))

Duty of Loyalty

- Trustees or board members always *must act fairly and in the best interest of the organization* without concern for their own interests.

(Ohio Attorney General definition)

Duty of Loyalty

Federal tax concerns

- IRC Section 4941 - prohibits self dealing by private foundations
- IRC Section 501(c)(3) - prohibits private inurement
- IRC Section 4958 - requires reasonable compensation

Duty of Loyalty

PLAIN ENGLISH:

- Directors must put the interests of the organization over:
 - their own interests;
 - the interests of family members; and
 - other businesses or organizations that they might be involved in.

Duty of Loyalty

Dos and Don'ts:

- **Do** establish and follow written policy for dealing with conflict of interest situations (see IRS model)
- **Do** use caution when entering into any business relationship between the organization and a board member
- **Do** disclose any financial interest and abstain from discussions and votes on transactions
- **Don't** divert opportunities available to the charity for personal gain

The Duties of a Director

DUTY OF COMPLIANCE



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Duty of Compliance

- Directors have a duty to be *faithful to the organization's mission* and to *follow the organizations' bylaws and other governing documents*, as well as laws related to nonprofits.

Duty of Compliance

Dos and Don'ts:

- **Do** annually review the organization's bylaws, mission, and major policies
- **Do** have a committee to review compliance with the organization's policies
- If your local agency is accountable to a national organization, **do** be sure that your own governing documents and procedures comply with the national organization's requirements.

Duty of Compliance

Dos and Don'ts (cont'd):

- **Do** be familiar with state and federal laws applying to nonprofits, including rules on registration (OH AG/SOS, IRS, etc.) and HR (e.g., employee vs. independent contractor)
- **Do** develop a strategic plan to set the nonprofit's goals, address weakness, and recognize strengths (the strategic plan should set the framework for board meeting agendas and set priorities for committees)

The Duties of a Director

DUTY TO MANAGE ACCOUNTS



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Duty to Manage Accounts

- Directors have a duty to ensure the nonprofit's financial stability and accountability.

Duty to Manage Accounts

- Sarbanes-Oxley - generally applicable to publicly traded companies, but relevant principles for nonprofits too
 - Audit Committee
 - Whistleblower
 - Document Retention

Duty to Manage Accounts

Dos and Don'ts:

- **Do** develop policies and procedures that protect the nonprofit's business interests and operations
- **Do** develop annual budgets that provide clear direction for all organizational spending
- **Do** ensure maintenance of accurate records of all income, expenditures, transactions, and activities throughout the year

The Duties of a Director

POTENTIAL LIABILITY FOR DIRECTORS
AND BEST PRACTICES



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Liability for Violation of Fiduciary Responsibilities

- A director is liable in damages for any act that the director takes or fails to take as director **only** if it is proved, by *clear and convincing evidence*:
 - that the act or omission was one undertaken with *a deliberate intent to cause injury to the corporation* or
 - was one undertaken with *a reckless disregard for the best interests* of the corporation.

Ohio Revised Code § 1702.30(D)(1)

Liability for Violation of Fiduciary Responsibilities

Protecting against liability:

- **Business Judgment Rule** - Directors generally OK if they act in a manner that the director reasonable believes is in the best interest of the corporation, using care that an ordinarily prudent person would use under similar circumstances.

Ohio Revised Code § 1702.30(D)

Liability for Violation of Fiduciary Responsibilities

Protecting against liability:

- Directors are entitled to rely upon information, opinions, reports or statements prepared:
 - by directors, officers, or employees who the director reasonably believes are reliable and competent or
 - by counsel, public accountants or others as to matters that the director reasonably believes are within their professional or expert competence



Liability for Violation of Fiduciary Responsibilities

Protections for Volunteers

- Ohio law also contains protections for uncompensated volunteers, including directors, from liability for personal injuries
 - No liability unless willful or wanton misconduct or intentionally tortious conduct
 - Not liable for others unless volunteer authorizes, approves, or actively participates in injury-causing action or ratifies action later

Ohio Revised Code § 2305.38

Directors and Officers Insurance

- Get Directors and Officers (D&O) insurance in addition to general liability policy
 - Protection against common claims
 - Coverage of defense costs and indemnification
(re: indemnification, review bylaws/regulations for corporation's policy)

Best Practices for Protecting Directors from Liability

- ✓ Conduct “legal audit” and keep rechecking
- ✓ Rely on counsel and other experts
- ✓ Regular training and new board member orientation
- ✓ Draw on a broad range of skills (legal, accounting, industry specific, etc.)

QUESTIONS

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Spieth Bell LLP

THANK YOU!



Today's Panel



Melony Butler
Executive Director
Dress for Success



Alexander Campbell
Partner
Schneider Smeltz Spieth Bell LLP



Carrie Carpenter, SVP, Corporate
Affairs, Huntington National Bank

Upcoming events

Linking New Leaders

Date & Time: July 13, 4:00 – 6:00pm

Linking New Leaders is a fun, fast paced “speed dating” style event that brings together community-minded young professionals with local nonprofit organizations. The goal is to connect up-and-coming professionals who want to contribute their time and expertise to a variety of engagement opportunities including positions on boards, committees, and “friends” groups.

Nonprofit Leaders’ Breakfast

Date & Time: July 15, 8:30 – 10:00 AM

BVU's Nonprofit Leaders' Breakfast brings together Northeast Ohio nonprofit leaders to discuss relevant and timely information.

Our upcoming breakfast will feature John Corlett from Community Solutions to talk about federal funding making its way to Northeast Ohio and what opportunities exist.

Connect with Champions

Date & Time: July 22, 11:30 AM – 12:30 PM

BVU connects young professionals with business and civic leaders shaping the Northeast Ohio community. Our community leaders discuss their background, career path, volunteer involvement, and commitment to the community.

**FEATURED PRESENTER: Eric Gordon, Chief Executive Officer,
Cleveland Metropolitan School District**

Effective Leadership

Date & Time: July 29, 8:30-11:30 AM

BVU's workshop that will address the role of board leaders in guiding and shaping a board to advance the organization to achieve its full potential. This seminar is specifically targeted to nonprofit board officers, committee chairs and chief executives.

Thank you

BVU connects businesses and nonprofits, creating connections to better our community.



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