



# Fiduciary Responsibilities

## ANA Board of Directors

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### **SUMMARY:**

The Board of Directors has a Fiduciary Responsibility for the Association.

1. Non-profit corporate law states that the Board of Directors has the fiduciary obligation to manage the organization.
2. Federal labor law states that the officers and directors of a labor organization have a fiduciary obligation to the organization.
3. A fiduciary obligation means that the officers and directors are entrusted to take care of the organization and have a duty to manage it and to safeguard the assets in a reasonable way.
4. The Board of Directors adopts a budget.
5. The Board of Directors sets the strategic direction of the association.
6. The Board of Directors hires a Chief Executive Officer (CEO) to manage operations and reviews his/her performance.

### **FIDUCIARY DUTIES**

- Duty of Care
- Duty of Loyalty
- Duty of Obedience/Duty of Good Faith

## **DUTY OF CARE**

- Duty to exercise reasonable care in acting on behalf of and in the best interest of the organization
- Reasonable care is that which is exercised by a prudent person under similar circumstances
- Duty to act honestly and in good faith
- Duty to make reasonable inquiries
- Duty to maintain confidentiality
  - Any information that the organization identifies as confidential (the Board should be reasonable)
  - Executive sessions – share information only with those who are present or share only with the President's or Board's explicit grant of authority
  - Attorney-client privilege – information may not be shared outside of the those in attendance with a need to know, or the privilege may be waived

## **DUTY OF LOYALTY**

- Duty to have undivided loyalty to ANA
- Duty to act in the best interests of the organization
  - put ANA interests above other personal, financial, or professional interests
- Duty of loyalty requires avoidance of conflict of interest
- Conflicts may be actual, potential, or apparent conflicts
- Board members should avoid the appearance of a conflict of interest to protect the integrity of Board decisions and retain the trust of the membership
- How to address and resolve a conflict of interest:
  - Disclosure of a minor conflict will often resolve it
    - If disclosure is impossible because of confidentiality requirements of another organization, recusal must be exercised
  - Recusal from discussion and voting on an issue where a serious conflict exists
  - Resignation if there is a serious, on-going conflict that precludes meaningful involvement on the Board of Directors
  - The Board, upon motion, may exclude a member
- Overlapping responsibilities, such as serving as members of the American Nurses Foundation
  - There is no inherent conflict; interests are generally consistent
  - Must act in the best interest of both organizations, taking care to observe corporate requirements

## **DUTY OF OBEDIENCE/DUTY OF GOOD FAITH**

- Directors must follow the guiding documents:
  - Articles of incorporation – establish the basic purpose
  - Bylaws – describe the governance and the basic rules of operation
  - House of Delegates (*former*)/Membership Assembly Policies – provide guiding principles
  - Board of Directors Policies – provide additional policy statements or procedures

- Rules of Parliamentary Procedure – the manner of making decisions; a small group like the Board of Directors does not have to follow all the formal elements of parliamentary procedure, but may use them if needed to support fair and clear decision making
- Common Law – case law describes how fiduciary duties are applied
- Statutory Law – the laws impose specific requirements on the Board of Directors, such as having a whistleblower protection policy or holding annual meetings

**ANA is a “Labor Organization” with Fiduciary Duties Defined by Law**

- The Labor Management Relations and Disclosure Act (LMRDA) defines a labor organization as one that:
  - exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment
- Duties of a labor organization
  - To report financial data on the LM-2 form
  - To ensure fair elections that comply with federal requirements (e.g., notice, secret ballot, only reasonable requirements to hold office)
  - To protect the rights of members to speak out
- Fiduciary Obligations Under Federal Labor Law
  - officers and directors are fiduciaries vis-à-vis their members
  - the board must not act in an adversarial manner toward the organization
  - the board must avoid conflicts of interest
  - the board must not use association funds for personal interests

**AVOID TROUBLE BY TAKING CARE**

- Make your best effort and use your best judgment – perfection is not required
- Directors are generally not personally liable for actions unless they act in bad faith, with gross negligence, intentional misconduct, or fraud
- You can rely on experts
- As a board member, you should –
  - Attend meetings
  - Review materials
  - Ask questions
  - Avoid conflict of interest
  - Report irregularities