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July 7, 2016

**DUTIES AND RESPONSIBILITIES OF  
A REGIONAL CENTER BOARD OF DIRECTORS**

**Regional Center of Orange County Board Training**

By Michael W. Monk

**I. Obligations of Directors:**

**A. Oversee the Management of the Regional Center: Cal. Corp. Code § 5210**

1. Encourage a strategic planning process and monitor the plan's implementation. Understand and review Company's policies. Keep updated on the nature of the Company's business and new legal and business trends.
2. Board must ensure that the Company has adequate information, control, and audit systems in place to tell the Board and senior management whether the company is meeting its business objectives and complying with legal, contractual, and ethical standards.
3. Also ensure maintenance of accounting, financial, and other controls.
4. Direct the management of the company.

**B. Formulating Policy v. Implementing Policy**

1. Board role to formulate Policy
2. Management and staff role to implement Policy
3. Board members risk liability, under Cal. Corp. Code, § 5239, if they engage in day-to-day implementation of policy.

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- C. Election of Directors – Cal. Corp Code § 5220 - 5227
- D. Selection of Corporate Officers - Cal. Corp. Code § 5213 (a) and (b).
  - 1. Ensure management properly carrying out duties and have mechanism to provide Board with information to effectively monitor this area.
- E. The Board delegates to the management the authority to conduct the company’s day-to-day-operations in the ordinary course of business.
  - 1. Ensure management properly carrying out duties and have mechanism to provide Board with information to effectively monitor this area.
- F. Adopt or Change Bylaws: Cal. Corp. Code § 5150.
- G. Approval of Regional Center Contracts of \$250,000 or More:

Welfare and Institutions Code, section 4625.5, which became effective on March 24, 2011, provides that the governing board of each regional center must approve all contracts between such regional center and third parties when the amount of such contracts are \$250,000 or more (the “Qualifying Contracts”). The new law also provides that (1) a Qualifying Contract shall not be valid unless the board approves it in accordance with the regional center’s written contract review policy and (2) the board must approve each Qualifying Contract before the regional center signs it.

Most Boards, however, have periodically approved contracts certain contracts even prior to the 2011 legislation, for example, approving the terms of the lender’s loan, and to approve the employment contract of its Executive Director or other key management personnel.

- H. Board Must Submit Documentation to DDS re: Compliance with 4622:

Welfare and Institutions Code, Section 4622.5 was added to the Code in June of 2011, requiring by August 15 of each year, the governing board of each regional center to submit to DDS, detailed documentation, as determined by the Department, demonstrating that the composition of the board is in compliance with 4622, the section that contains the criteria for composition of a regional center board.

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I. **Board Members Required to File Conflict of Interest Statements:**

Every new regional center governing board member and regional center executive director must complete and file the conflict of interest statement with his or her respective governing board at the following times:

- A. Within 30 days of being selected, appointed or elected.
- B. Yearly, by August 1.
- C. Upon any change in status that creates a potential or present conflict of interest.

If a conflict of interest is identified for a regional center director or a board member that cannot be eliminated:

- A. The board member may not serve unless the conflict is eliminated or a Conflict Resolution Plan is approved by DDS.

**Conflicts of Interest:** This is a complicated area, but the general rule is that a Board member or a family member cannot be involved with a vendor or provider of the Regional Center. A more thorough training outline on Conflict of Interest obligations is available.

II. **Rights of Directors:**

- A. **Meetings:** Right to attend and participate in meetings. Indeed, only directors may act on behalf of company at meetings. Practice due diligence and prepare for meetings.
- B. **Information:** Right to information, including to inspect books and records to the extent permitted by law, contract, or confidentiality rights.
- C. **Communication:** Right to communicate directly with key executives, key advisers, and when appropriate, outside legal counsel, accountants, consultants.
- D. **Inspection:** Right to inspect facilities.

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E. Limitations on Rights:

1. Reasonable notice.
2. Conflict of interest prohibitions.
3. Duty of confidentiality.

**III. Duties and Principal Sources of Director Liability:**

A. Duty of Loyalty: Act in good faith, with fair dealing, and in the best interests of the corporation, taking care not to create liability for the corporation. Cal. Corp. C § 5231.

1. Do not engage in Conflicts of interest.
2. Do not compete with Regional Center.
3. Do not take personal advantage of Regional Center opportunities.
4. Act as a body, not as individuals.
5. Comply with laws, regulations, contracts.
6. Share information with full Board.
7. Conduct business at the formal meetings, not in private.

B. Duty of Care: Standard care is must use such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Cal. Corp. Code § 5231.

1. Must attend meetings and spend adequate time on Board duties and ensure using reasonable diligence and making reasonable inquiry. This is a particularly important part of the duty of care. A member loses continuity and misses developments when a meeting is missed. A Board member should rarely, if ever miss a meeting.
2. Require adequate reporting to the Board. So long as acting in good faith, and after reasonable inquiry as to the matters inviting inquiry, directors are not personally liable for the decisions made in reliance upon information and reports by:
  - a. Officers or employees who director believes to be reliable and competent.
  - b. Committee of the board.

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c. Experts (attorneys, accountants, consultants).

3. Keep generally informed about the Company's areas of business and the Company's policies.
4. Ensure that all questionable actions are investigated and satisfactorily resolved by management.

There shall be no personal liability to a third party for a director's negligent act or omission, so long the director's act was within the scope of his or her duties, the act was performed in good faith, the act was not reckless, and the damages are covered by liability insurance. Cal. Corp. Code § 5239 (a).

- C. Fiduciary Duty: To act and speak "in the best interests of the corporation" and not to act out of self-interest.
- D. Duty of Inquiry: Directors have a statutory duty to exercise "reasonable inquiry." Directors must act to ensure that management investigates or inquires when evidence exists providing notice of the need for further information. Cal. Corp. Code § 5231.

**IV. Principal Sources of Director Protection:**

- A. Business Judgment Rule: Court generally will not evaluate or disturb business decisions where director is disinterested and independent, sufficiently informed, reasonably diligent, acted in good faith, and has a rational basis for decisions.
- B. Indemnification
- C. DDS Requirements Regarding Insurance: The Contract with the State requires, in Article III, Section 11, that Contractor maintain a variety of insurances, including, "Directors', Trustees' and Officers' liability insurance."

Types of Insurance: Most regional centers maintain up to two types of insurance protection:

Directors & Officers Insurance Policy - This type of policy provides financial protection for Regional Center Directors if they are sued in conjunction with the performance of their

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duties for regional center. A typical amount of coverage under such policy is \$5 Million per claim and annual aggregate.

Comprehensive General Liability Policy – Regional centers generally maintain this policy, along with an umbrella policy with combined limits of in the range of \$4 Million per occurrence and a \$7 Million annual aggregate, which might also provide coverage to a Director in a lawsuit. If a third party sues any Director relating to his or her vote to approve a regional center contract, regional centers, in general, would in the normal course of business tender the defense of such matter to its insurance company under both policies and demand that its insurance company defend and indemnify the Director from such claim.

- D. Statutory Right to rely on reliable Sources of Information: Cal. Corp. Code § 5131 (b)
- E. Statutes of Limitations: Generally a 3-year rule: Cal. Code Civ. Proc. § 359
- F. Provisions in Articles of Incorporation, Exculpating Directors to the Extent Possible from Monetary Liability for Breaches of Duty of Care

V. **Special Rules Applicable to Directors of Regional Center:**

- A. Board Composition: W&I § 4622.
- B. Length of Service: Members may not serve longer than seven (7) years within each eight (8) year period. W&I § 4622(f).
- C. Conduct of Annual Review of Performance of Regional Center Director: W&I § 4622(8).
- D. Take Public Input On and Approve Final Contract with DDS: W&I §§ 4629, 4634
- E. Annually Contract with an Independent Accounting Firm For an Audited Financial Statement and Submit Audit Report and Management Letter to DDS within 60 days of completion before April 1 of each year. W&I § 4639.

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- F. DDS Oversight: DDS shall present results of audit of Regional Center compliance with state contract, federal fiscal provisions, and performance contract measure outcomes at the publicly held Regional Center board meetings. Budget Act 4300-101-001.
- G. Conflicts of Interest, Disclosure, Statements, and Waiver Requests:  
W&I § 4622; 17 CCR 54520, 54521, 54522, 54523.
- H. Scheduled Open & Public Meetings with Limited Exceptions; Public Records:  
W&I § 4660-4665

This Open Meeting requirement is very important, and it requires business, with only a few identified exceptions, to be conducted in public. Board members violate this requirement when they conduct business in private, outside the open meeting, whether by email, telephone, or in person discussions.

**VI. Obligations of Board Arising from Contract with State:**

- A. Obligations Under Contract with State Generally Met by Management.
- B. Contract Contains Few Provisions Requiring Direct Action of Board
  - 1. Article I, Section 18 a., and Section 18 b. 11 require “board-approved policy” regarding transparency and access to public information on the Contractor’s Internet Web site.
  - 2. Article I, Section 18 b. 12 also mandates posting of a “board-approved conflict-of-interest policy” on the Web site.
  - 3. Article II, Section 2 b. “Resource Development” requires that “Contractor shall institute a Board approved policy effective January 1, 2011 specifying the circumstances under which the regional center will issue requests for proposals to address a service need.”

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4. Article II, Section 2 c. requires that Contractor's policy for the disbursement of start-up monies must be "approved by the Contractor's Board of Directors."
5. Article II, Section 3 a. requires that "Contractor's governing board shall adopt and maintain a written policy requiring the board to review and approve any regional center contract of two hundred fifty thousand dollars (\$250,000) or more before entering into the contract."
6. Article III, Section 3 f. provides that while generally any bank account or investment vehicle containing funds from the contract must be in the name of the State and Contractor, "Properly established trust accounts that are approved by the Regional Center Board of Directors" for the purpose of administering standard employee benefits do not have to be in the name of the State, provided the State has the power to review trust records.

**VII. Open Meeting Law for California Regional Center Board Meetings**

- A. Welfare and Institutions Code, Section 4660.
- B. Exceptions that permit Executive Session:
  - (1) Real estate negotiations.
  - (2) The appointment, employment, evaluation of performance, or dismissal of a regional center employee.
  - (3) Employee salaries and benefits.
  - (4) Labor contract negotiations.
  - (5) Pending litigation.
  - (6) Any matter specifically dealing with a particular regional center client must be conducted in a closed session, except where it is requested that the issue be discussed publicly by the client, the client's conservator, or the client's parent or guardian where the client is a minor.