Dealing With Conflicts of Interest

Carolyn D. Duronio, JD

Because of recent corporate scandals, governance issues in large organizations have become very prominent in the news and governmental debates. In particular, issues with respect to conflicts of interest have been highlighted. Newspaper articles last summer analyzed transactions between directors and the Nature Conservancy, a large environmental nonprofit organization. In certain transactions, directors had the ability to purchase property from the Nature Conservancy at what was deemed to be fair market value. Even though the Nature Conservancy may have followed the letter of the law, perception issues arose as to whether directors may have had an unfair advantage in their dealings with the organization. This is just one prominent example of the current discussion concerning conflict-of-interest policies and the need for corporate governance policies to deal with conflicts of interest. The Oncology Nursing Society (ONS) is addressing the conflict-of-interest issues directly to ensure that it operates in a transparent and an appropriate manner.

To ensure that nonprofit organizations, such as ONS, operate appropriately, states have enacted nonprofit corporation laws. Under those laws, certain individuals, generally insiders, have a fiduciary obligation to put the interests of the organization before their personal interests. This is known as the duty of loyalty. An insider for this purpose is a director and an officer, and may include others with responsibility in the organization, such as a committee member. In other words, someone who is in a position to make a decision or influence a decision must make the decision in the best interests of the organization.

Whenever an insider may benefit from a decision of the organization, a potential conflict of interest can occur. The types of relationships giving rise to a conflict of interest are usually financial ones. For example, if a trade show management company executive was a director of ONS and she wanted her company to get the contract to manage the trade show portion of the annual ONS Congress, this would be a conflict of interest. Also, if a director of ONS provided contract services to a pharmaceutical company and she provided information to the pharmaceutical company only known to a director that could provide the company with a competitive advantage because of her relationship with ONS and its members, then that would be a conflict of interest. A conflict of interest also would arise when a director of the ONS Foundation must determine whether to provide a research grant to the academic research center at which she is employed or to another one.

Conflicts of interest may surface in innumerable ways in any large organization because most people have several roles in life. Nothing is inherently nefarious in a conflict of interest. In fact, if conflicts of interest were to be avoided entirely, then organizations would be limited in their ability to attract directors—in particular, qualified directors because those are the individuals who usually have multiple roles. Further, in most cases, conflicts are a very small part of the tenure of any director. Because of this, the law provides a process for handling conflicts of interest rather than simply prohibiting them. Thus, the key to adequately dealing with conflicts of interest is to have a process in place to fairly...