

The Health Care Board Response to the Social Justice Environment

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The health care sector is not immune to the continuing national conversation on social justice and systemic racism. The broadening scope of social reflection presents a crucial inflection point for commerce generally, and its commitment to social responsibility. Corporate boards across the spectrum will be expected to consider in good faith the implications for their own companies, and to engage with their executive leadership on both matters of corporate policy and specific responsive measures. Health care boards will be no different in terms of this expectation.

This challenge comes at an awkward time for health care companies, when the pursuit of business [resiliency](#) and the response to the COVID-19 surge may already fully occupy the boardroom agenda. Social upheaval places additional and unexpected pressures on the board's commitment to guiding the social orientation of the enterprise.

Of course, there is no government mandate or requirement that health boards consider these issues on behalf of their companies—although it is not difficult to project possible statutory proposals arising in the future. However, there are clear indications from leading commercial and governance policy groups that board engagement on matters of social justice is timely, appropriate and important.

Notable in this respect are the actions of [the Business Roundtable](#), and its formation of a Special Committee of its Board of Directors for the purpose of advancing racial equity and justice solutions. The goal of the Committee will be to promote broadly economic opportunity and mobility, focusing on public policy solutions and corporate initiatives in education, workforce, health care, finance and equitable justice. In that regard, a particular Roundtable initiative will focus on the promotion of health outcomes in minority communities, addressing social determinants that lead to significant health disparities.

Similarly, the [National Association of Corporate Directors \(NACD\)](#) has taken a strong stand on the issue, observing that “business has a crucial role to play in creating the proverbial seat at the table for all who want to participate freely and equitably in our society.” NACD’s perspective is that the ongoing debate on the role of business in society (i.e., the purpose of the corporation) “takes on new urgency” in the current circumstances. For those reasons, NACD recommends that companies and boards closely evaluate the efficacy of their prior efforts to address racism, diversity, inclusion

and corporate social responsibility issues, and what actions might be needed going forward.

The unmistakable theme of these policy positions is that social upheaval calls for much greater engagement on the part of corporate governance. Indeed, the ongoing national conversation presents a significant opportunity for management and the board to participate as equal partners in reorienting the corporate business model to respond to social justice issues highlighted by recent civil turmoil. In this regard, the health care sector is no different than other lines of commerce.

But, like the pandemic, there are no “best practices” or established governance principles available to guide boards as they team with management towards meaningful solutions. Yet actions by numerous corporations and other organizations, together with thoughtful public commentary, offer useful examples for health care board consideration as they seek to demonstrate their reevaluated and renewed commitment to social change. These include the following:

Board/Management Collaboration: One of NACD’s many suggestions is for greater board/management discussion on how best to approach social justice as it impacts the purposes and values of the organization, and also its impact on the allocation of organizational resources.

Financial Commitment: Many leading companies across industry sectors, as well as industry associations and professional sports leagues, have made significant financial commitments to organizations addressing civil rights, racism, education, criminal justice reform, and related initiatives. Other organizations have funded internal resources supported by or directed by employees so they can personally support such initiatives.

Brand Evaluation: Several leading consumer products companies have implemented a brand and packaging review, and other steps regarding visual brand identity, to eliminate racially insensitive imaging and restructure brands associated with offensive stereotypes. Several professional sports teams are reconsidering long-standing nicknames and logos that project negative connotations.

Executive Speech: Many prominent corporate executives have chosen to make public statements on matters of social justice and systemic racism. This can have a positive impact on the company’s reputation, its relationship with consumers and with its own workforce. NACD suggests that the board solicit the CEO’s input on what role he/she can play in regards to social justice matters, and to work on guidelines that will facilitate the CEO’s ability to engage with the public in that regard.

Workforce Culture: Similarly, many companies are making special efforts to address concerns of the workforce, and to provide a cultural environment in which conversations regarding social justice and racism are encouraged and protected. This may extend to measures such as recognizing culturally significant events or holidays with closures or employee time off; allowing the wearing of politically-oriented pins and clothing and

other political messaging by individual employees; and prohibiting use of symbols widely recognized as racially insensitive.

LGBT Workers: Initiatives aimed at supporting workforce culture may also include specific protections designed to implement the guidance of the Supreme Court in its recent decision applying the language of the Civil Rights Act of 1964, which prohibits sex discrimination, to discrimination based on sexual orientation and gender identity.

Hiring Practices: A leading component of many corporate responses is a commitment to measurably improved diversity practices in the hiring, evaluation, promotion, and talent development of minority employees. Examples include financial commitments towards increasing minority managerial representation by specific levels, and increasing business with minority owned suppliers. The creation of an executive level diversity, equity, and inclusion officer is increasingly being considered.

Board Structure: The boards of some leading companies are giving active consideration to the formation of special task forces, as well as committees with delegated authority, intended to address issues associated with diversity and inclusion throughout the organization (e.g., a dedicated board diversity and inclusion committee). These bodies are also often made responsible for implementation of company-wide diversity policies and procedures.

Board Refreshment: A related governance element is a commitment to specific director refreshment methods (e.g., term limits, retirement requirements, [offboarding protocols](#)) intended to increase levels of director turnover. This step is recognized as an important means by which diverse candidates may be added to the board.

Executive Compensation: Appropriately drafted performance incentives tied to the achievement of specific corporate diversity, inclusion, and social justice related targets in executive compensation arrangements can provide motivation for corporate executives to support implementation of such objectives.

There are, of course, many other examples of corporate commitment to social justice objectives, and leadership should be alert to further developments in this area and to the possibility for development of related guidelines and principles. Yet the effective and recognizable achievement of corporate social responsibility goals will depend upon three particular factors:

First is the management of director engagement. Many health care boards are already stretched thin by new, heightened pandemic-driven demands on their oversight and decision-making responsibilities. The additional obligation to support the company's response to social upheaval may severely stress the attentiveness of many otherwise committed directors. Management and board leadership should work closely to identify governance-grounded solutions to this challenge.

Second, and related, is the need for close board monitoring of specific corporate initiatives to implement diversity, inclusion, and social justice. As NACD has pointed out, companies face significant reputational risk when their commitments in these areas are not sustained by meaningful implementation.

Third is an awareness that many elements of corporate social responsibility may raise new or unfamiliar legal issues, especially those concerning matters of free speech and employee relations. It will be important to closely involve the general counsel (together with senior HR leadership) as the board and management evaluate particular initiatives.

A corporate response to crucial issues of social justice and systemic racism requires the close, immediate involvement of the governing board. Yet the need for such involvement comes at a difficult time for health care companies, when the engagement capabilities of both the board and executive leadership are compromised by continuing pandemic related responsibilities. The ability of leadership to overcome these difficulties and consider meaningful social justice initiatives is likely to enhance the corporation's reputation as a responsible corporate citizen.