Authority Dilemmas on a Board
in a Multi-tiered
Governance Structure

by
Suzanne C. Feeney

Cases in Nonprofit Governance
CNG No. 22

October 1998

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This case was prepared as a basis for discussion rather than to illustrate either effective or ineffective handling of governance issues. It is one of a collection of cases edited by Miriam M. Wood.

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Program on Non-Profit Organizations
Yale University
Authority Dilemmas on a Board in a Multi-tiered Governance Structure
by
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Summary
Nonprofit organizations often struggle with the never-ending discussion of board roles and responsibilities. Who does what, when, and who should? In the case of St. Aloysius Care Center, the problem of role responsibility was exacerbated by an organizational structure embracing three levels of authority. The distinctions and responsibility were never clear, not just structurally but politically. When the local board, consistent with its understanding of its authority, initiated actions to replace its president/CEO, it opened a Pandora's box. All three levels acted as if they were in charge.

Siobhan Cronin
2277 Cold Brook Avenue
Metro City, USA

It is with sadness and regret that I find it necessary to resign my position on the board of directors of Saint Aloysius Care Center. There were several considerations leading to this difficult decision. The most prominent of these has to do with the governance issue and the fiduciary responsibilities of members of the board. I have shared my concern at board meetings, in writing and over the telephone for nearly a year.... My question is, who is in charge?

Cordially,
Siobhan Cronin

St. Aloysius Care Center (SACC), a nonprofit organization providing long-term care for the elderly and chronically infirm, is operated by the Holy Order of Caregivers, an order of Roman Catholic sisters. In the early 1980s this order and a number of other Roman Catholic religious entities in the Midwest that operated

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1Names of persons, organizations, and places have been altered to preserve anonymity.
health care organizations came together and formed a faith-based National Health Corporation (NHC). These religious communities were interested in maintaining ownership and operation of their faith-based health services, but few had the capacity to operate alone. Forming a national corporation with others engaged in the same kinds of enterprises promised to increase efficiencies by centralizing administration and management and establishing economies of scale. The NHC functioned as an umbrella or coordinating organization and provided a variety of management resources including pooled investment funds, management assistance, training in new health care law, and maintenance of standards. Because it was particularly important to each religious order to maintain its separate identity and mission, they did not abrogate the ownership or governance of their facilities and property to the NHC.

SACC was one among eight facilities owned by the Holy Order of Caregivers. By the late 1980’s, the sisters realized that their own population was aging and fewer young women were entering religious life, making it impossible to operate SACC and their other facilities without lay help. For this reason the Order incorporated each facility and appointed a board of directors with responsibility for overseeing it. Directors were drawn from both the lay community and the religious order. (Exhibit 1) The local board’s authority to appoint and reappoint its own members was contingent upon approval by the mother house of the religious order although in practice approval was pro forma because leaders of the Order felt that the local organization knew its needs and board members better than the mother house located in another region of the country.

Two years after the incorporation of SACC and the conversion of the SACC advisory board to a governing body, Siobhan Cronin was asked to join the board. A former social service administrator, Cronin was now a management consultant to nonprofits and with a reputation for expertise in planning and fundraising. Like most other lay recruits to the board, Cronin came from a Catholic background. SACC was well known to her through her growing up years in a nearby Catholic parish. At the time she joined, Cronin received a daunting 3-inch packet of materials describing SACC's programs and bylaws, but no formal orientation to her governance responsibilities was provided. SACC’s board, its new members assumed, had the usual and customary fiduciary responsibilities of other
incorporated nonprofit organizations. This meant that it was responsible for the budget and financial health of the organization, for compliance with all state and local laws affecting health care facilities and patient care, and for the hiring and firing of the president (i.e., chief executive) of the organization and for the preservation of the organization's mission. In the year following Cronin's appointment, new members were invited to the NHC annual meeting where new members could learn about health policy and health programs as well as the responsibilities of trusteeship.

Launching Strategic Planning at SACC

SACC's compelling mission (Exhibit 2) had originally persuaded Cronin to join the board, and her appointment to the board's new strategic planning committee, which had been meeting for six months, was a natural fit given her interests and expertise in planning. The challenges of national health care reform, she felt, and the growing elderly population made the efforts of the planning committee critical to the mission and sustainability of SACC. In addition to herself, the planning committee consisted of board members Tom Daley, M.D. and Mary Ellen Sanders, both of Metro City; SACC's administrative vice president, Leona Driver, also of Metro City; an out-of-state board member, Sister Maureen Sullivan, from Nebraska; and the committee's consultant, a nationally respected architect based in New York City.

Retaining an architect to plan for SACC's future made sense because its considerable campus offered opportunities for expansion to meet elder care needs for assisted living, nursing, rehabilitation, neighborhood service centers, and independent living cottages. SACC was operating out of an old building but was attractive because it was one of only two Catholic facilities in the city available to an aging Catholic population. SACC's president, Michael Murphy, had hired this particular architect not only to help the planning committee and the board understand what its facility development options might be, but also to assist them in implementing planning outcomes, developing site plans, and negotiating with city officials and neighborhood associations. The planning committee crafted a new vision, re-examined mission and programs, re-defined long term purposes, and finally, described the kind of financial readiness that would be needed for SACC to
position itself competitively in an increasingly chaotic health care environment. In this process the committee became the embodiment of SACC's mission and governance activities.

Several months into the planning effort, Cronin asked if Michael Murphy would be attending the planning meetings. His absence seemed strange because, in her previous experiences as consultant or board member, the planning process had always included the organization's chief executive. In fact the key success factor in effective planning was the active presence and endorsement of the organization's president and its board leadership. SACC's board chair, Sister Mary Catherine, didn't take part in planning, presumably because her out-of-state residence made the additional travel too time-consuming. Soon Cronin voiced her concerns to other committee members: "Strategic planning is the heart and core of leadership and governance," she said. "But where is the president? And where is the chair? We need their input, their vision, and their understanding of SACC's operations to provide important and balanced input to our efforts." Clearly the president's support and vision would be needed, she continued, if the committee's plan was to advance to the next step of suggesting additional facilities and outlining special efforts that would be required to ensure the support of neighborhoods, the city, and potential funders. "Is it poor health that's taken Michael Murphy out of the facility for a period of time?" she pondered out loud. "Do health issues explain the president's absence, or are there other reasons he isn't participating?" Cronin noticed that administrative vice president Leona Driver was uncharacteristically silent during these musings.

As the months went on and the work of the planning committee continued, a number of administrative issues emerged which troubled Cronin and other members of the board. These included standard matters like budget development and approval, board recruitment and re-appointments, fundraising activities, staffing reports, the president's annual evaluation, and ongoing information about structural changes within the NHC. The monthly budget reports indicated declining revenues; personnel reports indicated that there was high absenteeism; board recruitment efforts were not well organized or well thought out; fundraising didn't seem to be occurring in an organized or systematic way; and vacancies in the development office had not been filled. Board members had not been included in the evaluation process for the president, and information from the NHC about
its restructuring and new acquisitions was vague and somehow disquieting. The local sisters of the Holy Order of Caregivers seemed to be restless about what they thought might be a move by the NHC to take over SACC. As Cronin, Sanders, Sister Maureen Sullivan, Daley and other board members began talking among themselves in the parking lot after meetings, each was unclear about who was leading the organization and who was the keeper and coordinator of important functions—including communications—that would enable the board to be clear about what was going on. The board never seemed to hear much from Michael Murphy, and he was usually absent at standing committee meetings. Without becoming micro-managers, how could board members learn what they needed to know in order to meet their responsibilities? How could they assess whether the facility was functioning effectively? Benjamin Mulrooney, chair of the board's finance committee, had said he wasn't happy with the financial reports and was putting in too much time examining the books and developing new reporting procedures. There were new hires after several resignations and it wasn't clear why there were resignations and high absenteeism. Sister Mary Catherine, who was rarely on site except for board meetings, couldn't really monitor all of these things from out of state. Who could the board turn to?

**Issues of Leadership Come to a Head**

In January, 199_, SACC's entire board spent a morning traveling by bus to nearby long-term care centers preparatory to a formal meeting in the afternoon to discuss SACC's future options. There was an air of excitement and confidence about SACC's potential to be on the leading edge of long term care, not just among faith-based care facilities, but among all similar agencies located within the metropolitan area. The planning committee had arranged this day-long event for the board in order to move strategic planning from the conceptual stage to a decision-making stage. The consulting architect had come prepared with drawings and plans as well as a schedule for each alternative. The meeting was the culmination of many months of work by members of the planning committee.

Shortly before the afternoon meeting started, Cronin, now vice chair of the planning committee, distributed sealed envelopes marked "confidential" to other members of the committee and to the board chair, Sister Mary Catherine. Cronin, who had written the confidential memo at the request of the committee, had
telephoned each member in advance to alert them to its contents. The memo asked whether SACC's administrative leadership was prepared to shepherd the organization through a very complex and ambitious planning effort being described and proposed at this meeting. On behalf of the committee she identified a number of concerns: (1) the absence of SACC's president at planning sessions for nearly seven months and the assignment of his administrative vice president to the committee; (2) the failure of the president to provide guidance to the planning committee in spite of repeated requests to articulate priorities, a vision, or opinions; (3) conflicts between the vice president and the president which had disrupted their communications; (4) health problems of the president which frequently interrupted his duties in the agency; and (5) growing absenteeism on the staff as well as rapid turnover in several leadership positions within the organization. The memo implied that members of the planning committee collectively felt uninformed and unsupported by SACC's leadership and were losing confidence in the president's ability to take on whatever outcome might result from the strategic planning process.

The memo was designed to rationalize the need for an executive session of the board to discuss SACC's leadership at a time when the organization was charting an ambitious future. The only person surprised by the memorandum was Sister Mary Catherine, whose residence out of state had prevented her participation in the planning committee. She acceded to the request that she call an executive session to take place that afternoon immediately following the close of the board's regular meeting.

During the executive session, board members discussed their concerns about SACC's president. Was Michael Murphy's absence an issue of health, of delegation, or a matter of not being equal to the task, they asked. Several leadership issues were identified, including the need to examine future options for the organization; to consider the changing nature of administrative talents that might be required if the strategic plan were enacted; and to honor both the contributions and dignity of the current president should his talents not match the changing needs of the care center. As the discussion continued, several members suggested a leadership succession arrangement that would offer a graceful exit for Michael Murphy and assure him of all the benefits to which he was entitled, while at the same time providing a period of time to identify and choose a new leader.
Other members articulated their concern about repositioning SACC for its new challenges without disrupting normal activities. They especially hoped to avoid an upset within the staff over a leadership change. Sister Mary Catherine, who had listened intently but noncommittally throughout the discussion, said she needed time to think. Furthermore she wanted to talk to other members of the Holy Order of Caregivers and the NHC regional vice president who, although he did not typically attend board meetings, was officially the NHC's representative on the SACC board. "I also want to talk with Michael Murphy," she said.

As the executive session was breaking up, members of the SACC senior staff and Michael Murphy were still on-site, observably nervous and tense. Murphy approached Sister Mary Catherine and asked, "Am I fired?"

The National Health Corporation: Becoming a Local Presence

Following the executive session, members of the planning committee continued to meet with the consulting architect and to move forward in the development of an expansion plan for SACC. The committee needed to continue collecting information concerning neighborhood support or opposition, to undertake conversations with the city's zoning and permit officials, and to discuss financing options with the NHC.

After two months without any further word from Sister Mary Catherine regarding the leadership issues raised in executive session, board members were surprised when she called a special board meeting which was to include the new regional vice president of the NHC. Sister Catherine indicated she would not be able to attend, and she did not provide an agenda. This was unusual--both the calling of a special meeting and the lack of an agenda. Perhaps the meeting was just a courtesy--a convenient opportunity to introduce and welcome Robert Sundichter, the new regional vice president appointed as a result of the NHC's most recent administrative shuffle. Sundichter arrived at the meeting with Michael Murphy smiling confidently at his elbow.

Cronin, Daley, Sanders and Sister Maureen Sullivan were angry when they left the "courtesy" meeting and headed to a nearby cafe to vent their frustrations.
What had this meeting been about anyway? Was Robert Sundichter there to posture, to show off his authority and demonstrate his support for the SACC president? Was he there to slap the hands of board members for calling the president's leadership into question at the January meeting? When Sundichter had declared his intentions to monitor the president's administrative goals and objectives and supervise administrative activities, board members had bristled in silence. To cap the meeting off, Sundichter had announced he would be attending future meetings of the planning committee.

"Who's in charge here?" Mary Ellen Sanders demanded. "Doesn't the board have responsibility for supervising the president? Does this new regional vice president have any authority to come in here and supervise the administration of a local facility?" Tom Daley chimed in. "And what authority does the NHC have to assign one of its administrators to a governing committee of a local facility? I don't think Sundichter belongs at our planning committee meetings! What does he know about the local community or what we're up to? Is this NHC imperialism or is this guy just a jerk?"

For the next two months the consulting architect sent materials back and forth to the planning committee and Michael Murphy. Implementation was under way and meetings were being scheduled with Metro City planning officials. The consulting architect continued to provide updates for drawings, financing, and the schedule. He and the planning committee urged SACC's senior staff to meet with other local health facilities and to explore strategic alliances with other kinds of organizations as well. Since the health care field was changing so rapidly it was important to know what options might be available besides trying to go it alone. No certainties existed, SACC's board found; traditional care and insurance programs were in constant flux, and players were jockeying for position based on the best guesses of the moment. The language of mergers and consolidations, acquisitions and expansions, capitation and managed care, panel approvals, and reimbursement policies and procedures was bandied about in the crossfire of the latest media predictions about who the players were—who was in and who was out—and what the stakes would be for systems and clients.

At the same time, SACC was approaching the end of its fiscal year. At the regular board meeting in June, planning committee members were uneasy about
what they perceived as a lack of staff progress on the strategic plan. And they continued to be unhappy that Sundichter was almost a full-time presence--and perceived authority--at the facility. "Perhaps the executive committee is on top of this," Cronin remarked as she walked down the hall with Mary Ellen Sanders during a break. "I don't know," Sanders mused, "but this is the final meeting of the budget year and we have huge decisions to make for next year regarding the strategic plan. And I don't see that the agenda addresses those decisions in any kind of reflective way. By the way, Siobhan, have you seen the budget for next year? It wasn't in my board packet." "It wasn't in mine either," Cronin replied. "I thought we had to approve the budget before the end of June, and I don't see that there's another possibility to review it and vote on it before the end of the month when it's due at the NHC!"

When Cronin and Sanders returned to the boardroom, the meeting was called to order and Benjamin Mulrooney, chair of the finance committee, was asked to report on the next year's budget. Mulrooney reported that the finance committee had received the proposed budget just a few days before and had not had a chance to review it or make a recommendation. While Mulrooney was talking, Herman Dutch, SAAC's chief financial officer, passed the budget document out to the rest of the board members. Mulrooney asked the CFO to discuss the budget and how the board was going to approve it in time to meet the June deadline. Dutch responded that there was no problem with the schedule because he had already forwarded the draft budget document to the NHC. Then he added, "The board, however, still needs to vote on it." Mulrooney winced and asked the CFO, "Herman, do you mean that the proposed budget has already been forwarded to the NHC? The board hasn't even seen this budget, the finance committee hasn't had time to approve it, and there's no time for a full discussion in order to take a thoughtful vote on this document!

Robert Sundichter intervened in a moment of noisy shuffling and murmuring in the room. "The NHC," he said, "has the final word on the budget; all the SACC board has to do is vote on it. The NHC has to give it a full review anyhow and Herman Dutch has already been in touch with our finance people and briefed them about it."
Somewhat aghast, Siobhan Cronin retorted, "I'm sorry, but it's impossible for me to review a budget document that I've just received. I can't assess it adequately to know whether or not it makes sense. And I wouldn't feel comfortable voting on it until it receives a full review by the finance committee and they have made a recommendation for its approval. This is standard policy practice! If you must call for a vote, I abstain!"

Who's Watching the Hen House?

At the first autumn meeting, the NHC's presence in the boardroom in the person of Robert Sundichter was still cause for unease. Although the budget had been passed at the June meeting, notwithstanding Cronin's abstention, some members continued to be upset by processes whereby the NHC seemed to be undermining the local board's authority. But why was the mother house of the Holy Order of Caregivers not intervening? Weren't they really in charge as a participating member of the NHC and the owner of eight facilities? To add to this confusion and consternation of board members, there was a rash of other unsettling news. The first concerned a follow-up to the August annual meeting, when Sister Mary Catherine had announced that the terms of Mary Ellen Sanders and Tom Daley would not be renewed. These two were key members of the five person planning committee that had been working together for 18 months. They, together with Sister Mary Catherine, had completed two full terms and, according to SACC bylaws, should remain off the board for at least one year before reappointment. In a letter to the Holy Order of Caregivers and to the NHC, SACC's nominating committee reported that SACC's board had unanimously voted and requested that exceptions be made for an additional year of service so that these three members could continue their work at a critical time of decision-making.

Neither Daley's nor Sander's term was renewed, but Sister Mary Catherine was reappointed as chair for one year. On behalf of the NHC Robert Sundichter explained that exceptions had never been made and that to do so would be setting a precedent the NHC was not willing to live with. However, since Sister Mary Catherine was board chair, an exception could be made in her case for one additional year. Siobhan Cronin and Sister Maureen Sullivan were stunned by the
news. Negotiations with the local authorities were heating up and member continuity on the planning committee was integral to moving the planning process forward smoothly. Sundichter spoke up again and assured everyone that he would continue on the planning committee. But why was a regional vice president of NHC, an national administrator, sitting on a local planning committee, Cronin wondered. All the other committee members, with the exception of Leona Driver of the SACC staff, were from the SACC board.

There was more bad news. Prior to the June meeting some board members had heard hallway scuttlebutt from the staff that SACC had failed a state audit of patient care services. Murmurings spread through the board until Benjamin Mulrooney, chair of the board's finance committee, asked formally, "Is it true that we received a negative state audit in patient care?" Sister Mary Catherine answered, "Yes, we did, but we are taking care of it." Siobhan Cronin asked, "Why weren't members of the board informed of this? Isn't it our governing responsibility to know and to take action?" Jack Grant, vice chair of the board and member of the executive committee replied, "The executive committee did know about the audit and was taking steps to ensure there were systems and procedures in place to redress issues raised in the audit."

"All the same," Sister Maureen added, "it seems this is an important issue for us as a board to address, particularly in light of the financials which aren't looking so healthy these days. Is there any relation between the audit of patient services and the financial statements?" At this point CFO Herman took the floor. "Well, the high expenses can be partly explained by reduced bed reimbursements by the state," he said, "and we have had fairly high absenteeism, which means we have to hire temporary replacements, and those expenses drive up our costs. Our expenses go down significantly when we hire fewer temporary replacements for regular staff." When Sanders responded, "Then temporary help might explain both high costs and a negative review?" Michael Murphy replied, "That might explain it in part. But we've got things under control now, especially with the hiring of a new Vice President of Nursing. I'd like to introduce Nancy Bottemiller who has recently joined us from Arizona. She will have more to say later."

Following the meeting, disgruntled board members gathered in the parking lot to talk over once again the meaning of the events of the past few months.
What was going on? Who was in charge anyway? Who was making decisions? The Holy Order of Caregivers? the NHC? And by what authority?

With Sadness and Regret.....

In December, 199_, after two more months of confusion about who was in charge, continued evasions concerning SACC's financials, and a lack of responsiveness to questions about authority levels and responsibilities, Siobhan Cronin submitted her letter of resignation. (Exhibit 3)

Epilogue

In the following year Michael Murphy was asked to resign as president of SACC. The agency continued to work with the New York architect on the development of the campus. The NHC merged with another major health care conglomerate. Sister Mary Catherine finished her term as chair, and SACC's administrative vice president, Leona Driver, accepted a new position at another health care facility. A new president was recruited and shortly after her appointment telephoned Siobhan Cronin for lunch. "I came across your letter of resignation in the board files and am curious about the circumstances around it. Would you tell me? And by the way, the NHC and the Holy Order of Caregivers have decided to convert the local board from a governing board to an advisory board. What do you think?"

Some months after her lunch with the new president, Cronin got around to clearing out the drawer full of papers and notebooks she had accumulated during her service on the SACC board. At the back of the drawer she came upon the packet of materials that had been the sum and substance of the SACC board's orientation program. Might these documents—whose existence she had forgotten—hold some explanation for the authority confusion experienced with the local board, the NHC, and the Holy Order of Caregivers? She sat down on the sofa and began looking systematically through the mailing. (Exhibits 4, 5, 6, 7, and 8).
Questions for Discussion

1. The case is entitled "Authority Dilemmas on a Board in a Multi-Tiered Governance Structure." Identify and describe these authority dilemmas, providing evidence for your answers.

2. Are authority issues the only ones in this case? Identify and explain other issues and why you find them to be of concern. What would you do about resolving them?

3. Based on the case and the accompanying exhibits, what do you see as the differences in power and authority among the various organizational structures and tiers? Does the evidence support Siobhan Cronin's interpretation and frustration? Why or why not?

4. What is an appropriate role for SACC's board based on the facts of this case?

5. What do you see as challenges and implications for boards facing multi-tiered governance structures like the one described in this case? What kinds of strategies would you use to overcome or avoid the conflicts described in this case?
### Board Members by Occupation and Religious Affiliation

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<tr>
<th>Name</th>
<th>Occupation</th>
<th>Religious Affiliation</th>
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<tbody>
<tr>
<td>Jacqueline Washington</td>
<td>Attorney</td>
<td>?</td>
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<tr>
<td>Sister Maureen Sullivan, R.S.M.</td>
<td>Regional Coordinator, St. Jude's Housing Center</td>
<td>Roman Catholic</td>
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<tr>
<td>Sister Mary Catherine, R.S.M., Board Chairperson</td>
<td>Associate Director, Holy Order of Caregivers</td>
<td>Roman Catholic</td>
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<tr>
<td>Siobhan Cronin, Ph.D.</td>
<td>Consultant</td>
<td>Roman Catholic</td>
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<tr>
<td>Pauline Walker, M.S.W.</td>
<td>Executive Director, St. Francis Eldercare</td>
<td>Roman Catholic</td>
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<tr>
<td>Jack Grant</td>
<td>Attorney</td>
<td>Roman Catholic</td>
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<td>Patrick Flynn</td>
<td>Attorney</td>
<td>Roman Catholic</td>
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<tr>
<td>Tom Daley, M.D.</td>
<td>Chief, Dept. of Medicine, St. Vincent's Regional Medical Center</td>
<td>Episcopalian</td>
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<tr>
<td>Patricia Connolly, R.N., B.S.N., O.C.N., (J.R.)</td>
<td>Metro Home Health</td>
<td>Roman Catholic</td>
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<tr>
<td>Mary Ellen Sanders</td>
<td>Director of Planning, Metro District Commission</td>
<td>Roman Catholic</td>
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<tr>
<td>Benjamin Mulrooney</td>
<td>Financial Planner</td>
<td>Roman Catholic</td>
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Mission and Philosophy

Our Mission

St. Aloysius Care Center is sponsored by the Holy Order of Caregivers of Metro City, Midwestern State. The Mission of St. Aloysius Care Center witnesses to the Gospel message, the example of the Foundress of the Holy Order of Caregivers, Loretta MacKensie, and a long Caregivers tradition of service to persons in need of long term health care in the Metro City area. The Holy Order of Caregivers and Staff of St. Aloysius Care Center are committed to excellence, and to compassionate, loving care as we continue to creatively respond to the emerging needs of the elderly and the community.

Our Philosophy

We respect the uniqueness of each person and strive to provide compassionate care which preserves dignity and self-worth.

We encourage growth and development by providing opportunities for spiritual, psychosocial, intellectual, and physical enrichment.

We create an environment that maximizes the richness in the final stages of life, allowing for preparation for death as a natural part of life. We commit ourselves to make a difference in how people age and die...curing when possible, caring always.

We strive for excellence in a Christian healthcare environment, working as a team with love, trust and confidence, recognizing the importance of each person's contribution.

We extend hospitality to all with whom we work in partnership for the good of the resident.

We honor our heritage which includes a commitment to the materially poor. We accept our fiscal responsibilities as well as seek new sources of support for our ministry.
Dear Sister Mary Catherine:

It is with sadness and regret that I find it necessary to resign my position on the board of directors of St. Aloysius Care Center. There were several considerations leading to this difficult decision. The most prominent of these has to do with the governance issue and the fiduciary responsibilities of members of the board. I have shared my concerns at board meetings, in writing and over the telephone for nearly a year—beginning just prior to our strategic planning retreat in January of 199_.

At that time I expressed serious concern about the leadership of St. Aloysius and the critical importance of visionary and responsible management that could position the organization for the challenges it is facing in a managed care environment. I also registered my concerns about related issues concerning the ambiguity about the role in authority of members of the St. Aloysius board vis a vis those of the National Health Council; that is, who is in charge? What is our role in authority to make decisions? What is our responsibility for our decisions—is it fiduciary or not? We have had mixed and incomplete responses, especially from the NHC. And that situation has been exacerbated in the handling of the Executive’s leaving the facility, the appointment of a new interim Executive, and the conduct of facility matters over the last several months. Part of this seems to result from a lack of regular and timely communication of information to board members concerning St. Aloysius—its budget, leadership and planning issues, patient care reports, and governance. This is problematic because it not only makes it difficult to be a responsible board member exercising the board’s legitimate authority but also because staff are seemingly confused about who is in charge as well.

While the governance and fiduciary issues may be less acutely felt by other members of the board, this is a primary area of my professional practice. Governance is at the heart of the long term viability of the organization and the facility and is particularly critical during a period of active engagement in strategic planning at the same time as St. Aloysius is facing serious budgetary issues. All of these matters require diligence and attention—attention that I can no longer provide. My ability to continue to play a supportive, responsible and effective role as a board member is compromised under these circumstances.

With all of this said, however, I am grateful for the opportunity to have served St. Aloysius and continue to be committed to its very important mission. I have great affection and respect for you and other members of the board and deeply regret that this confluence of circumstances makes it necessary to resign.

Cordially,
Sioibhan
Exhibit 4
Restated Articles of Incorporation

Excerpts from
RESTATED ARTICLES OF INCORPORATION
The Holy Order of Caregivers of [State]

Pursuant to the provisions of .... the [State] Nonprofit Corporation Act (the “Act”), the undersigned corporation hereby executes the following Restated Articles of Incorporation.

ARTICLE I
Name and Office

Section 1. The name of this Corporation shall be ST. ALOYSIUS CARE CENTER....

ARTICLE II
Not-for-Profit Public Benefit Corporation

This corporation is not organized for profit and is a corporation organized and operated exclusively for benevolent, religious, educational, scientific and other charitable purposes. No part of the accumulations, gains, profits or net earnings shall inure to the benefit of any member, person or individual except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and reimburse reasonable expenses incurred. No substantial part of the activities of this Corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, and this Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office or in any activity contrary to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954 as originally in effect or as subsequently amended (the “Code”).

This Corporation is a public benefit corporation.

ARTICLE IV
Objects and Purposes

The objects and purposes of this Corporation shall be:

Section 1. The operation and management of the affairs, property, business and activities of St. Aloysius Care Center, an [State] non-profit corporation, and as such shall be duly benevolent, beneficial, educational, charitable, religious and scientific; and shall be to provide resident care. Its operation shall be conducted in such a manner as to support the healing mission of the Roman Catholic Church and the purposes of the Health System of the Holy Order of Caregivers, a [state] non-profit corporation, and shall be operated in compliance with the objectives of the Holy Order of Caregivers in the United States of America, Province of ________, a religious institute of the Roman
Exhibit 4
Restated Articles of Incorporation

Catholic Church. St. Aloysius Care Center will not admit any patient for the purpose of, or otherwise permit the performance of, any direct euthanasia or any other medical services or procedures in conflict with the officially adopted policies of this Corporation and the moral teachings of the Roman Catholic Church.

ARTICLE V
Powers

Section 4. The corporate powers, to the extent that such powers are reserved to the Health System of the Holy Order of Caregivers (the Member) as specially set forth in Article VI, shall be reserved and apply to all levels, holding companies, operating corporations, subsidiaries, affiliated and otherwise related entities, corporations, organizations or associations under the control of this Corporation.

ARTICLE VI
Membership

Section 1. This Corporation shall have only one member, and the sole member of this Corporation shall be the Health System of the Holy Order of Caregivers (the “Member”).

Section 2. The Member shall have all rights specified in these Articles of Incorporation and in the Bylaws of this Corporation, including:

(a) The sole right to approve any proposed amendment, revision, alteration or repeal of the Articles of Incorporation or of the Bylaws of this Corporation;

(b) The right to approve or disapprove establishment of, or amendment of, the operating philosophy and purpose of this Corporation;

(c) The power to elect, remove (with or without cause) or replace members of the Board of Directors of this Corporation; such power shall be exclusive except for automatic removal for failure to meet attendance requirements;

(d) The sole power to appoint the President of this Corporation and the power to direct the Board to remove the President;

(e) The sole right to approve any proposed sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, of this Corporation’s assets;
Exhibit 4
Restated Articles of Incorporation

(f) The sole right to approve any proposed merger or consolidation of this Corporation into or with any other corporation, organization or association, and the plan for dissolution or other wrapping up of the affairs of this Corporation; and

(g) The sole right to approve any proposed incorporation or establishment of other new affiliated entities, organizations or associations by this Corporation. The organizational documents of any such additional entities shall contain a reservation of rights to the Health System of the Holy Order of Caregivers comparable to this Article VI as a condition of approval.

ARTICLE VII
Board of Directors

The business and affairs of this Corporation shall be managed by a Board of Directors consisting of not less than three (3) individuals elected by the Member, the precise number of whom shall be determined in accordance with the officially adopted Bylaws of this Corporation.
Exhibit 5
Restated Bylaws

Excerpts from
RESTATED BYLAWS
for
Saint Aloysius Care Center
a [State] nonprofit corporation

ARTICLE II
Member

Section 1: Identity. The member of this Corporation shall be the nonprofit
corporation organized and presently existing pursuant to the laws of the state of
[State] under the name Health System of the Holy Order of Caregivers (the
"Member"), and shall have all powers and authority in relation to this
Corporation as are provided by the laws of the state of [State], the Articles of
Incorporation of this Corporation (the "Articles") and these Bylaws.

Section 6: Member Rights and Powers. Without limiting the provisions of
section 1 of this Article, the Member shall have:

(a) The sole right to approve any proposed amendment,
revision, alteration or repeal of the Articles of Incorporation
of this Corporation or of these Bylaws;

(b) The right to approve or disapprove establishment of, or
amendment of, the operating philosophy and purpose of this
Corporation;

(c) The power to elect, remove (with or without cause) or replace
members of the Board of Directors of this Corporation; such
power shall be exclusive except for automatic removal for
failure to meet attendance requirements;

(d) The sole power to appoint the President of this Corporation
and the power to direct the board to remove the President;

(e) The sole right to approve any proposed sale, lease, exchange,
mortgage, pledge or other disposition of all, or substantially
all, of this Corporation’s assets;

(f) The sole right to approve any proposed merger or
consolidation of this Corporation into or with any other
corporation, organization or association, and the plan for
dissolution or other wrapping up of the affairs of this
Corporation; and
(g) The sole right to approve any proposed incorporation or establishment of other new affiliated entities, organizations or associations by this Corporation. The organizational documents of any such additional entities shall contain a reservation of rights to the Health System of the Holy Order of Caregivers comparable to this Section 6 as a condition of approval.

ARTICLE III
Board of Directors

Section 1; Powers, Composition and Term.

(a) Subject to the powers reserved to the Member and the restrictions imposed by the Articles, these Bylaws or law, the affairs of this Corporation shall be managed under the authority of the Board of Directors.

(b) The Board shall exercise its powers consistent with the stated philosophy and objectives of the Holy Order of Caregivers in the United States of America, Province of _______, a religious institute of the Roman Catholic Church (the “Holy Order of Caregivers, Province of _______” and the canon laws of the Roman Catholic Church. The Member may designate one or more members of the Board to coordinate the operations of this Corporation with the philosophy and objectives of the Member and with the healing mission of the Holy Order of Caregivers, Province of _______.

(c) The Board of Directors shall consist of not less than five (5) nor more than ten (10) individuals (“Directors” severally or “Director” individually). One of more Directors shall be members of the Holy Order of Caregivers, Province of _______. The size of the Board within the stated parameters shall be specified by resolution of the Board from time to time, provided no decrease in Board size shall have the effect of decreasing the term of any existing Director. Only the Member may change the size parameters of the Board or create a fixed-size Board.

(d) The board shall be divided into three groups of approximately the same size to the extent the number of Directors is divisible by three (3). The separate classes shall serve staggered three (3)-year terms, with the term of one class expiring each year. No Director shall serve for a period of more than six (6) consecutive terms.
Section 3: Nominations for the Board. The Nominating Committee of the Board of Directors shall present a slate of nominees for Director, together with the credentials of such nominees, to the Board of Directors. From this slate of nominees, the Board of Directors shall make recommendations to the Member for its selection. Nominees to the Board of Directors shall meet criteria for Board membership adopted by the Member. The Member may accept or reject any nominee, call for the recommendation of one or more other nominees, or nominate and elect other individuals not recommended by the Board of Directors.

Section 4: Removal of Director. Removal of a Director by action at a meeting of the Member shall occur only if the meeting is called for that purpose among others, with notice stating that the purpose of the meeting includes removal of the Director.

Section 5: Board Vacancies. In the event a vacancy occurs on the Board of Directors, only the Member shall fill the vacancy, choosing from individuals it has independently identified or from such individuals as may be recommended to the Member by the remaining members of the Board of Directors. Any Director so elected shall remain a Director for the duration of his or her predecessor's unexpired term and may be reappointed if consistent with provisions of this Article III.

Section 7: Board Meetings. Meetings of the Board of Directors may be held within or without the state of __________. Unless otherwise stated in a notice of any meeting, all meetings shall be held at the principal office of this Corporation.

(d) Dissent by a Director. A Director present at a meeting of the Board or one of its committees when corporate action is taken is deemed to have assented to that action unless the Director did not vote in favor of the action and either: (i) the Director has objected to the holding of the meeting or transaction of business as provided above; (ii) the Director’s dissent or abstention from the action is entered in the minutes; or (iii) the Director delivers written notice of dissent or abstention to the presiding officer before adjournment or to this Corporation immediately thereafter.

Section 9: Reports. The Board of Directors, for the annual meeting and such further intervals as determined by the Member, shall prepare and submit, for review by the Member: (a) a report on the professional, financial and sponsorship activities of this Corporation, including an evaluation of the board's duties and performance; (b) statements of the operating and capital budgets of this Corporation; and (c) the long range plans and objectives of this Corporation.
Exhibit 5
Restated Bylaws

ARTICLE IV
Committees of the Board of Directors

Section 3: Nominating Committee. A nominating Committee shall consist of two (2) individuals appointed by the Member and three (3) currently serving Directors of the Board appointed by the Chairperson of the Board. Nominating Committee members shall be appointed for a two (2) year term and may be reappointed. The Nominating Committee shall have the duties of presenting a slate of nominees to the Board of Directors for consideration, of providing for evaluation of the Board’s performance, and of ensuring the provision of educational opportunities for the Board. The Nominating Committee shall consider persons for directorship according to the criteria for Board membership adopted by the Member.

Section 4: Committee of the Whole. The Board of Directors, acting as a standing committee of the whole, shall perform all functions not assigned to other appointed standing or special committees. Activities performed by the committee of the whole, unless otherwise assigned, shall include:

(a) To determine this Corporation’s objectives and major policies in accord with the objectives, philosophy and mission of the Holy Order of Caregivers, Province of ________, subject to Member approval as provided by the Articles;

(b) To assure that major plans and programs are in writing and designed to meet objectives in the areas of management, health promotion/disease prevention, education, research, human resources and community services;

(c) To establish suitable mechanisms for conducting the business of the Board;

(d) To make provision for a physical plant equipped to carry out the programs of service;

(e) To approve corporate organization and major authority delegation patterns;

(f) To approve a written job description outlining qualifications, authority and duties of the President;

(g) To approve rate structures and budgets, and provide for long-range financial stability and continuing development;

(h) To make major nursing home policy decisions;
Exhibit 5
Restated Bylaws

(i) To safeguard nursing home assets and arrange for proper investment of all funds; to provide an adequate insurance program and an annual certified audit;

(j) To periodically analyze and evaluate the total nursing home operation in relation to its objectives of service and accrediting and licensing bodies and other agencies;

(k) To approve and disseminate the annual report;

(l) To establish proper liaison with government and other agencies in order to assure coordination of nursing home services with those of other health care facilities and related community resources; and

(m) To promote board effectiveness by providing ongoing evaluation and continuing education activities.

ARTICLE V
Officers

Section 1: Selection. The Officers of this Corporation shall be a President, a Secretary and a Treasurer and such other or subordinate Officers as may be prescribed by the Board of Directors. Each Officer except the President shall be appointed for a term of one (1) year and each Officer shall serve until his or her successor is duly appointed unless removed as provided in these Bylaws. The President candidate will be selected according to the process adopted by the Member, including consultation with the Provincial Administrative Team of the Holy Order of Caregivers, Province of ________, and the Board of Directors. Notwithstanding this power retained by the Member as to the President, the President shall be directly accountable to the Board of Directors for his/her supervision and administration of the day-to-day operations of this Corporation. All other Officers of this Corporation shall be appointed by the Board of Directors. The President shall not be a member of the Board of Directors.

Section 2: Removal. Any Officer may be removed at any time, for cause or without cause, by an affirmative vote of two-thirds (2/3) of all members of the Board of Directors. Provided, however, that the President may be removed by the Board only at the direction of the Member following full consultation with the Board of Directors and the Provincial Administrative Team of the Holy Order of Caregivers, Province of ________.

Section 3: Vacancy. If a vacancy occurs in the Office of President, a new President shall be appointed by the Member in the manner specified in Section 1 of this Article. In the event a vacancy occurs in any other office, the Board of Directors shall appoint, at a regular or special meeting of the Board of Directors, a person to succeed to such office for the remainder of that term.
Section 4: Duties of the President. The President shall be the chief executive officer of this Corporation and shall have the authority and responsibility necessary to operate the business of this Corporation in all its day-to-day activities, subject to such policies as may be adopted, and such orders as may be issued, by the Board of Directors. The President shall carry out those duties usually incident to the office of President. The President shall execute all documents on behalf of this Corporation unless the Board of Directors has generally or specifically delegated the authority to execute the document in question to another Officer or employee of this Corporation. The President shall prescribe and assign additional duties to all subordinate Officers.

Section 5: Duties of Vice President. The Vice President, if one has been appointed, shall act as president in the absence or disability of the President, and, when so acting, shall have the power and authority of the President. The Vice President shall carry out all duties delegated to him or her by the President.

ARTICLE VIII
Amendment of Bylaws

These Bylaws may be amended by the Member at any meeting, provided that a full presentation of such proposed amendments shall have been included in the notice calling the meeting or in materials soliciting action without a meeting. These Bylaws shall be reviewed at least biannually by the Board of Directors, which may make recommendations to the Member concerning amendment of them.
Exhibit 6
NHC's Guidelines for Facility Governance

Excerpts from
for the
Board of Directors of St. Aloysius Care Center *

Health care facilities sponsored by the Holy Order of Caregivers have a
dual identity. They exist under civil law as a single corporation and under canon
law as an incorporated apostolate. The Holy Order of Caregivers, Province of
__________, and all of its incorporated apostolates are one totality under canon
law, even though they will exist as separate entities under civil law. This
duality dictates specific governance responsibilities....

The National Health Corporation is a partnership of religious orders
formed to strengthen the Catholic health care ministry, explore innovative
directions to modern health care, and preserve the precious heritage of service
found in the Catholic health care institutions.... There are currently 70 health
facilities (including St. Aloysius) affiliated with the National Health Corporation
by eight religious institutes (including the Holy Order of Caregivers, ________
Province)....

Although each religious institute is a corporate member of National
Health Corporation and retains all the reserved powers as noted in National
Health Corporation's by-laws, each maintains its own direct corporate
relationship with its health and social service facilities and there is no mingling
of assets. National Health Corporation is delegated stewardship and its
Affiliation Agreement and 'Governance Decision Flow Chart.' The Agreement is
the uniting and bonding element between National Health Corporation and each
of the affiliated corporations as an extension of the religious institute's ministry.
These rights and obligations are based in the belief that our shared
responsibility for mission is best served by means of collaboration and open,
trusting communication. They include:

- Review of financial and statistical performance on a regular basis and
  reference of issues to local management and board for timely response.

- Periodic assessments of employee relations, quality of services and the
  atmosphere of the facility; local management and National Health
  Corporation response to issues which may arise as a result of the
  assessment.

* The Director's Handbook, National Health Corporation, is cited in the Guidelines as the original source of this
information.
Exhibit 6

NHC's Guidelines for Facility Governance

- Examination of issues in the areas of sponsorship, finance, statistical performance, employee relations and planning which may arise from regular visits or review of documents; local management works with National Health Corporation to resolve the issue.

- Review and provide input to strategic directions, resolving issues by cooperating with local management and board.

- Report to the religious institute concerns and issues which threaten their mission.

- Account to the religious institute periodically (normally four times a year) on our stewardship of their resources and mission.
CANONICAL REQUIREMENTS RELATING TO
CIVIL LAW CORPORATIONS

Canon (rule) 1284 of the 1983 Code of Canon Law, Book V, of the Roman Catholic Church, imposes nine specific duties that are required of all canonical stewards (religious superior and council).

1. To take care that no property is in any way lost or damaged.
   - Maintaining adequate insurance coverage.

2. To see that the ownership of property is protected through civility [sic] valid methods.
   - Ensuring legal title to property is properly registered.
   - Seeing that all sponsored institutional apostolates have the correct civil law structure.
   - Maintain, through proper corporate structures, civil law authority to carry out canonical obligations in the affairs of the corporation.

3. To observe the requirements of canon and civil law. Canonical stewards are responsible for all activities even when carried on by a separate civil law corporation.

4. To collect accurately any income generated by property as such income is due and to safeguard such income or, if necessary, to spend it in accordance with canon law and apostolic purposes.

5. To pay all loans or mortgages on time, both principal and interest. To initiate only such loans or mortgages that can be met.

6. To invest profitably excess funds beyond those required to meet expenses.

7. To keep well-ordered books on receipts and expenditures.

8. To prepare yearly reports on their administration.

9. To arrange and keep in a safe place all legal documents that confer property rights.

These nine duties specify normal, prudent business practices that should be met by the persons actually operating the corporation. Due to their canonical relationship, however, certain safeguards are contained in the local corporation's Articles of Incorporation and Bylaws and/or maintained through National Health Corporation Stewardship policies.
Exhibit 8
NHC Stewardship Report

Excerpt from

NATIONAL HEALTH CORPORATION
199_STEWARDSHIP REPORT TO THE MEMBERS

Strategy 13  --  Greater clarity regarding the relationships among and roles of local boards, the NHC board, and the Members [of the NHC] will be developed.

Continued planning toward the greater integration of local boards into the function of NHC took place during the past year. Progress toward that goal was limited because most of the time the senior management was absorbed in bringing about the addition of the twelve new facilities. Several trips were taken to participate in board meetings and address issues requiring greater communication between NHC and local boards. In general, greater understanding is developing regarding our mutual role, however, the more complex local problems become, the more difficult division of responsibility becomes. Pressure for fast action and the threat of new arrangements to Catholic sponsorship add to the dilemma. New communication tools were developed to help explain the division of responsibility within NHC, but it is acknowledged that more discussion needs to take place.

...The NHC orientation program continues to attract new board members and it is the intent of NHC to continue conducting an NHC orientation at the spring conference.
Bibliography


Provides extensive explanations distinguishing board and administrative roles. Description of board’s policy responsibilities useful in interpreting tensions about who should do what in SACC case.


Good but traditional overview of duties and responsibilities of nonprofit boards. Also explains how to prepare bylaws and agency policies.


Describes governing boards as embedded in larger social/cultural communities which significantly affect how governance roles are enacted by individual members and the board as a collective. Suggests that cultural norms outside the organizational context best explain why boards and members behave the way they do.


As a source of alternative interpretations of, and solutions to, complex organizational problems, proposes institutional analysis rather than the traditional rational approach. Uses case studies, including an abbreviated SACC case, to explicate the five principal dimensions of institutional analysis.


In contrast to traditional top-down hierarchical models of governance, defines the separate roles of the chief executive and the board as a partnership. Explores ambiguity of the policy-administration continuum and advocates negotiation of roles
between board and chief executive. Based on analysis of 100 "effective" nonprofit agencies.


Conceives of nonprofit organizations as embedded in their communities and suggests that they are better understood--and would be more effectively managed and led--if seen as instrumentalities of community and cultural forces.


Not specifically addressed to boards but a classic describing multiple types of power in organizations. Shows how power is exercised to obtain resources or other kinds of preferred outcomes where there is confusion or uncertainty about roles and authority.


One of the classics on the importance of organizational culture in understanding organizational leadership and behavior.


Advocates a systems approach to understanding complex and dynamic organizations. Proposes that an understanding of relationships and interdependency patterns better explains complex situations than the traditional rational linear model which achieves interpretation through accumulation and analysis of observable facts and events.


Offers an alternative to traditional approaches to meaning-making in organizations. Suggests that paying attention to people, behaviors, and events for plausibility rather than accuracy might provide better understandings of organizations. See chapters 1 and 2.