
ONTARIO HOSPITAL ASSOCIATION TORONTO

MAY 27, 2013

FINANCIAL ACCOUNTABILITY AND INTERNAL CONTROLS

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	Ontario Hospital Association Toronto – May 27, 2013
Financial Accountability and Internal Controls	
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A. INTRODUCTION
<ul style="list-style-type: none">• Hospital foundations have a fiduciary duty with regards to the funds that they raise and hold• This fiduciary duty demands that there be financial accountability• In turn, financial accountability necessitates that there be appropriate internal controls in place• Some of the most significant areas for financial accountability for foundations involve structuring and managing restricted gifts, as well as investment of foundation funds• This panel discussion will look at both of these, including related governance issues where appropriate
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B. STRUCTURING RESTRICTED GIFTS
1. Distinguishing Restricted Gifts from Unrestricted Gifts
<ul style="list-style-type: none">• What is the nature of an unrestricted gift?• What is the nature of a restricted gift?
2. Different Types of Restricted Gifts
a) Restricted charitable purpose trusts <ul style="list-style-type: none">– Long term gifts, including endowments– Restricted use gifts– Restricted charitable trust property– Implied special purpose charitable trust funds
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- b) Conditional gifts
- c) Precatory trusts and donor advised funds
- d) Specific issues concerning endowed funds
 - Confusing terminology
 - What does "endowment" really mean
 - Ability to encroach on capital
 - Description of restricted use of income
 - Ability to vary terms of endowment
 - Minimum contribution thresholds
 - Ability to deduct administrative expenses
 - Investment income v. total return
 - Investment power
 - Disbursement policy and reinvestment of income

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C. MANAGING RESTRICTED FUNDS

1. Managing Existing Restricted Gifts

- Locate original restricted gift documentation
- Determine compliance with applicable restrictions
- Inform board of directors concerning the terms of the restricted gifts
- Where there has been non-compliance, seek legal advice

2. Managing Newly Received Restricted Gifts

- Conduct initial review of gift documentation to determine applicable restrictions
- Ensuring the ability of the foundation to comply with restrictions
- Ensure proper deposit of restricted gifts with the correct recipient

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3. Commingling Restricted Gifts

- Common law rule prohibiting commingling
- Understanding what the *Charities Accounting Act* permits concerning commingling

4. Investment of Restricted Funds

- Identify the applicable investment power
- Co-ordinate with investment policy of the foundation (see below)

5. Governance Issues:

- The board needs to maintain active involvement with regards to restricted funds
- Board members need to be aware of personal exposure to liability
- An applicable board committee should have oversight over management of restricted funds

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D. INVESTING FOUNDATION FUNDS

1. Determining Which Investment Power Applies

- Need to look at letters patent or supplementary letters patent of the foundation
- If the letters patent are silent, then by default, the *Trustees Act of Ontario* will apply

2. Requirements for a General Investment Policy

- General Investment Policy needs to reflect the requirement of the foundation under the *Trustees Act* as opposed to what a financial institution may propose

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- Need to explain the applicable law concerning investing charitable property as a reference point for board and committee members
- e.g.:
 - Prudent investor standard
 - The ability to invest in mutual funds
 - The seven mandatory investment criteria
 - The need to diversify investments
 - The requirements for commingling of restricted funds
- Since each fund will require a different investment approach, there will need to be specific investment policies for each fund that builds on the general investment policy

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3. Requirements for Delegation of Investment Decision Making

- Requires an “agency agreement” under the *Trustees Act*
- Requires an investment policy in order to reference investment requirements under the *Trustees Act*
- The choice of investment manager needs to be carefully considered and monitored “with prudence”
- The investment manager remains responsible for the funds invested, and as such the general investment policy needs to require the investment manager to indemnify the charity, not the other way around


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4. Role of Finance Committee

- Finance Committee should be established to oversee investments of the Foundation
- Role of Investment Committee can reflect any of the following:
 - Advise the board on investment decision making;
 - Undertake investment decision making on behalf of the board upon delegated authority of the board; and
 - Monitor the role of the investment manager where investment decision making has been delegated to an investment manager
- The finance committee should provide regular reports back to the full board because of the liability faced by all board members for investments
- The make-up of the finance committee should include a majority of the board members

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