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1st Quarter 2014
Open Door Session with Melanie Herman

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1st Quarter Webinar Topics

- Codes of Conduct
- Social Media and the Law
- Risk Oversight
- Questions about these... or other risk topics?

How are Codes of Conduct most often used in nonprofits?

- **Responding to inappropriate action or behaviors**
 - > Alternative to targeted discipline
- **Codifying accountability protocols**
 - > If this, then that
- **Expressing desired minimum standards**
 - > Supporting tool for accreditation, licensing
- **Signaling goals or aspirations**
 - > We want our staff to behave this way



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What Makes a Code of Conduct "work"?

Staff:

- Real risk of being fired (or punished) if you violate the code
- Perception that chances of being caught (and held accountable) are high
- Consistent adherence by the leaders of the organization



What Makes a Code of Conduct "work"?

Participants:

- Real risk of being suspended or deemed ineligible
- Perception that chances of being caught (and held accountable) are high
- Consistent application of the code – it applies to everyone and no one is above the rules



Volunteers:

- Pride
- Desire to fit in, perform at a high level, and contribute to a team

Common Challenges

- Inconsistent policies
- Overly complex policies or requirements
- Inconsistent enforcement of policies
- Lack of "common sense"



Code of Conduct Best Practices

- Timed appropriately
- Perfectly suited to the intended audience
 - Simple by design ("no hitting")
 - Use familiar terms and references
 - Age-appropriate
 - Tuned / proper tone
- Clear and unequivocal
 - Standard + consequences of violating the code
- Voluntary agreement to comply



Samples reviewed during the webinar

- Members of a profession
- Members of a Nonprofit Board
- Staff at a Youth-Serving Nonprofit (youth protection-oriented)
- Volunteers at a Youth-Serving Nonprofit
- Athletes/Participants



When NOT to use a Code of Conduct

Code of Conduct Homework Assignment

- If you don't currently use a code of conduct for your board, staff, volunteers and athletes, what are the most compelling to do so?
- If you decide to develop a code, what are the three top goals or rules you'll follow?



Code of Conduct Homework Assignment

- Take a closer look at your existing code(s) of conduct
- Ask:
 - What is the primary purpose of the code? Has that purpose been met by its use? If not, why?
 - Does the code meet the "best practice" test?



Social Media and the Law

- **Unintentional Illegal Discrimination: The Slippery Slope to Information That You Can't Use:** Social media sites provide endless information about prospects. Beyond being entertained, bored or surprised, is there a legal risk?
- **Too Strict Social Media Policies May Violate the NLRA:** The hard truth is that you can't prohibit employees from talking about work... in all cases.
- **Is Your Nonprofit Big Brother?** When curiosity or risk management cross the line.
- **Social Media and Copyright Protection:** tweet and publish with care.

Balancing Risk & Reward

- Some employers believe that researching online profiles is key to:
 - Identifying candidates whose personal conduct puts the organization (e.g., the camp) and its clientele at undue risk
- Be aware of the potential for discriminatory bias and proceed with caution



Can you discipline staff for unbecoming conduct on a Social Media site?

- ▶ Not unless an employee's post on a social media site directly impacts the reputation or harms the organization.
- ▶ "Some states have general rights of privacy and others have more specific laws that protect employees from discipline for their off-duty, off-site conduct. So reserving the right to discipline employees for their conduct in their social media accounts can violate an employee's right to privacy." <http://www.hrexaminer.com/8-reasons-social-media-policies-backfire/>

Privacy Legislation

- ▶ As of Jan. 2014, 24 states have legislation (or are considering legislation) that prohibits employers from requesting or requiring employees to provide usernames and passwords for their social media accounts.
- ▶ According to the National Conference of State Legislatures, employers often request this information to protect trade secrets, comply with federal regulations, and minimize legal exposures. www.ncsl.org/research/telecommunications-and-information-technology/employer-access-to-social-media-passwords-2013.aspx

Risk Lessons

- A social media policy can be an important risk management tool
- Don't over-reach by prohibiting employees from discussing the terms and conditions of employment
- Exercise caution when searching social media sites for info on current and prospective staff

Managing Copyright Risk

- Adopt clearly stated policies regarding the use of others' content.
- Establish an internal review process prior to the posting of online content.
- When in doubt, seek permission and obtain a release!

What does "risk oversight" mean in a nonprofit?

- ▶ The Board is responsible for overseeing management's efforts to identify, evaluate, prioritize, mitigate and monitor risks.
- ▶ The Board is also responsible for establishing risk policies that protect assets needed for the nonprofit's mission.
- ▶ The Board should pay special attention to the risks associated with strategy.

WHO

- “In carrying out their role of risk oversight, some boards choose to assign responsibility to selected committees to assess the risks relative to their mandate. Some boards have established a separate risk committee. Many boards prefer to have risk oversight assessed by the entire board.” *SOURCE: “Building High Performance Boards,” CCGG*
- (1) existing committees; (2) new risk committee; (3) board as a whole
- How to decide? What will work best for your BOARD given your governing structure, size, and culture?

HOW

- Clearly assign board responsibility for risk oversight (e.g., in the bylaws, committee charters, etc.).
- Ensure breadth of capability on the board to understand and oversee critical risks; retain independent advisors as needed.
- Ensure directors are engaged in a conversation about risk: what’s changing? What more do we need to know to make the best possible decisions about strategy?
- Allocate sufficient time on the board’s agenda to consider risk.
- Begin drafting a narrative about how the board oversees risk.

Thank you!

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