Ensuring Successful Integrations:
The Role of the Board
There is an increasing trend for hospitals and other health service providers to look for opportunities to improve the patient experience and create efficiencies in the health system through integration of services, programs, support operations and entities.

Carefully planned and thoughtfully implemented, integrations result in substantial benefits, but they are also fraught with complexities and may expose your entity to unforeseen risks. Boards play a key role in initiating, facilitating and implementing integration transactions.

The Board’s First Role – Setting the Stage with a System Perspective

The fiduciary duties of board members require that decisions are made in the best interests of the corporation served: the health service provider. The question is often asked: “How do we reconcile system interests with a hospital’s or organization’s best interest?”

A board of a publicly funded, mission-driven organization should define “best interests” with regard to the mission, vision, values and accountabilities of the organization. Accountabilities will be varied and include: patients/clients, regulators, funders, donors, taxpayers, academic partners, the community served, etc. These varied accountabilities cause the board to have regard to the health system.

Consideration must also be given to the statutory mandate that applies to health service providers that are subject to the Local Health System Integration Act (LHSIA):

*Each local health integration network and each health service provider shall separately and in conjunction with each other, identify opportunities to integrate the services of the local health system to provide appropriate, co-ordinated, effective and efficient services.*

Accordingly, boards of health service providers subject to LHSIA must also have a health system perspective. Looking at the organization through a system lens will impact key areas of the board role and function including:

- Strategic planning
- Recruiting – both at a board and management level
- Stakeholder relations and engagement
- Expectations of the board chair.

Boards should:

- Be informed about health trends, the health system and, in particular, the local health system.
- Identify key stakeholder organizations and look for opportunities to build board-to-board relationships – such relationships can facilitate opportunities for integration by building trust and confidence.
- Evaluate decisions with reference to a system perspective. Where appropriate, boards should ask questions such as: “Have we talked to other key stakeholders in the system with respect to this initiative? How will this impact the system and other healthcare providers?”
- When the opportunity arises, participate in collaborative governance forums. If no such forums have been established, consider working with other health service providers to establish collaborative governance discussions facilitated by a neutral party.
The Board’s Second Role – Demonstrating Leadership

Integration transactions often come to the board through actions initiated by senior management. Initially, board level integration discussions may start on an exploratory basis with a small group of board members, perhaps just the chair and vice chair, before expanding to engage the full board. Accordingly, a key accountability falls to the board leadership to support management, engage directly with their respective counterparts and to determine the appropriate point at which to engage the board more fully. Once engaged, the board needs to provide support to the CEO, the senior management team and the board chair.

It is also important that the board recognize the workload that will fall to management in the context of an integration, in addition to the “core” roles of the senior management team. Guidance and leadership from the board plays a valuable role in supporting management through the process.

The Board’s Third Role – Developing and Applying Evaluation Criteria

Successful integrations happen when all parties share a set of common objectives and guiding principles that are clearly defined at the outset of the process. Specific implementation decisions are then made with reference to those objectives and guiding principles.

Typically the objectives of an integration are to achieve improvement in one or more of the following areas:

- Quality
- Access to services
- Value for money
- Efficiency

Many boards may start with a list of “non-negotiables” but boards should limit such a list to factors that are truly critical to the success of the shared integration vision.

In many cases there may not be objectively measurable criteria with which to conduct a cost/benefit analysis of the proposed integration. This is particularly true where the vision is for improved access and quality of care. Boards must appreciate that the business case for a health system integration may be subject to less measurable criteria than would typically apply in a commercial transaction.
The Board’s Fourth Role – Engagement

Integration transactions are often overseen by a joint steering committee with representation from both boards. Such a steering committee is usually comprised of board leaders who can devote time to supporting management and taking direct roles, at a governance level, in implementing the integration. It is important that the members of any steering committee not get too far out in front of the full board with respect to decision-making. Mechanisms to communicate progress to the board and ensure buy-in at key milestones will be critical to the eventual success of the integration.

While the lead roles for implementation may fall to the board chair and the board members on the joint steering committee, there is a significant role for the rest of the board.

Sub-committees of the board or joint sub-committees may be established. Board members should participate in such committees when requested. Board members should stay involved in the process even where they are not assigned a direct role and should receive and respond to reports such as:

- Communication plan
- Community engagement plan
- Due diligence report
- Human resources implementation plan
- Governance plan

Once evaluation criteria have been defined, a board should continue to refine and evaluate those criteria and continue to question whether or not the list of non-negotiables remains appropriate.

Board members should participate in stakeholder engagement as appropriate and requested.

Lastly, it is important that the board continue to govern and exercise oversight throughout the integration process.
The Board’s Fifth Role – Approvals and Implementation

The board will likely be asked to pass a resolution approving the integration in principle. There may be a non-binding memorandum of understanding or letter of intent presented to the board which outlines key terms of the integration.

Such a document ensures that there is a “meeting of the minds” on key aspects of the transaction. If the parties have been talking in general terms, reducing key elements of the proposed integration to a non-binding memorandum of understanding or letter of intent ensures that there is a common vision, objectives, and criteria and that non-negotiables are understood. This avoids getting too far down the road only to find out that there is a fundamental disagreement in the nature of what the parties intend to achieve. This document can also map out key steps in the process such as the approach to a communications plan, human resource integration and due diligence.

The board should not expect that every question will be answered at this stage. A memorandum of understanding provides a high level road map for the negotiation of the final and definitive documents.

Boards should ensure that an implementation plan is established and monitor any conditions that are required for final approval. Boards should also be prudent in deciding what needs to be part of the process of integration and what work can be left for the new board or new governance structure.

Once the final documents are settled, the board gives final approval: the board must then stay involved and continue to govern during any transition period.

As many hospital and health-care organizations consider integrating services, programs and operations, it is essential the board of directors assume a leadership role and be directly involved in leading these integration activities.
Ten Steps to a **Successful Integration**

1. **Understand the Value of a Memorandum of Understanding or Letter of Intent**
   This non-binding document plays an important role in ensuring the parties have a true “meeting of the minds”. By setting out the core elements of the deal it will lessen the risk of future renegotiation of those matters. It can also provide both boards and management with a work plan for how the integration will be implemented and what approvals must be obtained and conditions satisfied. Care should be taken and legal advice sought to ensure the document is not inadvertently legally binding on the parties.

2. **Use a Steering Committee Comprised of Board Leaders and Guided by a Neutral Facilitator**
   It is inevitable that some board members will be more involved than others in the work of implementing the integration. If a joint board steering committee is created to oversee implementation on behalf of both boards, the appointees to this committee should be board members that are trusted and respected in their “home” board rooms. A neutral third party facilitator with experience in governance and integrations can play a valuable role in supporting the work of the joint steering committee by:
   - focusing discussions,
   - identifying what is the work of the steering committee and what is the work of the new board,
   - offering different options to achieve the stated objectives, and
   - helping the parties find common ground when issues arise.
   It is important that the board leaders who are more directly involved in the work of completing the integration keep the rest of the board involved and engaged. This will minimize the risk that the board begins to feel disengaged and starts to question the value of the integration.

3. **Be Able to Answer “Why?”**
   All parties to the integration should be able to communicate clearly the reasons for pursuing the integration. Being able to state the purposes and objectives of the integration will assist in evaluating whether the elements of the final structure are consistent with the objectives. It will also help with the communication strategy and engagement with key stakeholders and ensure a consistent message is delivered.

4. **The Communication and Engagement Plan is Critical**
   Publicly funded, not-for-profit corporations operate with a fair degree of transparency. Accordingly, adopting a communication strategy early in the process is important to keep key stakeholders informed and engaged. Some organizations have adopted a process that allows questions to be submitted and answers published as a way of managing information and dispelling false information. The communication strategy needs to consider both internal and external stakeholders. Key questions to ask include:
   - To whom should we communicate and for what purposes?
   - What detail is required?
   - How often should regular update messages be provided?
   - How can we manage false information and rumours?
   In addition to a communication strategy, the board will need to ensure there is engagement with key stakeholders to provide an opportunity for two-way communication. Where third-party approvals will be required to be obtained, the parties should ensure a co-ordinated approach, particularly to regulatory authorities.

5. **Recognize added Burden on Management and Uncertainty to Staff**
   In many integration transactions, there may be reductions in staff post integration. This creates an uncertainty for staff, particularly senior management, at a time when they are often taking on additional integration-related work in matters such as due diligence or board support. The board should be sensitive to this issue.
Get Medical/Clinical/Senior Staff Together Early
Look to medical/clinical/senior staff leaders to take accountability for relationship building, particularly if there is little prior interaction at that level. By facilitating interactions between the medical/clinical staff, the platform can be created on which trust can be built. Another way to engage the medical/clinical staff is to ask for their participation as members of integration working groups as appropriate.

Identify Required Third-Party Approvals and Develop a Strategy
Required approvals will typically include the board and corporate members as well as the local health integration network and Ministry of Health and Long Term Care. There may also be a requirement for approvals from other third parties, perhaps pursuant to terms of a contract. There may be other key stakeholders where approval is not strictly required, but from whom support will be critical to successfully completing the integration and whose future support will be important post integration. Such key stakeholders could include the foundation and volunteer association, major donors, other health service providers and local government. The parties to the integration should develop a co-ordinated strategy for obtaining necessary approvals.

Scope Due Diligence Appropriately
An integration between not-for-profit health service providers is not a commercial transaction; there will typically be no purchase price. Accordingly, it is important to understand the purpose for conducting due diligence and to create an appropriate scope of materiality. The purpose of due diligence is not to verify a purchase price, but rather to ensure the integration is prudent and in the interests of the parties. The due diligence process can also provide a valuable opportunity for management and the board to understand the business operations of the other party to the integration. The due diligence process may also facilitate identifying synergies and efficiencies post integration. The due diligence process should be founded on principles of full transparency. The parties should make early and voluntary disclosure of any major risk issues so mitigation strategies can be evaluated or jointly developed.

Keep an Open Mind and Minimize Legacy Interests
In structuring the integration, particularly the composition of the new board, try not to bring forward legacy issues that will have a limiting effect on future board autonomy. Trust that the new governing body will act in good faith and make decisions in the best interests of the new entity, as a whole, considering all of its constituent parts. While experienced board members will make a valuable contribution going forward, consider recruiting to the new governing body individuals who are not from the prior boards—these individuals will often have an easier time seeing the integrated entity as a whole.

Learn from Others and Let Your Fiduciary Duties be Your Guide
Identify best practices from successful integrations. Reach out to others who have been through the process and invite them to present to a joint board meeting. At all times be guided by the duty to act honestly, in good faith and in the best interests of the corporation. In defining best interests consider: mission, vision, values and accountabilities. Accountabilities in a health provider context are multiple and often competing or conflicting and include not only the community served, but the funder and regulator. Best interests must also be considered in the context of the duty set out in the Local Health System Integration Act, 2006 to actively seek opportunities to integrate the local health system. Accordingly, consider the new mission and expanded accountabilities of the integrated entity and implement a governance model that will be positioned to successfully achieve the new mission and discharge the expanded accountabilities.

The foregoing content was written by Anne Corbett, a senior partner at Borden Ladner Gervais with an extensive background in assisting not-for-profit and public sector entities and their Boards of Directors in developing and implementing governance best practices. In addition to advising on corporate law issues, Anne has special expertise in health sector governance and integrations. She has been involved in numerous health sector integrations and provides advice in respect of board governance, directors’ fiduciary duties, due diligence, by-laws, professional staff issues and regulatory approvals and compliance. She can be reached at acorbett@blg.com.
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