



# **Nonprofit Governance: What Every Compliance Officer Should Know**

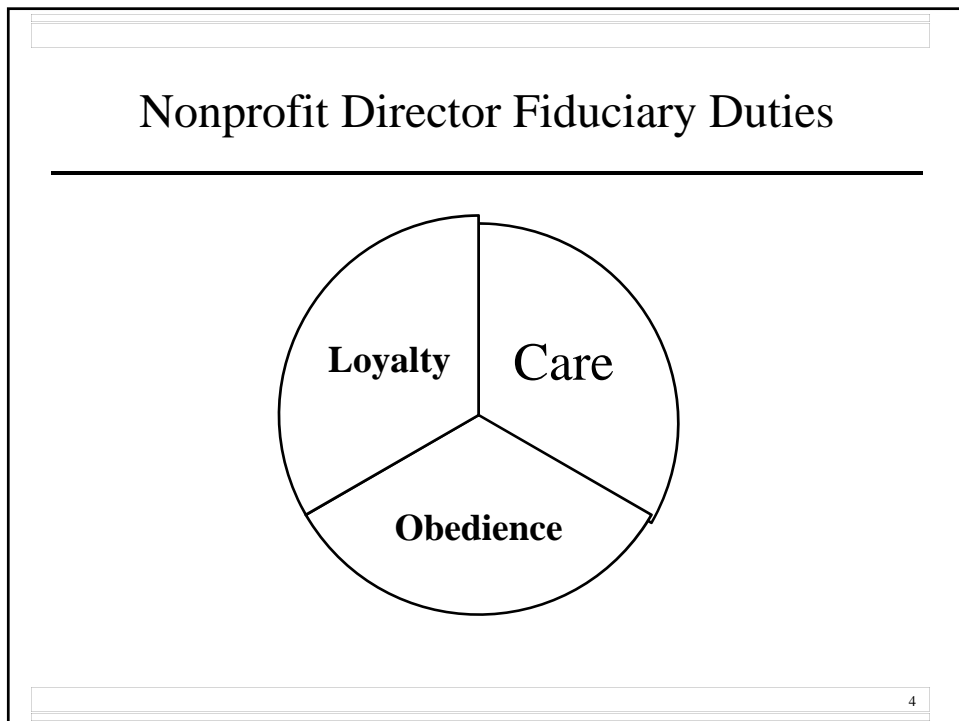
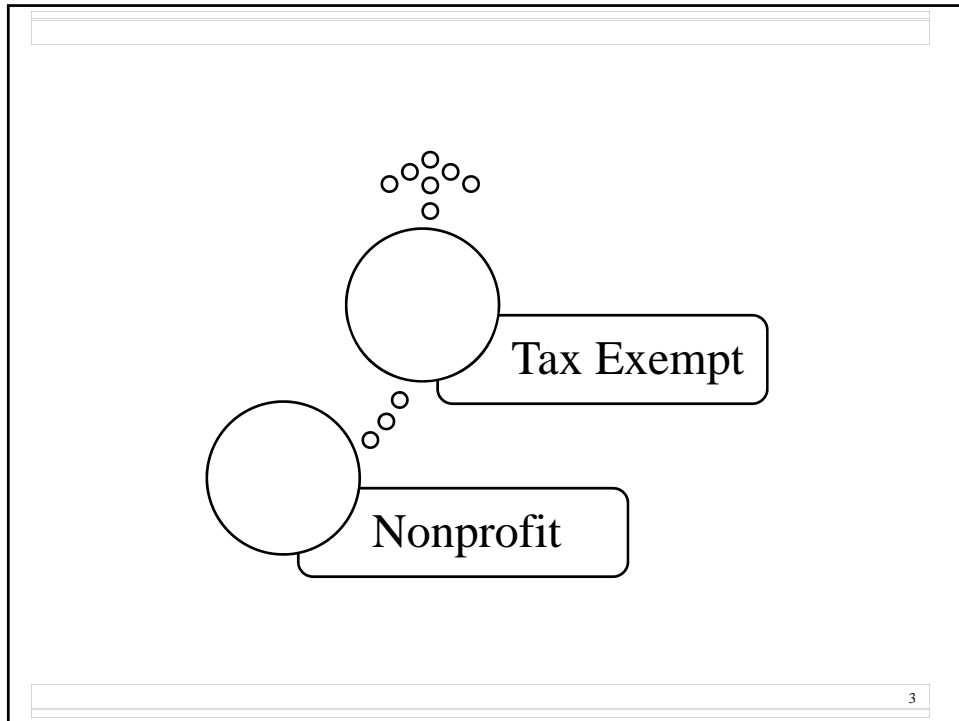
**April 2013**  
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1

## **The Compliance Officer and the Board**



2



## Attorney General Actions Alleging Breach of Fiduciary Duty

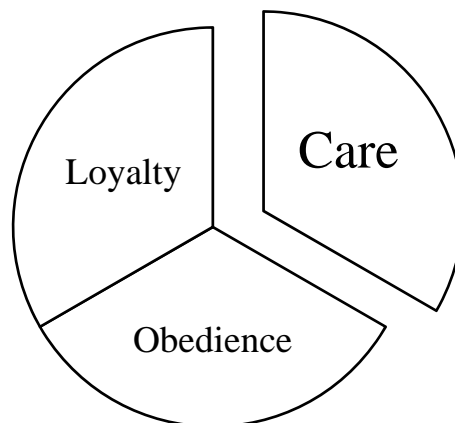
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- Investigation of health care providers for abusive collections and failing to protect **donor privacy** (2012)
- Investigation of hospital intention to acquire physician groups for **antitrust** reasons (2003-06)
- Investigation of many health care systems for **abusive collection practices** and overcharging the uninsured (2004-05)
- Investigation of nonprofit health care entities related to **executive compensation, consulting expenses, travel and entertainment** (2000-03)

5

## Duty of Care

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6

## Board of Director Duty of Care

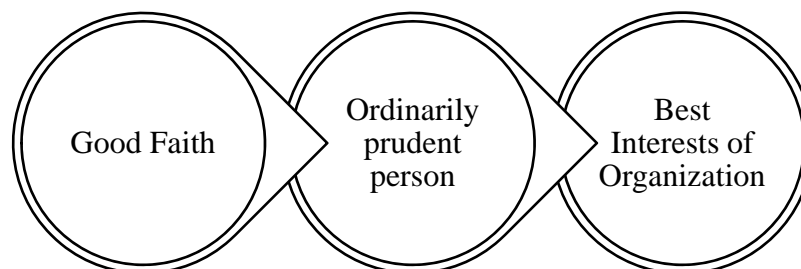
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- Directors must **actively participate**
- May establish **Committees**
- **Decisions** of the board should be documented
- General knowledge of **books and records**
- Assure accurate recordkeeping via **internal and external audit**
- Protect, preserve, invest and manage **charitable assets**
- Ensure adequate **resources** exist to achieve mission
- **Investigate** warnings or reports
- Directors should engage in **self evaluation**

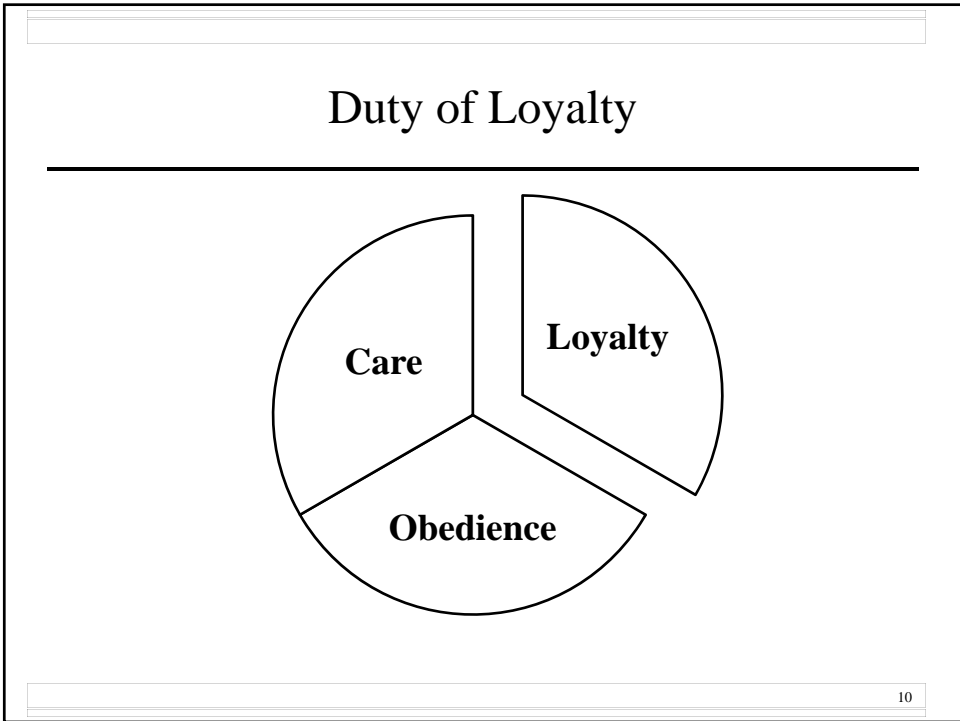
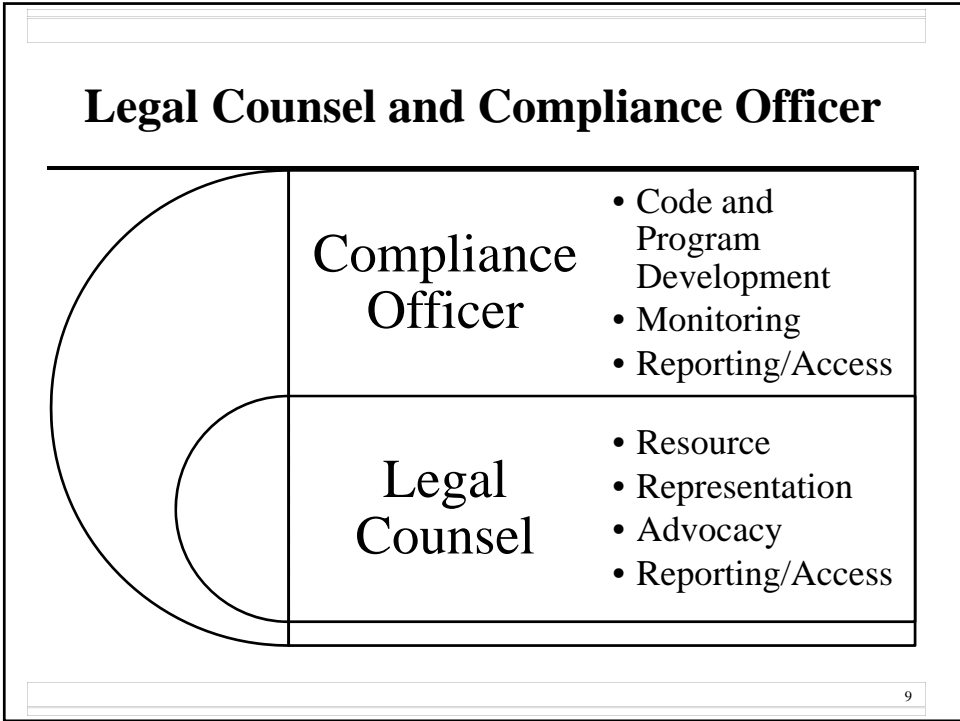
7

## Duty of Care

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8



## Duty of Loyalty

### Conflicts of Interest

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- **Directors should be independent** of the organization and other directors.
- Director, officer and key employee conflicts of interest should be addressed by a **written policy** which prohibits an interested party from voting on a conflicted transaction.
- The policy requires **annual disclosure** of potential conflicts.
- The nonprofit **consistently enforces** compliance with the policy.

11

## Duty of Loyalty

### Loans and Corporate Opportunity

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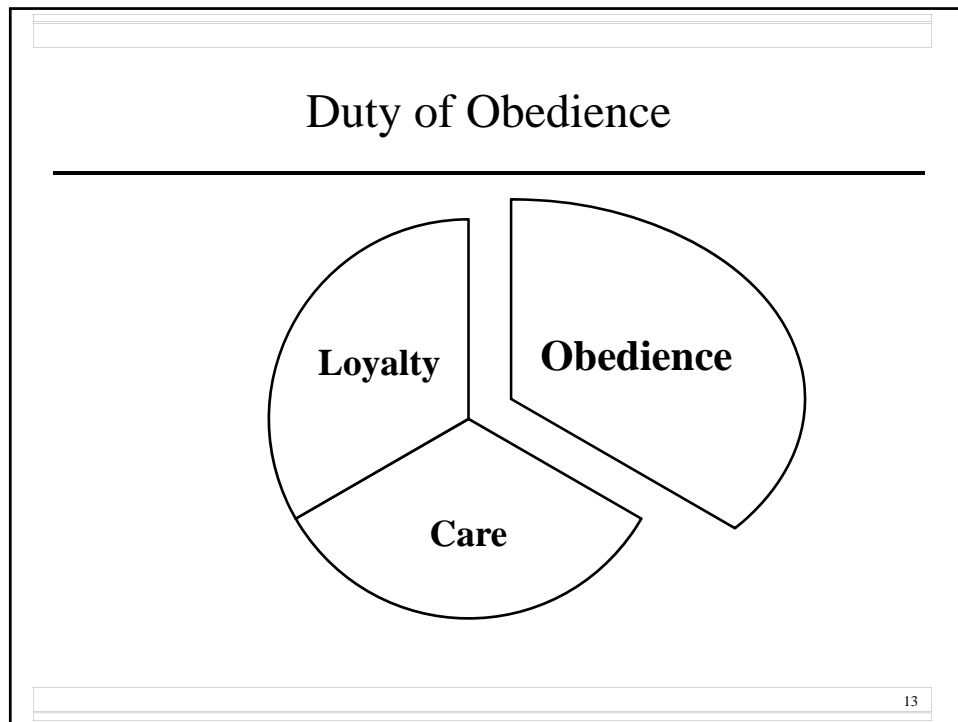
#### **Loans**

- A nonprofit **may not lend** money to an insider **unless** in the Board's judgment the loan may reasonably be expected to **benefit the corporation**

#### **Corporate Opportunity**

- Directors are under a fiduciary obligation **not to divert an opportunity** from the nonprofit for personal gain.
- Annual conflict of interest **disclosure form**

12



- Duty of Obedience**
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- Directors should be **familiar with state and federal laws**, employment, sales and property taxes, IRS regulations that impact tax exemption.
  - Directors should ensure required filings are done to **ensure transparency**.
  - Directors should be familiar with and follow **governing documents**.
  - Where appropriate, directors should **obtain outside help** to comply with the law.
- 14

## Duty of Obedience

### Chief Executive Assessment and Compensation

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- The Board or a Committee should regularly **review the performance** of the Chief Executive.
- Compensation for key insiders should be approved following a process outlined in federal law.
  1. The Board obtains and reviews compensation **data** to determine reasonableness.
  2. Only individuals **free of a conflict of interest** in the compensation decision participate in the discussion.
  3. The compensation deliberations are **documented**.

15

## Duty of Obedience

### Federal IRS Form 990 Review

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- The Board of Directors receives a copy of the complete IRS Form 990 and all attachments prior to filing.
- It is acceptable for the review to follow the actual filing, (e.g. at the next Board meeting).
- **Part VI** of the IRS Form 990 contains governance questions for all exempt organizations.
- **Schedule H** of the IRS Form 990 outlines federal tax exemption requirements for hospitals.

16



## Duty of Obedience Important Policies

- Nonprofits should have a **whistleblower policy** that provides for **protection from retaliation** by the organization.
- Nonprofits should have a **document retention** policy that prohibits destruction of document on a **legal hold**



17

## IRS Governance Check Sheet

- Governing Body and Management
- Compensation
- Organizational Control
- Conflicts of Interest
- Financial Oversight
- Document Retention



18