

Women Business Leaders  
of the  
u.s. health care industry foundation™  
[www.womenleadinghealthcare.org](http://www.womenleadinghealthcare.org)

# Answering the Call:

Understanding the Duties,  
Risks and Rewards of  
Corporate Governance

*2nd Edition*

Lynn Shapiro Snyder, Esq. and Helen E. Quick, Esq.

Epstein Becker & Green, P.C.  
[www.ebglaw.com](http://www.ebglaw.com)

**This booklet is intended to provide a brief overview of information as of September 13, 2003. This booklet is not intended to provide anyone with legal advice and no decision should be made based upon its contents.**

## ■ **Forward to the 2nd Edition:**

■  
■  
■

The idea for this booklet arose from discussions with other senior executive women involved with Women Business Leaders of the U.S. Healthcare Industry Foundation (“WBL”). We were discussing how—in light of increased scrutiny of corporate governance—we needed better information before we accepted positions on boards of directors. Of course we had heard of The Sarbanes-Oxley Act of 2002, but none of us was sure how it would affect board members’ behavior and decisions regarding accepting board member appointments. As busy executives, we wanted clear, concise material to inform us of the hidden risks and remind us of the many rewards of board membership.

We decided to accept the challenge and produce a booklet outlining the basic information every potential (and current) board member should know. With new laws, regulations and reams of commentary regarding the rules, duties and challenges of board membership being published virtually on a daily basis, attempting to capture all of this information in one place was indeed challenging. In February of 2003 we published the first edition of “Answering the Call: Understanding the Duties, Risks and Rewards of Corporate Governance.”

The booklet debuted at WBL’s 2003 Retreat March 5-7, 2003 outside Washington, D.C. We gave a complimentary copy to each of the nearly 100 attendees.

Word of this booklet—and its usefulness—traveled quickly.

After the Retreat, numerous companies contacted us requesting copies of “Answering the Call.” To date, we have sent out in excess of 1000 complimentary copies of the booklet to health care and non-health care companies across the country. Its content has benefited both men and women.

With the landscape surrounding board membership evolving at such a rapid pace, and given the overwhelmingly positive response to this booklet, we decided to publish a second edition. This second edition includes updated summaries of the current legal landscape and latest commentary regarding director duties, risks and rewards.

It is our hope that this second edition will be as warmly received as the first and that this booklet will continue to help current and prospective board members make thoughtful and informed decisions.

Lynn Shapiro Snyder

Helen E. Quick

September 13, 2003



# ■ Letter from the Founder

Dear Senior Management Executive:

The pinnacle of business is a company's board of directors or board of trustees. These directors or trustees are given important decision-making responsibilities for the company, its management and its shareholders. These important decisions take place in any business large or small.

In small firms, the senior management and board are often one and the same. This may blur the role that a person plays in the firm. At one point in time the person may be acting as management. At other points in time the same person may be acting as a director. However, as firms grow in size, it is more likely that the board will be comprised of both inside management people and outside directors. An outside director has challenges different from inside directors whose daily jobs are from the same firm.

The current pool for outside directors to provide corporate governance is small. It includes retired senior executives with the time and energy to be an outside director, existing senior management executives, former politicians and policy makers and anyone else who the board and management believe will be a valuable resource to the company. There is definitely a shortage of people qualified and willing to serve in this capacity.

There also is a particularly acute shortage of people qualified and willing to serve in this capacity who are not white males. As you will read in this booklet, diversity in the boardroom has not been achieved to date yet there are advantages to having a diverse board of directors. Therefore, those of you who otherwise qualify to be a director and who are not white males should seriously consider embracing directorship opportunities. Those who already enjoy directorships should seriously consider embracing new board candidates who provide increased diversity to the boardroom.

As a senior management executive in industry, you have spent many years advancing your business and professional objectives. Often you have sold a product or service, you have addressed human resource issues, and you may have even bought or sold all or part of your business. You recognize that the accumulation of these experiences has value to those operating similar or even different businesses. You decide that you are ready for the task of being an outside director for another firm to help that company grow and prosper. In the event such an opportunity arises, what will be the duties, risks and rewards involved? What type of due diligence should you do before accepting a directorship? If you accept the directorship, what will be expected of you?

The purpose of this booklet is to answer these questions briefly and thus help senior executives become more informed outside directors. This booklet is particularly designed to help senior executives decide which board positions to accept and, once accepted, how to be more effective board members.

Whether the company is for profit or not for profit, public or privately held, large or small, any decision to join a board requires a certain amount of due diligence. Also each senior executive who is contemplating such a career opportunity should be prepared to satisfy the obligations that are expected from this position. We hope this booklet helps you as you embark on these corporate governance endeavors.

Sincerely,

Lynn Shapiro Snyder, Founder  
Women Business Leaders of the  
U.S. Health Care Industry Foundation, and  
Senior Health Lawyer, Shareholder  
Epstein Becker & Green, P.C.

February 28, 2003

\* \* \*

This booklet is a joint initiative by the law firm, Epstein Becker & Green, P.C. ([www.ebglaw.com](http://www.ebglaw.com)) and by the Women Business Leaders of the U.S. Health Care Industry Foundation ([www.womenleadinghealthcare.org](http://www.womenleadinghealthcare.org)). The goal of this Foundation is to help senior executive women in the health care industry improve their businesses and grow professionally.

The authors wish to thank Jennifer Roberts, the Executive Director of the Women Business Leaders of the U.S. Health Care Industry Foundation, for her assistance and, in particular, for her invaluable research and writing regarding the benefits of diversity found in Chapter Nine. In addition each of William Burgess, an associate in the National Health Law Practice at Epstein, Becker & Green, P.C., and Emily Hoberg, a legal assistant in the National Health Law Practice at Epstein, Becker & Green, P.C. provided substantial support in the research and writing of this booklet. The authors further wish to thank Phyllis Lewis for her talents in designing this booklet. Their commitment and contributions to this booklet are greatly appreciated.

## ■ ■ ■ ■ ■ **An Executive Summary**

What are the rewards for serving as an outside director?

Although there often is tangible compensation for an outside directorship, most outside directors will say that the greatest rewards for serving on a board are the intangible benefits from having the opportunity to work with the other directors of the company. The other directors are likely to be similarly situated senior people from industry who may be in a position to improve your current business or to facilitate professional growth. The camaraderie that develops through the board meeting process is very rewarding.

The other reward often mentioned is the opportunity to help another company improve based upon your guidance and experiences. There is great personal satisfaction in being able “to advise” instead of “to do” in helping a business prosper.

Then, of course, there often is compensation for a director’s time and effort. There also is reimbursement for travel to board meetings. There may be a fee paid for each meeting. There also may be payment in stock or in stock options for agreeing to be a director.

What are some of the risks for serving as an outside director?

As with anything that has significant rewards, there also are risks involved in serving as a director. If things go bad there is risk to reputation, but the single most important risk is one of personal liability for something involving the company and the director. As you will read below, a director may be named in a lawsuit against the company and others. Furthermore, recently enacted legislation and heightened government scrutiny have complicated the risk analysis for certain companies. However, being sued and being held liable are two separate matters. Despite the picture painted by recent

headlines, a director is still rarely held personally liable for anything involving the company unless he or she also was personally involved in the wrongful conduct.

Nevertheless, it is not a pleasant thing to be named in a lawsuit and, in light of the fact that the United States is a litigious society, a prospective director needs to know about the risks of such potential liability and about risk management tools used in the event of lawsuits, such as indemnification and insurance for directors and officers of the company.

*What type of due diligence should you do before accepting a directorship?*

It used to be the case that a senior executive asked to be on a board was so grateful for the honor that he or she would just say “yes.” Those days are probably over. Just as the company’s senior management and current board members go through a due diligence process to determine whether to extend an offer for a directorship to a particular board candidate, so, too, should the candidate ask some questions and do some of his or her own investigations to make sure there is a desirable match. This is so important because a directorship requires a very close and personal relationship amongst other directors and with senior management with whom there will be a lot of interaction.

*Once on the board, what will be expected from you?*

Much of this booklet addresses the topic of what will be expected from you as a director of a company. There are certain duties and responsibilities. The bottom line is that if you decide to become a director and are given the opportunity to do so, then you must take this commitment seriously and fulfill the various fiduciary duties which are described briefly in this booklet.

# ■ **Table of Contents**

Chapter One .....	1
<b>Why should a busy executive want to serve a company on its board of directors?</b>	
Chapter Two .....	5
<b>Duty and Responsibility – What is expected from a director?</b>	
Chapter Three .....	13
<b>What are the risks of serving on a board?</b>	
Chapter Four .....	23
<b>What are some of the basic risk management tools used to address the liability risks?</b>	
Chapter Five .....	31
<b>How will The Sarbanes-Oxley Act of 2002 and recent state law initiatives affect directors and boardroom practices?</b>	
Chapter Six .....	49
<b>What are the proposed new listing standards at the New York Stock Exchange (“NYSE”) and NASDAQ?</b>	
Chapter Seven .....	55
<b>Why is there an increased focus on the Audit Committee?</b>	
Chapter Eight .....	61
<b>What are the additional duties and risks facing a director serving on the board of a nonprofit corporation?</b>	
Chapter Nine .....	79
<b>Why is diversity in the boardroom so important and where are the opportunities to achieve it?</b>	
Chapter Ten .....	85
<b>What are some of the best practices for directors?</b>	
Closing Remarks .....	91