

BOARD WORKS**"Sarbanes-Oxley: What Must We Do...What Ought We Do?"**

By Rick Stiffney, President/CEO, MHS Alliance

"Sarbanes-Oxley" is not an infectious disease, though there are some who believe its impact has been that. Paul Sarbanes (Democratic Senator from Maryland) and Michael Oxley (Republican Representative from Ohio) authored two bills that were signed into law in July 30, 2002. The legislation was intended to bring fiduciary accountability to publicly-traded companies at a time when it seemed each day's headline in the Wall Street Journal exposed yet another case of big corporate fraud.

A little review is in order. Sarbanes-Oxley required that publicly-traded companies establish new internal accounting controls. The Act required that company CEOs and CFOs "sign off on" or certify that they had reviewed and believed that the audited financials accurately represented the financial state of the company. Further, the Act required independent audits and that a company's audit firm could not at the same time be retained as a consultant to the company.

Four years have passed since this law was enacted. The Act has had some unintended consequences. The September 2005 issue of Inc. Magazine featured an article that reported that small to mid-size public companies experienced significantly greater expenses complying with the requirements of the law. Sarbanes-Oxley apparently has been a boon to auditing companies! Auditing fees have skyrocketed. Directors and Officers insurance premiums are climbing. Today Congress is considering some amendments that would make compliance less onerous.

However, the question remains, what about the not-for-profit sector? Does Sarbanes-Oxley apply? And if so, how?

The Washington DC-based firm Jaeckle Fleischmann and Mugel LLP, reported (Board Member Practices –published 2005) that not-for-profits should expect a crescendo of regulatory and/or legal initiative that would lead to the

application of Sarbanes-Oxley-like requirements in the not-for-profit sector. They wrote, "Unless and until new legislation is passed directly addressing not-for-profit governance, courts, funders, and controlling agencies are very likely to consult the standards set forth in Sarbanes-Oxley in determining how well these obligations have been met in the not-for-profit arena". We are seeing this trend continue through 2006.

Many of our MHS Alliance member organizations are carefully reviewing their policies and practices and bringing them voluntarily into compliance with many of the features of the legislation. What constitutes "promising" practices as it relates to this dimension of governance accountability?

Marian Pearlman Nease, Esq. highlighted critical considerations for not-for-profits in a seminar presentation at a recent Mennonite Health Assembly.

1. Whistle-blower protection is required under Sarbanes-Oxley. Any member organization that is a Medicare provider and has a compliance program already has policy that protects the potential whistle-blower. But, if you are not a Medicare provider, Marian notes that it's important to develop policy that designates a person/role (**cont'd page 2**)

**DATES TO
REMEMBER:**

- **January 5 - Submit Online Member Survey**
- **March 29 to April 1 Mennonite Health Assembly Pittsburgh**
- **March 29 Annual Members Lunch and Meeting 12:00 – 2:30**
- **March 29 Sponsored Organization CEOs and Board Chairs with MHS Alliance Board 3:00 – 5:00**

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to whom confidential complaints can be made as well as policy and procedures for how complaints will be investigated and resolved.

2. Policies to guide documentation retention and destruction are important and need to be evenly administered.
3. Certification by CEOs and CFOs of financial statements and tax returns is good practice.
4. The "independence" of an audit review or full audit is important. "Independence" means that the audit company is contracted by and serves the board, not management. Periodically "letting" or putting out the audit contract for competitive bid may be in order. Minimally, the lead agent or liaison between the audit firm and the organization should be rotated at least once/5 years. Board Source, a Washington DC-based organization serving not-for-profit organizations suggests that as a guideline, any organization that has revenues in excess of \$500,000 and receives federal or state funding should do an independent full audit. Organizations that have revenues less than \$1M and do not receive federal or state funding can elect to do simply an annual "review" performed by an external and independent auditing firm.
5. Every not-for-profit organization should have a "conflict of interest policy" that is reviewed and signed annually by all board members.
6. An Audit Committee receives, reviews, and recommends to the board the results of the audit firm's work. It is good practice to ensure that the Audit Committee is constituted with finance-savvy individuals. Some of our MHS Alliance boards are inviting non-board member individuals to serve on the audit committee to ensure adequate expertise and an additional measure of independent perspective in their work.

A first step to improving board performance on this and other matters is to conduct a board self-assessment. Contact us about our newly revised tool.

Our Vision

To be a community of Anabaptist health and human service ministries committed to God's work of healing and hope in Christ Jesus.

Our Mission

To develop the capacity of health and human service organizations to provide care and service to those in need in a way that expresses the unique vision, values and beliefs of MHS Alliance.

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For further information or to suggest topics for future issues of Board Works, please contact MHS Alliance at Emily@mhsalliance.org.