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NONPROFIT BOARD MEMBERS HAVE CRITICAL FIDUCIARY RESPONSIBILITIES

Over the past year, three prominent Columbus-based nonprofit charitable organizations made headlines. Unfortunately, that news was not about their good work combating homelessness, serving the healthcare needs of the LGBTQ+ community or wildlife conservation.

Community Shelter Board (CSB), Equitas Health and the Columbus Zoo each faced a series of shocking discoveries that, directly or indirectly, led to embarrassment, criticism and the resignation of several key leaders at each organization. Last May, the person who ran CSB's financial assistance program pleaded guilty to theft of over \$350,000. Equitas Health's CEO resigned in October in response to claims of racial discrimination within the organization.



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The Columbus Zoo's CEO and CFO both resigned and agreed to pay back over \$500,000 of alleged improperly obtained benefits. In reference to these organizations, the Columbus Dispatch's Editorial Board said, "[t]hey cannot be allowed to self-destruct and the members of all of their boards of directors – where the buck stops – must be called on the carpet when

they make bad and costly decisions or are sleeping on the job while others make bad and costly decisions."

This article does not seek to criticize the members of those boards. Rather, it uses their difficulties as a reminder to those who represent and advise nonprofit boards or individual members, or serve on those boards themselves, of the significant fiduciary responsibilities entrusted to them. Serving on a charity's

board of directors or trustees is not just an honor or something to add to a resumé. It requires significant time, effort and, most importantly, oversight of the organization's activities, finances and adherence to its charitable purpose. These responsibilities are no different for board members of a multimillion-dollar healthcare system or community foundation as they are for a food pantry, animal rescue or school booster club.

In Ohio, the responsibilities of nonprofit board members are generally governed by the charity's by-laws and articles, Ohio Revised Code Section 1702, Internal Revenue Code Section 501(c) and common law, which can be enforced by the organization, IRS or the Ohio Attorney General. At a minimum, the four primary duties that all board members should bear in mind are the duties of care, loyalty, compliance and to maintain accounts.

The duty of care requires board members to participate and take an active interest in the organization's affairs, prepare for and attend board meetings, and ask thoughtful questions about the board and executive staff's proposed actions. Board members cannot just be a rubber stamp and must ensure no one person or people have a disproportionate influence over the organization. Board members must be loyal to the organization and not to any other interest or individual, including themselves. They must ensure the organization complies with all federal, state and local requirements, which include incorporating with the Secretary of State, registering and filing annual reports with the Attorney General, and accurately filing its taxes. Finally, board members must ensure the charity is solvent, forecasts and maintains its budget, and adopts prudent spending and investment policies. While these requirements might appear onerous to some, they are the minimum essentials to ensure the organization can continue to fulfill its mission, properly use its precious charitable dollars and avoid scrutiny from regulators or the public. ■

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GENDER CHECK-THE-BOX OPTIONS ARE EXPANDED ON FEDERAL FORMS

Effective March 31, 2022, President Biden has announced a number of changes designed to remove barriers faced by transgender Americans. These changes include modifying certain federal forms that require an applicant to choose "male" or "female" in order to complete the form. The new forms will enable transgender persons to select an "X" as their gender marker if they choose.

The key changes that may affect employers include:

• **U.S. Equal Employment Opportunity Commission (EEOC) changes** – The



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EEOC will allow persons filing charges of discrimination to select an "X" gender marker on the voluntary self-identification intake questions.

• **Social Security** – By fall 2022, the Social Security Administration will remove the requirement that transgender people show proof of identity such as doctor's notes in order to update their gender information in their social

security record. This is expected to facilitate accessing retirement benefits, obtaining health care and applying for jobs.

• **Student financial aid** – The Department of Education will propose that,

beginning with the 2023-24 FAFSA cycle, applicants may indicate their gender identity as well as their race/ethnicity when applying for federal financial aid. The questions will first be posted for public comment. The goal is to use this privacy-protected information to inform the department about possible barriers that students, including transgender and non-binary students, face in the financial aid process.

• **Passport applications** – The state department will begin offering the "X" gender marker option.

Other changes implemented by this announcement include modifying TSA procedures by replacing the current gender-based pat-down system with updated technology. In tandem with this,

the Department of Homeland Security will also add the "X" gender marker option in the Trusted Traveler and TSA PreCheck programs to enhance access for transgender, non-binary and gender non-conforming travelers enrolled in these programs. Several airlines have also updated their reservations systems to offer the "X" gender marker designation.

The federal government will continue to evaluate how best to obtain information that will accurately reflect the transgender community in data collection sets. ■

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