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GOVERNING HEALTH UPDATE

from Michael W. Peregrine

RE: ADVISING THE BOARD OF DIRECTORS ON ITS "OMICRON MOMENT"

Omicron variant issues are rapidly occupying the most prominent positions on the board of directors' agenda, the Holiday season notwithstanding. Directors will seek an understanding of their proper fiduciary role in developing and implementing a coherent organizational response.

The chief legal officer ("CLO"), as the board's primary governance advisor, will be a key resource to both the board and management in providing this understanding. The chief compliance officer ("CCO") and chief risk officer ("CRO") can play important contributing roles in this regard.

Addressing the board's "Omicron Moment" will likely include the following:

- 1. The Fiduciary Basics.** The board has a fiduciary responsibility to be directly involved in shaping the organizational response to Omicron. Leading governance principles make clear the expectation that fiduciary duties actually increase in times of crisis such as major pandemic events.
- 2. Preparation, Not Panic.** The board's immediate response should reflect a strong "hand on the tiller" image and should concentrate on preparation and planning. It must avoid at all costs projecting an internal or external image of panic or uncertainty.
- 3. Information Flow.** The board will benefit from both a preliminary briefing from management in the near term (e.g., what is known; what is the state of preparation), and the establishment of an ongoing Omicron information reporting system.
- 4. Engagement, Not Deference.** Boards will be expected to be fully engaged with the organizational response to Omicron, given recent judicial decisions and survey results suggesting concerns with director disengagement. Excessive deference to management will be subject to critical third-party scrutiny.
- 5. Specific Considerations.** The board's "Omicron portfolio" is likely to include oversight of the following matters, among other financial and operational concerns:
 - Lessons Learned: application of lessons from the previous pandemic "waves"; what worked and what didn't work, as well as the efficiencies, shortcuts, ideas and designs developed out of necessity.
 - Institutional Preparedness: the ability of the institution and its executive and clinical leadership to respond to the uncertain course of the variant.
 - Workforce Culture: the impact of the variant on the maintenance of a positive, committed and supportive culture amongst the workforce, and on existing and planned return-to-work initiatives.
 - Employee Staffing: the impact of Omicron on the ability to attract and retain a trained and accessible workforce.
 - Clinician Fatigue: supporting the physical and emotional needs of front-line clinicians and other healthcare workers as the pandemic moves to this latest stage.
 - Supply Chain: the extent to which Omicron will affect the organization's ability to access supplies and technology critical to effective treatment.
 - Government Regulation: the application of existing and future state and federal regulation relating to vaccination and other medical treatment for employees.
 - Business Resiliency Planning: whether the organization's current business resiliency planning is sufficient to address new Omicron-related concerns.
 - Impact on Strategic Initiatives: the ability of the organization to sustain existing, and to implement planned future, strategic initiatives without basic re-evaluation.

The ability of the board of directors and executive leadership to maintain a working partnership that is respectful of each other's responsibilities will be key to an effective organizational response.

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