



GOVERNING HEALTH 2021

KEY AGENDA ITEMS FOR BOARD COMMITTEES

SECOND EDITION

SUPPORTING COMMITTEE
EFFECTIVENESS IN A
CHANGING WORLD

Prepared by
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INTRODUCTION

Welcome to the second edition in our 2021 Governing Health series of e-books designed to address the particularities of committee practice for the health system governing board.

As we noted in the first (January) edition of this series, a well-organized, thoughtfully composed and industry-attentive committee structure can provide substantial support to the governing board, especially when multiple items compete for attention on the board's agenda. Delegating key tasks to standing and special committees can facilitate the efficiency and thoroughness with which the board fulfills its responsibilities.

In that previous e-book, we focused on committees' ability to satisfy their delegated responsibilities through a keen understanding of the key topics and trends they are likely to encounter in the coming year.

In this latest edition, we're focusing on the types of information committees need to receive, from whom they should receive it and the frequency with which they should receive it. It's all part of supporting the ability of committee members to make thoughtful, informed decisions and to exercise diligent oversight.

An important note: The information that committees need does not come exclusively from their legal advisors. Committees operate best when they receive input from a wide variety of industry experts familiar with the key relevant issues. So we reached out to several of our friends in other advisory disciplines—names you're sure to recognize—to help us with this second edition. We hope that you'll find that this collaboration provides a fresh perspective on some traditional governance challenges.

Internally at McDermott, we've referred to this as our "Duets" project, in reference to the manner in which famous recording artists collaborate with their friends to bring new life and energy to old standards. We've deeply enjoyed sharing various thoughts and perspectives with these accomplished colleagues. We think the "Duets" approach enhances the scope of the e-book and the value it provides to those who lead and those who support committee practice.

We hope you'll agree!

Michael W. Peregrine
August 2021
Chicago, Illinois

THE INCREASING LEGAL IMPORTANCE OF EFFECTIVE COMMITTEE PRACTICE

Author: Michael W. Peregrine, Partner, McDermott Will & Emery

One of the most significant governance developments of the last two, consequential years is how courts, regulators and stakeholders have operated to expand the scope of the board's oversight obligations.

From what was once a relatively finite set of responsibilities, board committees are now being asked to focus on a much broader range of issues than ever before. Need examples? Think of workforce culture, corporate reputation, human capital, business resilience during and after the COVID-19 pandemic, digital transformation, diversity across the spectrum, pay equity/just wages, social justice, climate risk, job participation and increasing signs of inflation, to name just a few.

Add to this the fundamental operational fluidity that comes with the realization that there may be no "After the Pandemic" business environment; that companies, as with the population at large, must become accustomed to COVID-19 and its mutations as part of daily organizational existence.

From the perspective of corporate governance law, the need for boards to rely upon the work of committees with delegated responsibilities has never been greater. The related oversight burden that is placed on corporate boards may test the capabilities and will of even the most dedicated and determined directors. And that translates into the need to give committees (and those who lead and support them) greater clarity on what the law expects concerning their performance, and what level of diligence is necessary for the board to justify its reliance on committee performance.

Committees are being asked to be more prepared, to re-assess their approach to oversight, and to position their members to be sufficiently informed to support their enhanced monitoring and decision-making tasks. Just as the issues identified above weren't on the radar screens of many boards and committees five years ago, neither have standards of conduct expected of committees truly been "pressure tested" in the last five years.

That's what we're trying to speak to in this second release in our "Duets: Key Agenda Items for Board Committees" e-book series. Our goal is to provide committee members a list of "stuff" they might receive to do their jobs, exercise their oversight and make their decisions with a level of competency that is expected given the magnitude of their responsibilities.

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POST-PANDEMIC TOPICS FOR THE STRATEGIC PLANNING COMMITTEE

Author: Ken Kaufman, Chair & Managing Director, KaufmanHall

- 1 We have entered the Fourth Industrial Revolution.** We are in the midst of a revolution that is fundamentally changing the way we live, work and relate to one another.
- 2 Consumer demand will continue its rapid evolution.** Convenience, accessibility and personalization will become major considerations in the selection of healthcare providers.
- 3 Social justice, social responsibility and climate change will have greater urgency.** Healthcare boards will need to decide the extent to which they want to lead in these efforts, understand the repercussions of their position, and set their goals and actions accordingly.
- 4 New stakeholders are bringing new issues to health system operations and policy.** New stakeholders include patients, employees and sub-groups of employees, communities, local government, state government, federal government, political movements, religious groups, other nonprofit organizations, major media outlets and social media.
- 5 Healthcare's economic model continues to change.** Overall, economic risk will continue to shift to providers.
- 6 New competitors continue to enter healthcare.** Private equity, large health insurers and big tech firms will increasingly attempt to separate patients from their traditional providers.
- 7 Scale will drive consolidation.** Consolidation will continue as weaker organizations seek partners and scale becomes more necessary to obtain and maintain resources to support an expanding healthcare mission.
- 8 Contemporary governance and management is all about achieving the proper alignment of internalities and externalities such as those listed above.** Strategy must be closely integrated with a carefully curated operating style, where both fit effectively and appropriately with current external social and economic conditions.
- 9 The strategic and operational goal of hospitals and health systems coming out of COVID-19 should not be to return to a pre-COVID-19 comfort zone.** Rather, the goal should be to negotiate and navigate your way to being the best-performing healthcare organization possible within the post-COVID-19 business environment.
- 10 Reset your strategic direction and reset your operating methodology.** Recognize that this reset will likely fall competitively short if you have not assessed the changing business externalities correctly.

10 QUESTIONS FOR THE GOVERNANCE COMMITTEE

Authors: David Nygren, PhD, Principal, Nygren Consulting and Zachary Morfin, PhD, Consultant, Nygren Consulting

- 1 Is the board adding measurable value?** Effectiveness within a board is measured by task completion and thoughtful independent collaboration. Annual board assessments are essential, but they need to focus on the appropriate measures.
- 2 Are the board and CEO swimming in their own lanes?** The constant balance between the CEO's authority and proper board oversight often reflects mistrust in either direction. Naming that is the first step to solving it.
- 3 Are board members judicious in asking questions?** Curious board members can derail an otherwise good conversation. Asking effective questions requires knowing exactly when and how to raise a concern. Not all questions are pertinent in the moment, although they deserve an answer.
- 4 Is every board member engaged in the work?** Board size can dilute director accountability. Make sure everybody is engaged and not loafing on the margins of the real work.
- 5 Is your board actively recruiting highly qualified, diverse candidates to enhance your governance?** Boards should be working hard to diversify in terms of race, ethnicity, gender and LGBTQ+ status. As states continue to enact new laws to advance diversity and enhance transparency of diversity statistics on boards, the committee must be prepared.
- 6 Is the governance committee proactively addressing the heightened expectations around environmental, social and governance practices?** Community and stakeholder needs should inform the board's strategic discussion. Does the board have a deep understanding of these needs?
- 7 Are your board members staying on top of industry trends?** Business model innovation and technological development, among other priorities, underscore the importance of board education. How often is some element of board education included on the meeting agenda?
- 8 Does your board have a clear plan not only for board recruitment, but for board leadership succession?** Board leadership is a key lever for strengthening board performance, yet board succession planning is often put on the back burner.
- 9 Is the governance committee clear about its role with respect to human capital programs?** The pandemic's impacts on the labor force heightened concerns about employee health and safety, and related human capital priorities such as employee engagement, training and development, and recruitment and onboarding. The governance committee may need to partner with the human capital committee to help ensure the organization is compliant regarding required workforce related disclosures.
- 10 Does every director operate from the same set of values when it comes to board culture and communication?** Expectations for board engagement are often assumed and not explicitly stated. A set of governance principles is often necessary to align culture and standardize the desired boardroom decorum.

10 "TO DOS" FOR THE PATIENT SAFETY AND QUALITY OF CARE COMMITTEE

Author: Sandra M. DiVarco, Partner, McDermott Will & Emery

- 1 Establish a cadence of committee meetings and data review timing** (*i.e.*, monthly, quarterly, annually) to set the stage for robust committee member participation. Set the expectation that committee participation is an endeavor and that there is important work to be done.
- 2 Dedicate time to review the data** by requesting provision in advance, in dashboard or other forms as the committee finds helpful, to assist with review and comprehension and to permit questions to be prepared or even asked in advance of a meeting.
- 3 Emphasize education for committee members** as part of on-boarding and continuing committee work, to ensure committee members understand and can process the import of the information they review and discuss. Committee members can participate and propose areas for additional or focused education.
- 4 Dig deeper** where warranted. The committee must have the ability to request more information or explanation from hospital leadership and staff as it performs its duties. Questions should be the norm and not the exception.
- 5 Consider an outside perspective** where helpful, whether from within the company beyond the board or outside the organization, either in determining the hospital's safety and quality performance based on current industry standards, or in reviewing areas where the committee might recommend improvements and changes.
- 6 Look around the corner** and demand the same from the organization's quality leadership. This includes emergency preparedness planning and incorporating safety and quality lessons learned from the COVID-19 pandemic thus far.
- 7 Ask for help.** Ensure that the committee has access to quality and safety staff resources and administrative support to help it conduct its work and fulfill its obligations.
- 8 Develop accountability** within both the committee and the board as a whole specific to the governing body's ultimate responsibility for the quality of care rendered in the hospital.
- 9 Increase transparency** within the board and through "trickle down" effects to the organization as a whole. Instill the importance of patient safety and quality at all levels and communicate that message directly from the board.
- 10 Push the issue**, even when it is not "popular" due to other demands, or if the data is not favorable. These are the times when lapses in quality can have even more significant effects on the culture and operation of the organization.

10 FOCUS AREAS FOR YOUR HUMAN CAPITAL COMMITTEE

Authors: Kathy Hastings, Executive Workforce Practice Leader, SullivanCotter and Tim Cotter, Managing Director, SullivanCotter

- 1 **What is our overall workforce strategy?** Does it differ by employee group? Are we flexible in our retention, recruitment and staffing approaches? Are we considering the evolution of our workforce—including remote worker and outsourcing strategies—given the changing nature of work and talent retention/recruitment challenges? How do we intend to balance expectations for the remote workforce with those for on-site workers?
- 2 **What are the organization’s diversity, equity and inclusion (DE&I) objectives?** What are the plans and support activities to ensure DE&I goals and benchmarks are met? Do we include DE&I goals in our leadership incentive plans? Have we performed a comprehensive pay equity review and addressed areas of risk and remediation?
- 3 **What are our key indicators of workforce engagement?** What do we do well, and where do we need to improve? What are the plans to ensure improvement in areas that highly impact engagement, retention and recruitment? Do we have programs for recognizing our workforce’s contributions? Do we have a scorecard of workforce engagement metrics that are monitored on a regular basis?
- 4 **What measures have been taken to ensure the safety and well-being of our workforce** in addressing COVID-19 and considering environmental risks for employee health (physical and mental)? How do we ensure a culture where employees embrace our core values, make us a best place to work, and support each other’s well-being?
- 5 **What are our turnover statistics by workforce group?** How long does it take to fill vacancies? How do these statistics compare to competitors? What measures are we taking to reduce turnover? What are our talent risks? What are our costs to recruit, and are we effectively managing these costs?
- 6 **What is our talent pipeline and management strategy?** What are our plans to grow the next generation of leaders and luminaries? How are we developing high-potential employees? How do these plans support succession and DE&I objectives?
- 7 **Do we face outstanding litigation** that may impact the organizational image and/or presents material financial risk? What are the incident levels of sexual harassment, violence and/or code of conduct violations in the workplace? How are these incidents addressed? What training programs are in place to ensure a safe workplace? If applicable, do we have major union negotiations coming up, are there issues we need to address, and what is our strategy for doing so?
- 8 **What is our compensation philosophy for our workforce?** How do we pay in relation to market? Are there differences given talent availability in particular workforce groups? Do we incorporate pay-for-performance components, such as incentives, into our compensation program? Do we communicate the value of our total rewards packages, including all forms of compensation and benefits? Are our benefit programs responsive to workforce needs and cost efficient? Do we have any talent risk areas given our compensation program?
- 9 **Have we addressed social responsibility issues for our lower-paid workers**, including increasing the minimum wage, reducing benefit-related payments and increasing developmental/training opportunities? Can we support our community better, through hiring programs that target select community members (e.g., non-violent offenders)? How do we support our employees, families, and community to address food security, transportation, childcare and wellness/health care needs?
- 10 **Are we making investments in human capital technology** to reduce costs and improve service? Are we responding to the retooling and training needs of our employees as technology changes jobs and workforce parameters?

10 QUESTIONS TO ASK YOUR COMMUNICATIONS COMMITTEE

Author: David Jarrard, CEO, Jarrard Phillips Cate & Hancock

- 1 Are you and your executive team present and listening?** Employees need to see leadership and feel supported and heard. Buy-in and advocacy for any changes moving forward depends on employees feeling part of the process.
- 2 What is the state of your workforce?** The pandemic accentuated the existing strain, pressure and fatigue felt by clinicians and staff. Ensure that employees have opportunities to communicate what they're going through, and equip leadership to make changes where possible.
- 3 Are you engaging with your community?** Leaders such as community health workers, clergy, educators and others can be some of your biggest allies—or skeptics. Work with them to understand the holistic needs of the people you serve.
- 4 What tools does your organization use to collect feedback from employees and the community?** Not every group in the community or job title in your hospital receives or responds to information in the same way. Provide multiple methods for people to get in touch.
- 5 Have you reviewed and updated your communications policies?** You should be clear about expectations—including for the executive team and board—for both in-person and online behavior. Social media policies often fall through the cracks.
- 6 Have you reviewed and updated your crisis communications plans?** The pandemic demonstrated the value of having plans ready to execute at a moment's notice so that your organization can offer clear, consistent, timely information. Look at what worked and what didn't and adjust accordingly.
- 7 Are you developing and presenting a unified message?** Ensure that your board and leadership team are on the same page—both for success of strategic initiatives and for any scrutiny that might come. Assume everything put down on paper could be discoverable.
- 8 Are you prepared for proactive communication?** Are you equipped to discuss major strategic moves, such as partnerships or service line changes, with the public and media?
- 9 Are your marketing and communications leaders involved in decision-making?** Have you brought these important teams into conversations about operations and strategic planning so they can offer insight and help craft your holistic internal and external stances?
- 10 Are you looking for areas of media and public scrutiny?** After a pause in 2020, the negative spotlight on hospitals is growing brighter. Are your board and executive team reviewing trends in news coverage and listening to your community to learn where your organization may be vulnerable? If you have identified issues, are you responding in a timely way?

TOP 10 DILIGENCE QUESTIONS FOR EXECUTIVE COMPENSATION COMMITTEES

Authors: Ralph E. DeJong, Partner, McDermott Will & Emery and Tim Cotter, Managing Director, SullivanCotter

- 1 **Does the executive compensation philosophy support our strategy to assemble the executive human capital required by our new environment?** Is the peer group composed of organizations that are our actual talent competitors? Should nontraditional peers be added, including broader industry organizations for selected positions and business units? Is pay model variation desirable for selected business units (e.g., business ventures, health plans)? Should we use broader definitions of competitive positioning rather than a specific percentile to allow variation based on an executive's impact, performance and industry standing?
- 2 **Should we rethink the balance between fixed compensation (base salary and vested retirement supplements) and variable compensation (incentive pay and at-risk retirement supplements) in light of the current healthcare environment and the impact of the pandemic?** If incentives are not earned or paid out, is our resulting compensation market-competitive? If not, what kinds of talent risks does this create and what actions (if any) would the committee take?
- 3 **Are we prepared to respond to a more competitive and aggressive executive labor market due to retirements and burnout?** Is our compensation package competitive for candidates and incumbents with the skills and competencies required to be successful in the current environment? Should we establish salary increase budgets of 3% consistent with anticipated norms, or do we need to budget more to respond to more aggressive peers and provide above-norm increases for key leaders heading up transformation initiatives?
- 4 **Is now a good time to review selected executive benefit programs that may no longer be contemporary or achieving their intended purpose?** Does the supplemental executive retirement program support retention, and is it competitive and cost-effective? Do our severance arrangements provide income protection in line with contemporary market practice and our anticipated transformation and merger/acquisition activities?
- 5 **Do we have sufficient business judgment built into our executive compensation programs** so the committee can make the adjustments necessary to reward great performance and crisis/change leadership while remaining good stewards of our tax-exempt assets? Can the committee make both positive adjustments (to provide more than stated or required) and negative adjustments (to provide less than otherwise calculated) in these programs?
- 6 **Does our executive incentive plan align with the organization's new performance priorities and measures of success?** Does the degree of stretch in the performance goals ensure meaningful performance is attained for corresponding payouts? Do we need to consider incentive measures that reward the attainment of multi-year transformation goals? Do we know how our operational performance compares to our peers as well as our overall executive compensation market percentile?
- 7 **Do we have a current succession plan for our senior leadership positions,** including emergency appointments and identified "ready now" and "ready later" successors? Do we have a succession plan for the CEO role, with timelines of key events and steps, and is the CEO's employment agreement (if any) aligned with that plan?
- 8 **Does our executive performance assessment process focus on emerging critical skill sets and changing leadership competencies?** Do we evaluate our executives' crisis management skills and how effectively they manage a workforce that is more mobile and less connected to our culture, offices and colleagues?
- 9 **Do we have a robust leadership development program in place that provides training and developmental opportunities for our future system leaders?** Is this program aligned with our diversity, equity and inclusion priorities?
- 10 **Do our diversity, equity and inclusion initiatives focus primarily on hiring (getting people in the door), or is there a holistic focus on mentoring, developing, advancing and retaining?** Does our executive leadership team represent and demonstrate our principles, or at a minimum progress toward their achievement?

10 FOCUS AREAS FOR YOUR AUDIT COMMITTEE

Author: Scott Steffens, Partner, Grant Thornton LLP

- 1 Is the organization compliant with all financial filings beyond audit reports?** Does governance regularly review all required Internal Revenue Service and state tax filings? Has governance confirmed that any and all other reports, such as debt compliance and uniform guidance (for federal funds spent), have been made in a timely manner?
- 2 Is summarized financial information available** that is consistent with external statements and internal management reports? If there are differences, are they fully explained by management to the board? Does governance understand how management organizes programs and reports results?
- 3 How does the auditor assess significant risks?** What are the risks assessed as significant by the auditor? How does management determine significant disclosures? Has management omitted any significant disclosures?
- 4 What are the significant estimates embodied in the financial statements?** Is management pushing the envelope too much? Is management taking the most supported positions? When was the last time significant estimates were critically challenged?
- 5 How does the organization manage information risk?** Have there been any ransomware attacks on the organization? What controls are in place over critical financial information?
- 6 What insurance policies are in place for theft and cyberattacks?** What are the deductible and coverage levels? How often are these policies evaluated? How do the coverage levels compare to those of peer organizations?
- 7 Is the organization compliant with conflict of interest policies and procedures?** Are all employees aware of the policies? How does management communicate and set the appropriate tone of the importance of the policies and guidelines for acceptable business practices? Have annual conflict of interest forms been received and reviewed to identify any possible issues?
- 8 Who are the key employees in the finance function?** How are they kept current on industry developments and technical training? Is there adequate succession planning for key roles? Is there concentration of information risk because of employees who play too many critical roles?
- 9 How has the work-from-home environment impacted or modified internal controls?** Are there any internal control deficiencies that have not been remediated for more than one audit cycle? Do any deficiencies represent increased risks of fraud or misdirection of assets?
- 10 How often are information systems reviewed for relevance and obsolescence?** Are there any critical systems where management has elected to not purchase or install upgrades or patches?

10 QUESTIONS TO ASK YOUR IT AND PRIVACY/SECURITY COMMITTEES

Author: Stephen W. Bernstein, Co-Head Digital Health Practice, McDermott Will & Emery LLP

- 1** What steps has our organization taken to map our data, including how it comes in, how it is used, with whom it is shared (both within and outside our organization), for what purposes and in what forms (e.g., identifiable for treatment or payment purposes, limited data sets for research or public health reporting, or deidentified/anonymized for third-party licensing or other business purposes)?
- 2** What are our data handling policies and procedures beyond HIPAA and relative to specific state and international laws (both for non-US patients and for any data coming from outside the United States or moving from the United States abroad for patient intake or telehealth consultations)?
- 3** What kinds of security risk assessments have been conducted, when, and by whom? What was learned? What remediation steps have been recommended? Has progress been made on those steps?
- 4** Do we have a security incident response plan? Who is on the incident response team? Have we conducted a mock (or real) security incident exercise with this team? If so, how did they perform?
- 5** What is the status of our efforts to implement interoperability requirements within our own system, and when working with other health systems and providers, to ensure that patient information is readily accessible for use in treating patients?
- 6** What do our usage reports show with respect to patients accessing our patient portal? What are our figures with respect to patients sharing their information with others (both providers and third-party apps) via application interfaces? Have our patients found it easy to access their information?
- 7** What is our data strategy regarding uses of our own data? Have we been approached by others in connection with data licensing arrangements where we would in-license data or out-license deidentified data to others? What is our business and compliance approach to these efforts?
- 8** What is our system's telehealth strategy? Is there a business plan for it? How did this effort work during the pandemic, and what is our future pivot to deliver care via telehealth? Is there an optimal balance between in-person and remote care, and if so, what are the quality of care implications? What are the economics around this hybrid care delivery approach?
- 9** Do we have an organized approach around machine learning and use of artificial intelligence involving our own data to improve care delivery? How have we evaluated and accounted for bias within these tools? Who are the internal and external experts advising us on this innovation from the operational, regulatory and care delivery standpoints?
- 10** When was the last time our cyber-insurance coverages were reviewed, not just with respect to amounts of coverage, but with respect to quality of coverage (i.e., what is covered, what is excluded)?

10 DECISION-MAKING TIPS FOR THE FINANCE COMMITTEE

Author: Andy Majka, Managing Director, KaufmanHall

- 1 **Now is the time to update the strategic financial plan.** Don't wait for certainty—it doesn't exist. This plan is the essential connection between the system's mission and strategic plan (and associated capital requirements) and its financial capabilities and constraints within the context of an acceptable risk and credit rating.
- 2 **Make sure you understand today's financial position,** including capital capacity, risk appetite, refined capital needs and anticipated funding shortfalls. Make informed decisions in balancing trade-offs among capital, cash, debt, operations, philanthropy and alternate funding sources. Establish contingency plans around future states versus a steady state. Work with executive leadership to identify data sources, reporting systems and advisors that can help inform the finance committee's decision-making.
- 3 **Make performance improvement your no-regrets strategy.** An uncertain environment makes revenue unpredictable. Focus with great urgency on improving what you can control: your internal performance. Extend traditional cost reduction into improving service distribution, clinical variation and care management.
- 4 **Consider alternative budgeting processes through COVID-19 and beyond.** The sudden and unpredictable variations brought about by COVID-19 made annual budgeting virtually impossible. In the pandemic's wake, momentum is building toward more flexible budgeting processes, such as dynamic rolling forecasting, to better adapt to future disruptions in real time.
- 5 **Get closer to the premium dollar.** In light of revenue, expense and capital challenges, consider strategies that will bring you more of the insurance premium dollar. While it's not feasible for most systems to become their own health insurers, consider strategies for risk sharing and closer alignment with certain insurers.
- 6 **Understand your capital capacity.** The appetite to fund growth, ambulatory migration, transformative strategies, technology and partnerships is insatiable. Now more than ever, you need to objectively understand your current and near-term capital capacity under alternate scenarios.
- 7 **Allocate capital with great discipline.** As we look to the future, organizations that establish a more corporate-based, competitive and disciplined capital allocation process (tied to the mission and strategic plan, and supported by the financial plan), with a clear bias towards realistic return on investment, will likely be more successful over time.
- 8 **Reexamine how much risk is appropriate in your debt and investments.** With so much uncertainty ahead, now is the time to consider how much risk is appropriate in your debt structure and investment strategy, and whether your debt and asset strategies are aligned. Because historically low interest rates are countered by mounting inflation concerns as the economy reopens, there are risks in being either too passive or too aggressive. Organizations should consider establishing an integrated and fluid risk-resource management framework.
- 9 **Develop financial talent.** The finance function is often overlooked in the race for talent. Organizations should identify the financial skills they need, and where, and build out the pipeline for attracting and developing people with those skills. Similar goals apply to leadership on the finance committee.
- 10 **Ensure that partnerships are accretive.** The finance committee has a special role in ensuring that the business case, financial due diligence, determination of financial accretion or dilution, resource allocation, funding and other elements of any partnership are appropriately vetted.

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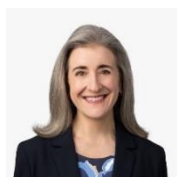
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