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Foreword

*by Tim Delaney, Esq.**

Beware Buzzwords

Webster's Dictionary defines a buzzword as "an important-sounding, usually technical word or phrase often of little meaning used chiefly to impress laymen." Wikipedia elaborates: "Buzzwords appear ubiquitously but their actual meanings often remain unclear. Buzzwords … have the function of impressing or obscuring meaning." And WordNet offers the following meaning: "stock phrases that have become nonsense through endless repetition."

The words "accountability" and "transparency" have not been reduced to complete nonsense, but there can be no dispute that the terms have become ubiquitous recently as accountants, lawyers, and other consultants have been invoking the terms endlessly, repeating these important-sounding words to impress various audiences. Those audiences, in turn, have been tossing the words around haphazardly—to the point that the real meanings of "accountability" and "transparency" seem unclear to speakers and listeners alike. Speakers say the terms and listeners politely nod, but no one really knows what is meant. When that happens, it's time to take a step back to gain some perspective.

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"Accountability" Has Become a Buzzword

Intrigued at how people today appear to be using the term "accountability" as shorthand for different things, and inspired by Joseph Rost, who found 221 definitions of another popular word—"leadership"—when writing *Leadership for the Twenty-First Century* (1990), I set out to review what "accountability" means today.

First, I turned to dictionaries, where I found dozens of different definitions of "accountability." *Random House* defines it to mean "the state of being accountable, liable, or answerable." WordNet offers this twist, "responsibility to someone or for some activity," while Centipedia.com notes it means "the aspects of responsibility involving giving a statistical or judicial explanation for events." Even the *Department of Defense Dictionary of Military and Associated Words* has a view: "The obligation … for keeping accurate records of property, documents, or funds. The person having this obligation may or may not have actual possession of the property, documents, or funds. Accountability is concerned primarily with records, while responsibility is concerned primarily with custody, care, and safekeeping."

Thinking that dictionaries might be offering different distinctions to meet market niches, I then turned to the Internet to see if there is a universally-accepted usage in the real world. That search confirmed that the word "accountability" is extremely popular, with more than 225 million hits on Google (and a seemingly equal number of interpretations). That search also revealed the term is perceived to be extremely marketable, in that more than 290 books have the word "accountability" in their titles—books about corporate, education, governmental, leadership, military, nonprofit, personal, and other aspects of accountability. Wikipedia's on-line descrption best captures the diverse usage in the real world today: "*Accountability is a concept in ethics with several meanings. It is often used synonymously with such concepts as answerability, responsibility,* *blameworthiness, liability and other terms associated with the expectation of account-giving*."

Finally, thinking that the apparently endless use of the word in the nonprofit realm might have created a common understanding at least within one sector, I asked nonprofit leaders in several states what "accountability" means to them. Their responses varied widely, from "doing the right thing" and "being transparent" to "being answerable to your stakeholders" and "being ethical." In short, there is no uniform understanding even within the nonprofit sector, where use of the word has been inescapable during the last few years.

So, just as Rost's research led him to write that "*leadership* is a word that has come to mean all things to all people," my review of the term "accountability" leads to a similar conclusion: the simple word "accountability" means different things to different people. Through overuse and misuse, "accountability" seems to have reached buzzword status: a word that, although used ubiquitously and authoritatively, carries a meaning—by both speakers and listeners—that is unclear.

"Transparency" Is Another Buzzword

Similarly, people are calling for more "transparency" within the nonprofit sector, but without a common understanding of what that really means or looks like. Many people interpret "transparency" to mean "open everything to public scrutiny and review." Some use "transparency" as code for "be more ethical." Yet others even intermix buzzwords, using "transparency" to mean "more accountable." In fairness, their confusion is reinforced by the various formal definitions, which range from "allowing the clear transmission of light" to "free from pretense or deceit" and "readily understood; clear."

Danger exists when using terms without a clear understanding of their meaning or how they will be interpreted by others. Telling nonprofits they need to be "transparent" may lead some to conclude that nonprofits must be "see-through," that everything a nonprofit does must be open for public display. While that may sound nice in the abstract to the uninformed, in fact board members have a legal duty to protect certain information as confidential. Indeed, even the IRS recognizes that certain nonprofit information is confidential and that select categories of information may be withheld from general consumption. So before calling for "more transparency" or jumping to certain assumptions when others use the term, people should pause to question what really is meant.

Pillars of Accountability Moves Beyond the Buzzwords

This second edition of *Pillars of Accountability* can help nonprofit leaders look beyond the buzzwords of "accountability" and "transparency" to see the important foundations upon which the terms really are built. Through three mechanisms, *Pillars of Accountability* illustrates what is required to bring appropriate accountability and transparency to nonprofit organizations.

Accountability to the Truth

Through its separate yet interrelated chapters on ethical fundraising, fiscal integrity, strategic risk management, leadership sustainability, and sound employment practices, *Pillars of Accountability* helps readers see the numerous stakeholders to which a nonprofit's board members are accountable, including: donors, other board members, employees, volunteers, clients being served, the public, the law, the organization's governing documents, and the organization as a whole. This cogent book helps new nonprofit leaders avoid falling into the myopic trap of trying to appease just one stakeholder, because the challenge is much larger.

So how can nonprofit leaders balance all of these interests? To whom are they ultimately accountable? Leaders need to appreciate that they are accountable to the truth—an all-important but oft-forgotten concept. In studying the scandals of recent years, I have seen people rationalize their actions by asserting they were doing things out of loyalty to a certain constituency, such as cooking the books to help stockholders or protect the jobs of key employees. By constantly prioritizing loyalty (often to themselves) over the truth, these people found themselves mired in scandals. To avoid future scandals, our society and our leaders need to consciously and purposefully reconnect to the truth. Nonprofit leaders can do this by recognizing that they are accountable to the truth rather than to a single group of stakeholders. This perspective will help thwart damaging short-term rationalizations and provide long-term protection to nonprofits and the communities they serve.

Transparency Requires Clarity, Not Obfuscation

Too often, so-called "experts" tell people what the end results should look like without sharing the required elements on how to make those results possible. For example, saying that a good nonprofit has a strong board with a talented staff may be true, but without sharing any clue about what a strong board and talented staff actually looks like, the description of the overall objective remains abstract and therefore meaningless. That's where the second edition of *Pillars of Accountability* steps into the usual void to add practical clarity.

In this edition, Melanie Herman (executive director of the Nonprofit Risk Management Center) provides important comparisons about what a good nonprofit situation looks like and what a bad one looks like. In so doing, she presents the context for new (as well as experienced) nonprofit leaders to informally assess how well their nonprofits are performing so those leaders may determine whether immediate action is necessary. Also, with its useful check lists, *Pillars of Accountability* supplies a "Goldilocks" level of detail; instead of a "too little" admonition to "go forth and do good things" and rather than a "too much" approach found in a thick legal treatise, this book is "just right" in that it supplies informed, substantive insight for busy people to readily apply in the real world. Finally, while *Pillars of Accountability* offers comprehensive breadth and unique depth, it does not pretend to offer all the answers and openly identifies multiple quality resources for further reference. In sum, in this latest edition, the Nonprofit Risk Management Center provides evidence of the organization's commitment to clear, helpful, and practical service to the nonprofit sector and nonprofit leaders.

Actual Definitions

Finally, unlike other experts who are running around simply repeating the terms "accountability" and "transparency" without explaining what they mean, this book reveals the Center's preferred definitions of those terms. As for the rest of us, while we do not have to adopt the offered definitions beyond this book, I believe it would be a good place for our sector to begin. We need to avoid the empty buzzwords that mean different things to different people. Mere repetition of words with no understanding of their actual meaning will not transform them into magic solutions. In short, to strengthen our sector and our organizations we need to get on the same page. Fortunately for us, the Nonprofit Risk Management Center—with this second edition—has provided the appropriate vehicle to do just that.

—Tim Delaney, Esq.

Introduction

There is perhaps no higher calling than serving one's community through the work of a nonprofit organization. Many dedicated community leaders are asked to occupy a place of honor as a member of the board of directors of a nonprofit. Yet many do not realize the weighty responsibilities they will encounter when they agree to volunteer as a board member. Some new board members arrive with an overly optimistic or glossy view of the nonprofit's assets and opportunities. Many report that prior to joining the board, they did not fully appreciate the range of issues and responsibilities which would fall under their purview. Once new board members have put aside the ambitious outlook described in the annual report and taken a hard look at service delivery outcomes, monthly financial statements, and an analysis of funding prospects, they are ready to go to work, but they may still need clarification about just what their scope of work entails. That is the purpose of *Pillars of Accountability*.

Managing a nonprofit in the 21st century offers more challenges than ever before. Nonprofit missions are increasingly bold and ambitious, reliance on costly technology has become the norm, and relationships with key community organizations—from government agencies and local businesses to other nonprofits—have also grown more complex. Something as simple as "borrowing" space from a community church may now require that the nonprofit enter into a contract, provide a certificate of insurance, and substantiate the organization's risk management efforts before it is allowed to occupy the space.

Providing vision and guidance to a nonprofit is further complicated for the board by the public's steadily intensifying scrutiny of nonprofit leadership. This intensified interest, fueled by media reports of wrongdoing by a small number of sector leaders and the growing interest by donors (organizations and individuals alike) in assuring that their chosen charities act responsibly, puts additional pressures and responsibilities on nonprofit leadership. Thus it behooves nonprofit boards to be accountable themselves and to ensure that their organizations are accountable.

Volumes have been written about nonprofit boards' legal responsibilities, ethical dilemmas, governance challenges, and accountability concerns. Much of what has been published during the past decade offers a philosophical or legalistic approach: a board must deliberate with care because the legal *duty of care* requires that it do so. A board should mind that its actions are ethical so that it lives up to the ideals it espouses in the community. A nonprofit board must be accountable to constituencies in order to minimize the risk of dissent, controversy or ultimate failure in achieving the nonprofit's mission. This book acknowledges these ethical and legal imperatives and also offers practical suggestions for targeting accountability weak spots. *Pillars of Accountability* specifically offers advice and suggested action steps in the following areas, which the Nonprofit Risk Management Center believes represent key components of a solid foundation for accountable conduct:

- ❑ Ethical Fundraising
- ❑ Strategic Risk Management
- ❑ Fiscal Integrity
- ❑ Leadership Sustainability

- ❑ Sound Employment Practices

The Center views improving accountability as an important "to do" item for boards but believes its pursuit should not require a large investment of funds.

This book borrows some of the advice found in the Nonprofit Risk Management Center's free online tool, *Pillars of Accountability*. While the online tool known as "Pillars" is intended to help nonprofit CEOs and other senior managers craft an accountability "to do list," this book is aimed at nonprofit board members. The goal of this publication is to offer a different perspective on some of the ideas held dear by nonprofit leaders, while presenting practical steps that every nonprofit board should consider taking, in order to inch towards the ideal. We purposely choose not to draw an accountability line in the sand and insist that every nonprofit step over it. What constitutes acceptable, appropriate or reasonable action differs so much from one nonprofit to the next. While it may be possible to identify certain conduct as unacceptable in any environment (such as the intentional disregard of the prescribed intent of a donor), most conduct is simply not that easy to classify. What may be unacceptable in one organization (the absence of directors' and officers' liability insurance) may represent a practical reality or thoughtful decision in another.

This book also follows in the footsteps of an earlier publication, *Leaving Nothing to Chance: Achieving Board Accountability Through Risk Management*. In that booklet, published by the National Center for Nonprofit Boards (now known as BoardSource, www.boardsource.org), we outlined 10 steps to achieving greater organizational accountability. *Pillars of Accountability* follows the tradition of this earlier publication by presenting risk management as a foundation for making accountability happen.

Only a nonprofit that is *disinterested in its mission* can afford to ignore the consequences of risk. Unfortunately, the discipline of risk management is too often viewed as a luxury by nonprofit boards. Representative of board members' attitudes are:

- "We're managing risk to some extent, but we just don't have time to focus on it due to our ambitious capital campaign."
- "We've been serving young people in this community for more than 50 years, and nothing awful has ever happened."
- "Every minute we spend fretting about disaster is one less minute spent on planning activities for the seniors."

As a result of these attitudes, much risk management is either lost in a fog of good intentions or buried by self-confidence. While it is no surprise that an organization that has never suffered an unfortunate or calamitous surprise would be reluctant to embrace risk management, it definitely should.

Risk Management as a Launching Pad and Framework

Why position risk management as the foundation for accountability goal setting and activities? Risk management is an effective launching pad because when practiced appropriately it:

- recognizes the culture, environment, resources and challenges facing a particular organization;
- suggests ways that an organization can gradually incorporate changes that increase the safety of its assets: people, property, income and reputation;
- offers a means to identify and address challenges as they emerge in an organization; and
- provides a range of options for addressing the fear, anxiety and concern felt by a nonprofit's leaders.

What Is the Board's Role in Risk Management?

Despite the tendency among some nonprofits to treat risk management as an administrative matter, a nonprofit that seeks to incorporate state-of-the-art thinking and practice into its day-to-day operations cannot extract the board of directors from discussion and decision making on the subject of risk. The board's role may be expansive or narrow, tailored to the circumstances, resources and perspective of the organization. No matter how the board fulfills its responsibility for providing leadership in this area, several aspects should be common to all nonprofits. These include the responsibility for making the case for risk management, the duty to model the commitment to risk management, and the board's need to fully understand and appreciate its exposure to liability.

Making the case

Making the case for risk management in a nonprofit begins with the board of directors. A nonprofit board not only establishes policies that govern operations, it models behavior for the organization's paid and volunteer staff, clients, and other constituencies. When a nonprofit's board attaches significance to a particular issue, it is likely that paid staff and other key players will follow suit.

Without sacrificing program goals or a nonprofit's enthusiasm for new activities, the board can and should demonstrate to others that risk management frees up—rather than consumes—resources that can be used to achieve the organization's mission. Through its actions and policies, the board can dispel some of the misconceptions about risk management.

Modeling the commitment

The board has a number of ways to start modeling a commitment to risk management. First, the board can focus on the precautions and steps to be taken to ensure that its own affairs are conducted in a legal and appropriate manner. As the board reviews proposals concerning new activities, it can include safety-related issues in its deliberations. Questions the board might ask include:

- ❑ What are the risks associated with this activity or program?
- ❑ Can we conduct this activity or program safely?
- ❑ If no, what alternative activity would have similar results with an acceptable level of risk?
- ❑ What resources or actions do we need to take to ensure the safety of staff, clients and the general public?

One of the most important contributions that a nonprofit board makes to the organization's overall risk management effort is to manage its own affairs properly. A board's actions should model its commitment to excellent management that includes risk management. When the board takes its responsibilities seriously, others will follow the board's lead.

Understanding board liability

Every nonprofit board has specific legal duties of care, loyalty, and obedience. The *duty of care* asks a director to be reasonably informed, participate in decisions, and to act in good faith and with the care of an ordinarily prudent person in similar circumstances. Ways to assess a board member's commitment include asking if the person participates actively in decisions, attends meetings, uses independent judgment, and seeks reliable information to make informed decisions.

The *duty of loyalty* requires that a board member put the interests of the organization first, ahead of any personal interest or the interest of another party or entity. Loyalty issues usually arise from actual or perceived conflicts of interest, appropriation of a corporate opportunity (a member engages in a transaction that may be of interest to the organization), and breaches of confidentiality. Each nonprofit should have written and enforced policies on conflict of interest and confidentiality.

Board obedience relates to the need to act in accordance with the nonprofit's mission and all applicable laws and regulations. A common allegation of *board malfeasance* is that the board is not staying true to the organization's mission and purpose. Remember that in addition to the board itself, many external entities regulate and monitor nonprofits closely to ensure that they maintain their charitable functions.

To meet a board's legal duties and manage the risks associated with governing an organization the directors must be committed to being effective members. The board can enhance its ability to act appropriately by providing its members with information and guidance. One tool is a manual that includes basic documents and information on the organization's history, structure and activities. Another tool is a board orientation program to bring new board members up-to-date quickly. Board minutes serve to inform new members and to document the board's actions. These and other activities will help board members meet their responsibilities and be accountable to members and stakeholders.

In addition to following the rules that guide its operations, an accountable board meets in an environment characterized by a culture of candor. Each board member must feel comfortable raising difficult issues for discussion (e.g. "Will this new program truly further our mission, or are we pursuing this opportunity due to the associated revenue?" or "Is the figure proposed for client fees realistic given our history of declining demand for services?"). The opposite environment—where board members feel that asking tough questions reflects disloyalty to the organization and its staff—is poisonous for an organization seeking to achieve greater accountability.

Risk Management Checklist for Board Operations

- ❑ Does the board keep thorough, accurate records? Do the board meeting minutes document every corporate action taken? Are dissenting views and votes reflected?

- ❑ Do the minutes reflect which directors were in attendance?
- ❑ Does the board have operating procedures, either outlined in the nonprofit's Bylaws or elsewhere?
- ❑ Does the board explore options before arriving at a decision?
- ❑ Do board deliberations reflect a "culture of candor," an environment where board members feel they are permitted and encouraged to ask difficult questions and discuss controversial topics facing the organization?
- ❑ Are attendance policies in place and enforced for board members who fail to participate?
- ❑ Do board members stay informed about the organization's activities? Are background materials provided in advance of each meeting? Do board members ask questions and seek clarification on matters before them?
- ❑ Does the board have a conflict of interest policy? Is the policy followed?
- ❑ Is adequate notice of meetings provided in accordance with the Bylaws?
- ❑ Are board members elected in accordance with procedures outlined in the Bylaws?

As indicated previously, this book explores five pillars of accountability: Ethical Fundraising, Strategic Risk Management, Fiscal Integrity, Leadership Sustainability, and Sound Employment Practices.

These Pillars provide a foundation for preserving and protecting the integrity of your organization. We hope this book inspires your board to sharpen its collective pencil on the issue of accountability. As you read the chapters ahead, consider what goals are appropriate given your circumstances and resources. Take a closer look at your accountability goals and the steps you can reasonably take to achieve them.