

**THE RELATIONSHIP BETWEEN FORMALIZATION
AND AWARENESS OF FIDUCIARY DUTIES OF BOARD
MEMBERS OF NONPROFIT ORGANIZATIONS**

by

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Abstract

The purpose of this study is two-fold: firstly to examine the position of the Chairperson and the Executive Director regarding the awareness of board members of nonprofit organizations of their fiduciary duties, and secondly, to explore the impact of formalized organizational procedures and role definition on promoting awareness of fiduciary duties among board members. Data was collected from 161 nonprofit organizations in Israel and included interviews with executive directors and chairpersons. The results showed that most board members are aware of their fiduciary duties. The findings also showed that fiduciary awareness is significantly positively correlated with formalization, age of organization, number of board committees, and attendance rates at board meetings; i.e., the older the organization the more formalized it is and the more written rules, bylaws, and other written materials the greater is board members' awareness of their fiduciary duties. Similarly, the higher the level of perceived fiduciary awareness among board members, the more board committees and higher rates of board meetings attendance there are. The positive correlation between formalization and the levels of awareness of fiduciary duties proves the need to establish a board's working procedures through legal arrangements.

Keywords: Fiduciary duties, formalization, boards, nonprofit organizations

THE RELATIONSHIP BETWEEN FORMALIZATION AND AWARENESS OF FIDUCIARY DUTIES OF BOARD MEMBERS OF NON PROFIT ORGANIZATIONS

Preface

During the past two decades boards of directors of nonprofit organizations (NPOs) have undergone many changes. From a “window dressing” team (Fishman, 1987), they have become the primary group bearing the burden of accountability and responsibility for the nonprofit organization’s performance. The prosperity of the nonprofit framework in the United States of America, as well as in Israel, has drawn attention towards the organizational behavior of its managerial bodies – the board of directors and the executive management. These two core bodies of the nonprofit setting are its agents, they shape the corporate intention and will, are supposed to monitor their implementation, and are responsible for monitoring the routine management of the corporation. Therefore, they are legally identified as organs which form part of the body of the non-profit entity.

Directors in non-profit organizations perform several functions (Iecovich, 2004; Klausner & Small, 2005): while some of them govern, others are engaged in raising funds, providing special experience, maintaining ties with the community or serving as goodwill ambassadors for the organization. Managers of non-profit organization serve as agents of the organization thereby executing its purposes.

The definition of these organs as agents and the application of agency principles on the nonprofit form (Ostrower, & Stone, 2005) accentuate the difficulty caused by the absence of capital stockholders with a pecuniary interest, in the nonprofit form. Their absence is caused by the legal prohibition to distribute profits as

part of the nonprofits infrastructure, consequently leading to the lack of an efficient monitoring function.

The relationship between a firm's performance and personal investment in shares serves as an incentive to management monitoring by interested shareholders (Cheffins, 1997). However, the prohibition of profit distribution has a negative effect on the incentive of interested groups to monitor the behavior of management. Thus, the nonprofit board of directors has the responsibility to assure donors that the organization and its officers will honestly use their contributions to the benefit of the organization (Fama & Jensen, 1983). Miller (2002) argues that monitoring and oversight are also difficult because the third sector lacks a commonly accepted indicator of effective performance.

Intrigued by the growing importance of boards, we sought to examine their compliance to fiduciary duties as a means of promoting their effective functioning. There are, at least, two routes to effectuate this mission: The internal route in which board members have to report how much they are aware of their duties and the external route in which the chairperson and the CEO report from their standpoint on the fiduciary functioning of board members. In our research we chose to proceed along the second route. We wanted to investigate whether the intensive relationships between boards and chairpersons on the one hand, and the more distinct and conflict prone relationships between boards and CEOs on the other hand, shed any light on the level of awareness of fiduciary duties. We assumed that the external route was more interesting for two reasons: (1) It offers an objective and critical position. (2) Since the chairperson and the CEO are responsible for formalization procedures such as internal regulatory standards they can improve, if recommended, board performance through their control on written materials.

The purpose of this study is, therefore, two-fold: First, to examine the extent to which chairpersons and executive directors assess and perceive that board members are aware of their fiduciary duties; and second, to explore the impact of different levels or degrees of formalized organizational procedures and role definitions on the level of awareness of fiduciary duties among board members.

The Board of Directors in the Non-Profit Organization – legal review

The expanding use of nonprofits as an ultimate corporate framework for different activities emphasizes the need to improve the performance of their governing and monitoring body – the board of directors. The efficient functioning of an organization depends on competent, professional, and loyal behavior on the part of both, the board and officers. Along with the organizational ordering of the expected behavior of nonprofits, law has also defined the duties of the board and officers.

Loyal and careful behavior is defined by the legal term “fiduciary duty” that orders careful, diligent, and bona fide behavior for the best interests of the corporation. Fiduciary duty is defined as a mechanism to cope with managerial accountability (Clark 1986). In the U.S., the Non-profit Laws include a very detailed definition of the fiduciary duty, with most of them adopting the Revised Model of Nonprofit Corporation Law formula. The New-York Not-For-Profit Law (s 717), for example, specifies the way in which this duty should be executed. Yet, American evidence shows that as opposed to the for-profit world, law plays a residual role in assuring accountability in the nonprofit sector (Bothwell 2001). Goldschmid (1998) argues that the central paradox of nonprofit corporate governance is that the nation’s nonprofit institutions are the recipients of so much public and private largess and yet are subjected to so few accountability constraints. Fishman and Schwarz (1995)

conclude that despite of lack of empirical evidence, it seems likely that ineffective nonprofit corporate governance has had a significant negative impact on the capacity of nonprofit corporations to carry out their missions. A decade later Salamon & Geller (2005) still contend that systematic evidence on the governance practices of nonprofit organizations and on their adherence to basic conflict of interest and other ethical standards has long been unavailable.

Contrary to the detailed definition in the American law, the Israeli legal arrangement of nonprofit organizations is very complex: There are two legal enactments which may serve as a basis for nonprofit incorporation: the Non-Profit Law, 1980 and The Law of Corporations, 1999. The Israeli Nonprofit law ¹, states only very briefly that directors should behave in a manner that will benefit the organization, be within the framework of its purposes and according to the instructions of its articles and its general meeting. This very general and vague definition of fiduciary duty, coupled with a traditional lack of awareness of nonprofit directors of the exact level of obedience required in order to fulfill their legal responsibilities, contrasts with the growing public expectations from them as “public servants”. Contrary to the American, where the responsibility of enforcing nonprofit law rests with the state attorney general, the Israeli law affords a similar arrangement but less effective. The Israeli public nonprofits' registrar is authorized to investigate the management of the organization and can apply to court for its dissolution in cases of extreme irregularities. The Israeli registrar is not authorized to sue the officers or to order their replacement. Therefore, the amount of cases in which the registrar has conducted such investigation is very small. Monitoring can be also performed by Israeli Internal Revenue Authorities in relation to tax exemption provision. Unlike the

¹ The Amutut Law, 1980

situation in the United States (Brody, 1998), this is a relatively effective tool in Israel although it does not serve to monitor the management efficiency but rather the management loyalty. Therefore, the functioning of Israeli nonprofit organizations is hardly monitored.

The American experience shows that legal definition does not insure compliance to duties (Bothwell, 2001). Hage (1998) states that boards have not often been studied in the traditional literature due to their inconsequential status. He argues, however, that organizations that rely upon volunteer labor and financial contributions have to be more concerned about the legitimacy and support granted to the organization than organizations in the governmental and business sectors. Therefore, the role of the board becomes more critical and thus more powerful. Golensky (1993) also argues that boards are critical for stabilizing NPOs.

The Fiduciary duty: The Core of the Nonprofit Existence

The nonprofit corporation reflects a bond of power and dependency. The dependent parties are the beneficiaries who are the consumers or the patients or the needy that receive the nonprofit's service. They rely upon the power holders - the directors and managers and expect them to some aspect of their lives (Mitchell, 1990). This dependency may create monitoring problems since the power holders are not properly controlled, as previously noted. The control on their functioning is not effective due to the fact that those who would like to monitor - the beneficiaries - are practically unable to do that and there are no other figures with a financial incentive to replace them. Therefore, the power holders can be tempted to take personal advantage of their non-monitored positions. Bothwell (2001) cites survey interviews in which many respondents declare their belief that codes of ethics, codes of conduct, accountability standards, and principles of good practice are ineffective without enforcement. It is

this scenario that encouraged the law to define the internal relations within the nonprofit corporation as a fiduciary relationship and create an enforcing mechanism in the case of breach of duties.

The main characteristic of the fiduciary relationship is the total reliance of the dependent upon the power holder and the latter's control over the affairs of the dependent. This dependency of one side to the relationship on the other has given rise to duties to protect the beneficiary from possible abuse of power by the power holder, who will be termed "trustee" hereafter. Fiduciary principles rest on the ex ante assumption that since the beneficiary is not in a position to police each transaction or measure any injury to it or even foresee all contingencies. S/he expects and is entitled to have the trustee exercise her/his best efforts solely to serve the beneficiary's welfare and to refrain from using her/his powerful position for any purposes other than those in the beneficiary's exclusive interest (Brudney, 1985).

It follows that a fiduciary relationship is the core of the nonprofit existence. According to Hansmann (1996) the fiduciary basis is supposed to supply a safeguard against management embezzlement. Every director of a nonprofit organization has a fiduciary responsibility to the organization. This fiduciary responsibility includes two major duties; a duty of obedience and loyalty, and a duty of care. Each director and officer has a duty of obedience to fulfill the particular purposes of the organization, a duty of loyalty to the corporation and a duty of care to be exercised towards organizational matters, including a duty to manage funds prudently in the corporation's best interests and in accordance with the corporation's purposes.

Crimm (2001) argues that the extensive discretionary powers conferred on directors of nonprofit corporations emphasize the importance of adherence to these basic fiduciary duties. The duty of loyalty requires each director to preserve the

organization and its charitable purposes and to avoid conflicts of interest and usurpation of corporate opportunities. The duty of care requires each director to discharge all responsibilities in good faith and with the degree of care, diligence, and skill that a prudent person would ordinarily exercise under similar circumstances, and in a manner reasonably believed to be in the corporation's best interest².

Fiduciary Duties and Board Effectiveness

In a study of NPO boards and organizational performance, Herman and Renz (1998) found that boards' increased effectiveness was positively associated with better performances of the organizations. Legal fiduciary duties are supposed to promote board effectiveness, yet, Herman, Renz and Heimovics (1997) suggest a moral aspect that is integrated in the fiduciary duties; the board assumes the role of a public steward over the affairs of the organization, ensuring that it serves the interests of the larger community. These legal and moral duties mean that boards should exercise governance and leadership responsibilities, including making decisions about organizational mission, programs, financing, and management of work, while carefully delegating to the staff the implementation of these decisions and tasks. It leaves the board with the job of overseeing and reviewing the performance of staff in carrying out board decisions.

Not only are nonprofit boards expected to perform governance and leadership responsibilities to meet legal and moral duties, but those boards that more effectively perform these duties are supposed to contribute to increased organizational effectiveness (Carver, 1997; Chait, Holland, & Taylor, 1991). Thus the effectiveness of nonprofit boards is a significant issue for nonprofit leaders, managers and founders.

² See, e.g., N.Y. Not-For-Profit Corp. Law 717,

Indeed, as Inglis and Weaver (2000) indicate, increasing the effectiveness and efficiency of the work of the board is critical to the success of nonprofit organizations.

Mechanisms to enforce compliance of duties

Crimm (2001), citing Fishman and Schwarz (2000), and Bowen (2000), points out several ways of possible breach of the duty of care by failing to carry out these functions. Among these are the following:

- (1) A failure to remain reasonably informed about the corporation's activity.
- (2) A failure to obtain adequate information in order to be able to make informed decisions about matters affecting the corporation's interests, investments, and assets.
- (3) A failure to actively participate in the proper management or supervision of the corporation.
- (4) A failure to regularly attend meetings of the board of directors.

These failures show how compliance to duties depends largely on internal formal procedures and that their execution could be improved if their breach caused legal offense. The voluntary nature of the corporation discourages the imposing of heavy legal burdens on board members. Furthermore, the lack of financial interest of stockholders, due to the prohibition of profit distribution, makes private monitoring almost impossible. Sidel (2002) notes that the awkward and inconsistent nature of regulation of the nonprofit sector remains an intractable problem as Karst (1960) identified the problem several decades ago. It follows that at present external enforcement cannot serve as an efficient mechanism for the monitoring of fiduciary duties. The same laxity of enforcement is also present in the Israeli legal system. Precedents regarding the breach of duties are not in existence despite the public outcry against the malfunctioning of the boards of nonprofits. Enforcement of duties may be

promoted not only through external mechanisms such as state activism or third party claims, but may be enhanced through internal procedures such as increasing formalities and specific training programs.

Sidel (2002), in pointing out the problems of overseeing and accountability in this sector, observes that a new approach towards increasing efficient functioning of nonprofits is under way – that is, the strengthening of self regulation, including the roles and capacities of nonprofit boards. These efforts consist of attempts to formalize self-regulation. It makes sense then, to examine alternative mechanisms that enhance implementation of duties in order improve efficient functioning.

Enhancing awareness of fiduciary duties is crucial to achieving. Attentiveness and consciousness to duties is the first step toward compliance. The initial assumption is that board members bring altruism, concern for the issues addressed, and professional skills; but, as Holland and Jackson (1998) argue, only few are well prepared for the challenges of translating values into clear mission statements and goals that shape the organization's direction. Despite the importance of awareness of fiduciary duties as a key element in effective performance, the relationship between internal regulatory practices and awareness of duties or the organizational factors that promote compliance to fiduciary duties have been hardly investigated.

Formalization

By formalization we mean clear role definition, written guidelines regarding duties and responsibilities of board members, and written procedures. Indeed, formalization helps rationalize behavior in organizations and is manifested in the rules governing behavior, including role relations of individuals occupying positions in the organization's structure (Scott, 1998). Thus, formalization aimed at standardizing and regulating behavior, helps to set expectations for each member of the group, and

enables efficient work-flow and division of responsibilities. Zucker (1977) found that lack of formalization in role definition caused much role ambiguity and hampered organizational efficacy. Thus, formalization helps to objectify the structure of relationships between members and to regulate activities and interaction among them. Schmid (2002) found that the higher the levels of formalization the more adequate the organization's response to clients' needs. Schmid (2002) also found that formalization had a significant effect on all effectiveness measures.

Nevertheless, as pointed out above, there are no studies that explored the relationship between different aspects of formalization in the work of the board and the extent to which they fulfill their duties as board members. We therefore sought to determine whether formalities promote board awareness of fiduciary duties as well as adherence to these duties.

Chairperson and CEOs as leading figures in enhancing internal procedures

Our agents for exploring board awareness of fiduciary duties were the two leading figures in the organization - the chairperson and the executive director. These two figures are able to influence board behavior both through non-formal relations and by means of creating and imposing new formalities.

The CEO is the person who is responsible for the entire organization's coordination and integration of all organization functions. He/she is the liaison between the board and the paid staff and responsible for achieving the organization's policies as they are set by the board. CEOs obtain a lot of power in their relationships with the board because boards are dependent on them in terms of providing written and oral material information as well as the identification and definition of issues that should be addressed by the board. Boards are, however, expected not to be rubber stamp (Zald, 1970).

In one study (Murray, Bradshaw, & Wolpin (1992) found that the vast majority of executive directors had a great deal of influence on board decisions, worked as a team with the board and tried to avoid conflicts. In larger boards, and in organizations that focused on few programs conflicts were, however, more frequent when the organization was lacking formalization regarding board roles and procedures.. Green et al., (2001) found that in less effective organizations the CEO tended to take over more activities that were usually the board's responsibilities, and that there was a constant tension regarding how much authority should be delegated to the CEO. Miller (2002) found that relationships between boards and their CEOs were characterized by trust and mutual respect, in spite of a role definition conflict.

The chairperson is the other point of view that we took to examine board adherence to duties. S/he may play a central position in activating the board. Chitayat (1985), who examined the working relationships between corporate boards of directors chairmen and CEOs in 20 Israeli corporations, found that board chairpersons considered their primary role to be ensuring board fulfillment of legal responsibilities .

Methods

Sample.

The data for this study was collected from 161 nonprofit organizations in Israel between May and December 2000. All the organizations chosen were members of one of five national umbrella organizations. Only five categories of organizations were selected: culture and recreation, education and research, health, social services, and advocacy. Altogether the final list included 282 organizations, of which 161 volunteered to be interviewed - a response rate of 57%. The organizations were selected to vary in type of service and client population, age, and size. Interviews

were conducted with executive directors and chairpersons. In those organizations that did not employ a paid executive director the chairperson and an additional board member (usually the treasurer or secretary) were interviewed. Altogether, in 94 organizations two members were interviewed and in 67 organizations only one member was interviewed because of unavailability or refusal of the second key person to be interviewed.

Measures

Fiduciary duties - Respondents were presented with an inventory composed of a list of four items, asking them, the extent they perceived the board members of their organization:

- 1) Are aware of their legal obligations as board members in general.
- 2) Are aware of their duty of loyalty.
- 3) Are aware of their duty of cautiousness.
- 4) Understand the legal meanings of these specific duties

Scores for each item ranged from 1 (= Non of the members of the board) to 5 (= All members of the board). Scores for all 4 items for each organization were summed up with scores ranging from 4 to 20, with higher scores indicating the organization larger number of members of the board who were aware of these duties. The reliability (Standardized Alpha Cronbach) estimate for this composite is $\alpha = .88$

Formalization: Formalization in the organization was measured by a scale that included 4 questions:

- 1) Is there a formal policy regarding board members' attendance at board meetings, with scores ranging from 1 (no formal policy at all) to 5 (detailed formal policy).

2) Are there printed materials (such as manuals) addressing board members' responsibilities, with scores ranging from 1 (no printed material at all) to 3 (a great deal of printed material).

3) Are there explicit written rules and bylaws that define how the board should govern the organization, with scores ranging from 1 (not at all) to 3 (yes, very much).

4) Are procedures of appointment of members to committees and committees members' responsibilities and duties defined in written documents, with scores ranging from 1 (not at all) to 3 (yes, very much).

Scores for all 4 items were summed up with scores ranging from 4 (minimal formalization) to 20 (maximal formalization). The reliability (Standardized Alpha Cronbach) estimate for this composite is $\alpha = .66$.

Organizational characteristics: Organizational characteristics included the following variables: age of the organization (year of establishment), size of membership (members of the general assembly), number of paid workers, and number of volunteers.

Board characteristics: Board characteristics included 4 variables: board size (number of board members), number of permanent committees, number of board meetings per year, and attendance rates at board meetings.

Means taken against board members that violate fiduciary duties: The respondents were asked about the means taken against board members who violate any of the fiduciary duties. The respondents were presented with 5 optional answers and were asked to choose one of the following:

- 1) Violations are brought to the attention of the chairman.
- 2) Violations are brought to the attention of the board.

- 3) A demand is made that the member be discharged from his/her membership in the board.
- 4) The police are advised and a complaint is made.
- 5) The reaction is depending on severity of the violated duty.

Data collection

The study instrument included a structured questionnaire, which included only closed questions. Data collection was conducted by face-to-face interviews with CEOs and chairpersons of organizations at their offices. Each interview lasted between one and two hours.

Results

Organizations' characteristics

The sampled organizations included 34 (21.1%) culture and entertainment organizations, 29 (18.0%) education and research, 43 (26.7%) social services, 18 (11.2%) health, and 37 (23.8%) advocacy organizations. Organizations' ages ranged from 1 to 95 years with a mean = 25.52 ($SD = 19.95$). Organization size was defined according to two measures: organization membership and annual budget. Organization membership ranged from 5 to 32,000 members with a median of 130. Annual organization operating budget ranged from approximately \$500 to \$137,500,000 a year with a median of \$625,000. These characteristics suggest that the sample represents a very broad variety of organizations.

Fiduciary awareness: The results showed fiduciary scores that ranged from 4 to 20 with a mean score of 17.97 ($SD = 2.88$), indicating that the respondents perceived that most of the board members were aware of their fiduciary duties.

Formalization: Formalization scores ranged from 4 to 14 with a mean score of 9.78 ($SD = 2.94$), indicating a low to moderate degree of formalization. Table 2 presents the covariate correlation coefficients matrix of outcome variable and organizational and board characteristics.

The findings show that fiduciary awareness was significantly positively correlated with formalization, age of organization, number of board committees, and attendance rates at board meetings. In addition, the findings show that formalization was significantly positively correlated with organization's membership, number of paid staff and volunteers, as well as with number of board committees.

-Table 1 about here-

In a stepwise multiple regression analysis (not shown here), however, only formalization entered the regression analysis with $\beta = .35$ ($p < .01$) accounting for 12% in the variance. All the other variables were excluded from the equation, suggesting that only formalization was a significant predictor of board members' awareness of their fiduciary obligations.

To compare the responses given by CEOs with those given by chairpersons regarding the awareness of fiduciary duties, *t-test* analyses were conducted. The results (not shown here) indicated no significant differences in the views of the two key persons, suggesting that they perceived very similarly the extent to which board members were aware of their fiduciary duties in their organizations.


Regarding means taken against board members who violate their fiduciary duties, results show that the majority (58.1%) would prefer in such a case to bring it either to the chairperson's or to the board's attention (31%) and require the board member's dismissal.

Discussion

The findings of this study show that fiduciary awareness is significantly correlated with formalization, age of organization, number of board committees, and attendance rates at board meetings. In addition, the findings show significant correlation between formalization and size of organization's membership, paid staff, volunteers, as well as number of committees. This suggests that the more an organization is established in terms of the organization's age, and the more it is institutionalized and formalized in terms of having more written rules, bylaws, and other written materials, the more its board members are aware of their fiduciary duties. Similarly, the higher the level of perceived fiduciary awareness among board members the more there are board committees and the higher are the rates of attendance at board meetings.

Although the results do not directly imply a causal relationship between formalization and fiduciary awareness, there are indications that formalization may increase fiduciary awareness among board members. This awareness may stimulate board members to demand formalized procedures and role definitions to which they have to adhere. For example, the findings show that, on the one hand, age of organization and formalization are significantly positively correlated, suggesting that more established organizations employ more formalization with regard to a board's work and procedures. This in turn enhances board members' awareness of their legal duties. On the other hand, attendance rates at board meetings, as well as number of board committees, may express the degree of fiduciary awareness that the board members exhibit, i.e., the more board members are aware of their fiduciary duties, the more they attend board meetings where decisions are made. In addition, in these organizations there are also more board committees where board members can be more intensively involved in matters concerning organization governance.

Regarding steps taken against board members who violate their fiduciary duties, results show that the majority would prefer in such a case to bring it either to the chairperson's or to the board's attention and require the board member's dismissal. This indicates that board members rely on their own internal relationships to deal with the offender. It also suggests that board members consider fiduciary violation as an internal problem of the board that is best solved within the board framework rather than a general organizational issue. It seems that board members would hesitate to address external agents and complain against board members who violate their duties as board members.

This behavior would appear to be obvious for several reasons: First, there is the "unity brotherhood" syndrome. Board members of nonprofit organizations have joined the board with the common intention of promoting the public goals of the organization, whereas being aware of its limited means. This goal-devoted ideology serves as a common denominator uniting board members. Board members meet regularly and develop friendships, and trust for each other. For board members to denounce a fellow member means betrayal. Therefore, members would prefer to tackle problems regarding board members behavior within the internal bodies of the organization.  Furthermore, they are also aware of the fact that protecting a fellow-member means self-protection in case they themselves are found guilty of a breach and need the co-operation of their fellows. One might define it as a silent gentlemen's agreement to cover for each other.

Second, board members develop a sort of pride in "their" organization and the way it is managed. To complain of a breach of fiduciary duty of a fellow-member means to admit a common failure in their work.

Third, any complaint has to be backed by documents or other facts supplied by the complainant, who would be exposed to a time-consuming investigation and inquiry procedures. This might threaten not only busy members but also those who would be unwilling to endure conflicts with their fellow members.

It seems obvious that expecting board members to monitor their fellows is not the best solution. The “goal-devoted” ideology and “unity pride”, give rise to the presumption that board members should be very interested in keeping a high standard of board performance. This might be promoted by dividing the burden of monitoring to different bodies, private and public. Since internal supervision – the members’ preferred mechanism for dealing with breaches of duties- has been proven good but insufficient it has to be strengthened by additional means: first, it is recommended that a legal responsibility should be imposed upon every board member to convene an immediate board meeting and advise the board about any information indicating a violation of the law or of public order, has come to his/her attention . The Israeli Companies’ Act, 1999 (sec. 257) includes a similar duty, which is intended to counteract the “brotherhood” syndrome by defining such a situation in legal terms and thereby put an end to the hesitation against informing; second, it is suggested that the scope of functionaries, who are exposed to such information, be widened by imposing a duty on the chairperson to report to the Voluntary Organizations’ Registrar about suspected violations. Such reports should be a legal duty and not an option leaving discretion to the chairperson; third, information exposure is supposed to serve as a permanent deterrent against duty violations and as a method of educating all board members regarding their required adherence to the laws governing their responsibilities. Needless to say that the law has to specify that such reports should be carefully phrased without mentioning any names to avoid possible mistakes and

causing irreversible harm to the denounced member without final and documentary proof. Over zealous exposure of board members might deter honest candidates from serving on the board; fourth , it is recommended that board members in medium-to large-sized organizations be compelled to take professional training in management of non-profit organizations to improve their awareness of their duties. Very frequently volunteers who serve on boards lack minimal knowledge of managerial practices and their good will is insufficient to help them fulfill their duties. They have to understand that these burdens are part of their job performance and that such training should improve their collective as well as individual functioning.

Since our recommendations require legislative intervention they might pose implementation difficulties. The findings of this research on awareness of fiduciary duties show that self-awareness needs strengthening by external agents. The laxity of independent monitoring compels more formal measures. The normative existence of such measures is considered necessary regarding the growing public dissatisfaction from nonprofit managerial behavior. The proposed legislation is intended to turn “goal-devoted” ideology into “goal devoted” strategy and promote board performance.

The positive correlation between formalization and levels of awareness of fiduciary duties proves the need to establish better working procedures on boards of directors; this means compelling organizations to formulate written rules of behavior, working procedures, and to document and distribute decisions regarding these procedures. Although such recommendations might seem bureaucratic, they may have a positive effect on board performance.

The beneficial effects of formalization procedures have been recognized by The Organizational Sentencing Guidelines adopted by the U.S. Sentencing

Commission in 1991 pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.A. §§ 3331-4120, which includes recommended steps to be taken by an organization to prevent and detect criminal conduct by its employees. Among these recommendations is the dissemination of written information, emphasizing the importance of written materials in effectively communicating corporate standards³.

It should be noted that to the best of our knowledge this is the first attempt to examine the issue of board performance through awareness of their legal duties. More research is necessary to examine the following matters: the concrete ways nonprofit organizations deal with violation of duties, and the ways board members themselves understand their fiduciary duties and how they carry them out. Since the respondents of this study included chairpersons and executive directors only with regard to the behavior of board members, it is also necessary to include all other board members in order to examine the extent to which they are aware of their fiduciary duties, how they perceive these duties and how they translate them into their actual involvement in the organization's governance.

We recognize several limitations of this study, which is based on secondary data analysis. First, the original study did not include some important variables affecting and being affected by awareness of fiduciary duties such as board and organization effectiveness, which might have provided more insight into the characteristics of this issue. Second, characteristics of the sample limit the possibility of generalizing from the results of this study. The sample included only five categories of organizations and therefore caution is warranted in generalizing these findings to the entire population of nonprofit organizations. Third, the data relies on the executive directors and chairpersons' perceptions, whereas getting the views of the board members

³ 18 U.S.C.A. §§ 3331-4120

themselves as to how much they know about fiduciary standards and act on them would provide a better picture on this issue and its connection to organization outcomes. Further research is needed also to get a better understanding of the factors affecting awareness of fiduciary duties and how this awareness affects the actual behavior of board members as well as the implications for the overall performance of the organization.

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Table 1: Zero-Order Correlation Coefficients between Fiduciary Awareness and Organizational and Board Characteristics

Variable	1	2	3	4	5	6	7	8	9
1. Fiduciary awareness									
2. Formalization	.42***								
3. Organization age	.19*	.13							
4. Membership size	.02	.30**	.24**						
5. Board size	.02	.10	.16	.11					
6. Number of board meeting per year	.11	.20*	.11	.12	-.11				
7. Rate of board member attendance in board meetings	.21**	.14	.14	-.01	-.36***	.14			
8. Number of board committees	.23**	.36***	.25**	.26**	.22*	.14	.01		
9. Number of paid workers	.05	.22*	.08	.32***	-.06	.12	.16	.20*	
10. Number of volunteers	-.04	.23*	.28**	.26**	.01	.60***	.07	.19	.21*

* $p < .05$, ** $p < .01$, *** $p < .001$