

EXECUTIVE COUNCIL RESPONSIBILITIES

Officers

Association officers shall be the President, President-elect, Treasurer, Immediate Past President and the Executive Director. All elected officers shall be members of the Association. The Executive Council may appoint other officers, as it deems necessary.

Members-at-Large

Every Member-at-Large has, by virtue of his or her own professional training and experience, a personal relationship with some particular area of the pharmaceutical sciences which causes the Member-at-Large to identify more closely with one specific AAPS Section than the others. Moreover, for those same reasons, he or she is likely to have chosen that Section for primary Section membership. Furthermore, he or she generally has risen through that Section's elective offices as a foundation for nomination to national office in AAPS.

Nevertheless, despite this background experience – that is shared by virtually every candidate for national office—every Member-at-Large must effectively submerge “Section-oriented thinking” and function as an impartial representative of all AAPS members, equally and without bias or favoritism toward any Section.

All Member-at-Large positions shall be members of the Association. The five Member-at-Large positions each serve a three-year term. Consequently, the Association, in general, and the Executive Council, in particular, look to Members-at-Large to provide a great deal of historical background, the continuity of thinking, the long-term perspective, and the “sage advice” that is essential to any organization like AAPS.

Finally, the office of Member-at-Large is a natural training ground or stepping-stone for prospective future nominees for national office – in particular, candidates for the office of President. Those aspiring to such higher office should use the experience of being Member-at-large to prepare for such a role if called upon for future service in the organization.

Duties and Rights of the Executive Council

AAPS is a non-profit corporation incorporated under the District of Columbia Non-Profit Corporation Act (D.C. – Code, 19 81 Ed., Title 29, Sec. 29 – 501 et seq.). It is also exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986. Such organizations are generally referred to as “charitable” organizations. However, AAPS is, in fact, entitled to its tax-exempt status based on its scientific and educational purposes and their benefit to the public welfare.

All corporations, whether business corporations or non-profit corporations, are entities created by statute in the jurisdiction in which they are incorporated. As such, they are subject to all provisions of state law applicable to them, and such provisions take precedence over organizational Constitutions and/or By-Laws. It is, therefore, important that certain elementary legal principles common to all corporations be understood.

The first of these principles is that, although business corporations are owned by their stockholders and non-profit corporations having members, such as AAPS, can be thought of as being owned by their members, the sole authority and responsibility for management of the corporation's affairs rests with a corporation's Directors (sometimes called "Trustees" in non-profit corporations). Collectively, the Directors are known as the "Board of Directors" or "Board of Trustees". In the case of AAPS, the Executive Council serves as the corporate Board of Directors. Therefore, the individual members of the Executive Council also are Directors of the corporate entity for purposes of applying District of Columbia statutes and corporate legal principles.

The second principle applicable to Executive Council members in their capacity as corporate Directors is that being a Director carries with it definite legal duties, as well as potential civil (and in some circumstances criminal) liability for failure to carry out these duties. Fortunately, however, under District of Columbia law there is also a substantial degree of personal protection from civil liability for monetary damages in connection with claims arising out of alleged breaches of duty as a corporate Director.

The primary duties of Directors as corporate managers can be concisely described as the "duty of care" and the "duty of loyalty". Although the purpose of this memorandum is not to set forth all aspects of these principle duties and the case law from which they have developed, it is possible to distill a few essential-points regarding them. Of necessity, questions regarding their application to particular individuals and situations must be left for case-by-case evaluation and advice. Directors having such questions should not hesitate to present them to the Executive Director for referral to counsel.

Basic to fulfilling the "duty of care" is attendance at Executive Council meetings. The law and this duty do not require attendance at all meetings, i.e., illness and unavoidable unforeseen circumstances may excuse an occasional absence, but regularized or a significant number of absences place a Director at risk. Also vital to fulfilling this duty is "knowing what is going on" when acting on matters before the Executive Council. Clearly, this requires review of all documents relating to proposed actions and understanding what is being proposed and its anticipated consequences. It also requires ongoing monitoring of Association activities and, in particular, of actions directed by the Executive Council.

The Executive Council is neither required nor expected to conduct AAPS day-to-day operations or activities; these are the responsibility of the Association's staff. The role of the Executive Council is to assure that staff responsibilities are fulfilled.

Even in the absence of some form of statutory immunity for Directors, the courts have fashioned the so-called "business judgment rule" that generally shields the decisions of corporate Directors from civil liability, even when these judgments have proven wrong and even negligent. However, the business judgment rule will not be invoked if a Director has failed to satisfy the "duty of care" briefly described here.

The "duty of loyalty" is more clear-cut. A Director owes absolute and sole loyalty to the corporation he or she serves. In short, a Director must put aside personal considerations and

those of other parties, e.g., employers, other organizations, etc., and act solely on the basis of good faith judgment as to what is in the best interest of the corporation. Included in this duty is the avoidance of “conflicts of interest”. It is unlawful for a Director, or for any party for whom a Director may act, to profit at the expense of the corporation based on an act or decision of the Director. This does not mean that the Director or such parties cannot be compensated for providing goods and services to the corporation “at the market”, but even in such circumstances, the relationships and potential dealings must be disclosed so that the Board of Directors can accept or reject them as it chooses.

In considering the “duty of loyalty”, it should be remembered that, as a corporate Director, the interests and well being of the corporation, AAPS, must prevail in a case of apparent conflict. It is also true, however, that the status and functions of specific AAPS Sections may be a factor in determining what is in the interest of the corporate “parent”, AAPS, in a given situation. In such situations, the advice of counsel may be required to assist in avoiding inappropriate conduct.

These provisions provide limited immunity from civil liability for monetary damages for all non-profit corporation “volunteers” including Directors. This protection extends to any “act or omission” unless: (1) it is the result of “willful misconduct”; (2) it is a crime (unless the volunteer had reasonable cause to believe the act or omission was lawful); (3) it results in an “improper” personal benefit to the volunteer in the form of money, property, or services; or (4) is not in good faith and is beyond the corporate charter authority of the nonprofit corporation. The availability of this immunity, even as thus limited, is conditioned upon the nonprofit corporation maintaining specified amounts of liability insurance to cover corporate liability which may remain viable even though the volunteers are immunized. AAPS maintains the required liability insurance.

Certainly, the described immunity provision leaves open a number of questions as to its applicability in specific factual situations. These interpretations will be arrived at only through litigation and court decisions. The important point for Executive Council members is that their responsibilities, in their capacity as corporate Directors, should not be taken lightly, and that their individual personal interest dictates ongoing, constant awareness of their duties as Directors and the principles discussed herein.

Finally, it should be emphasized that Executive Council members should not hesitate to seek, via the Executive Director, the advice of counsel with regard to any matter on which he or she may be called upon to act and about which there may exist some question in the Executive Council member’s mind as to its potential legal consequences. Both the “business judgment rule” and the above-described immunity provision are most likely to be of benefit if a simple rule is observed: “if in doubt, ask!”

Authority

The Executive Council shall serve as the corporate board of directors and shall be responsible for the general supervision and management of Association affairs, including, but no limited to, specific duties stated in the AAPS Bylaws. It shall determine Association policy and shall oversee and approve all Association programs and activities.

Voting

A majority of the voting members of the Executive Council shall constitute a quorum for the transaction of business.

Any question which might be decided by vote taken at any Executive Council meeting may be decided by vote taken by mail, telegram, fax, email, or telephone ballot, provided, however, that any such vote must be ratified by the Executive Council at its next subsequent meeting.

Meetings

The Executive Council shall hold regular meetings in person or by conference call and generally no less than monthly.