



# Geriatric Care Management Journal

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# Guest Editor's Message

by *Monika White, Ph.D.*

The growth of the care management “industry” over the past 25-30 years is truly remarkable and permeates virtually all human services arenas. The advent of private, for-profit care management with a focus on addressing needs of elders and their families has set many social workers, nurses, psychologists and others on the road to becoming successful business owners of geriatric care management companies. This issue of the *GCM Journal* is about some important aspects of the business of geriatric care management. The authors of this issue’s articles are exceptionally knowledgeable PGCMs who were willing to share their experiences and learnings.

In the first article, I have the pleasure of presenting the answers to a set of questions I asked of five extraordinary, award-winning GCM pioneers about their business histories and their views on the future of geriatric care management. In their own voices, they talk about the issues they faced, the strategies they used and the advice they would give to someone just starting out. Similarly, in the second article, **Steve Barlam** and **Claudia Fine** eloquently relate the process they each went through in making their decisions to sell their private practices to a large company and develop full-service businesses. Those GCMs considering such a move will find this article especially useful. Next, **Suzanne Modigliani** presents the rationale for working solo. In a very personal style, she discusses what it takes to start a care management business and

outlines the advantages of staying small while considering alternatives.

The next two articles address issues relevant to GCM business leaders. **Nancy Alexander** reminds us of the importance of an ethical

light of recent headlines about the misbehaviors of some major company CEOs. Finally, since many PGCMs serve their communities by sitting on non-profit boards, it is essential to know the implications of

doing so. **Hugh Webster** delineates the roles and responsibilities associated with servicing so that the decision to join a board is a fully informed one protecting both the PGCM and her/his business interests. It

is our hope that regardless of our readers’ level or business expertise, each will find something relevant and applicable to her/his practice in this issue.

*The growth of the care management “industry” over the past 25-30 years is truly remarkable and permeates virtually all human services arenas.*

foundation to business principles and provides a step-by-step process of thinking through issues and making decisions. Her article is particularly thought provoking in



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# The Business of Care Management—Reflections from the Experts

By *Monika White, Ph.D., MSW, CMC*

Care management, as a professional, private, for-profit business, was a new concept just 25 years ago. Today, the numbers of practicing care managers in both public and private sectors are evidence of its success. The growth in membership in the National Association of Professional Geriatric Care Managers (GCM) alone is testimony to the work as a profitable business venture. How did we move from a perceived public-sector “social” case management model for low income, frail elderly to a respected, successful arena of business, and what might we expect in the future? How and why were businesses started? What issues and challenges had to be met to become successful and how was success measured? What strategies were utilized to facilitate expansion? And, what should the care manager thinking about starting a business know?

To shed some light on these questions, five distinguished GCM members were asked about their experiences in starting and growing their companies and their perspectives on the past and future of the business of care management. The group consists of:

- Rona Bartelstone, Rona Bartelstone Associates, Inc., Fort Lauderdale, FL.
- B. J. Curry Spitler, Age Concerns/LivHome, Inc., San Diego, CA.
- Phyllis Mensh Brostoff, Stowell Associates—Select Staff, Inc., Milwaukee, WI.
- Lenise Dolen, Dolen Consulting Systems, Tarrytown, NY.

- Leoni Nowitz, Center for Lifelong Growth, New York, NY.

Each is an acknowledged leader and pioneer in care management and has been recognized by GCM with the Adele Elkind Award. Here, in their own words, are their very interesting and instructive responses:

**Question: Tell us a little about the beginning of your care management business—when did you start it, where was it located, how was it staffed and, just for comparison, how is it staffed today?**

**Rona:** I started in 1981 out of my home as a solo practitioner. I hired subcontractors within the first year and an employee by the third year. About the fifth year, I moved into offices. I now have eight local care managers and a network of 700 care managers.

**Phyllis:** I started in 1983 with a partner in one office in a commercial building. A year later we were 2.5 FTEs, all MSWs. Today, there are 5 care managers including a nurse, 150

caregivers and nine accounting and support staff.

**Lenise:** I started the business in 1980. I added a wing onto my house with an office and conference area and used my grown, out-of-the-house children’s rooms as secretarial, space. I began with just myself as a psychologist/gerontologist. Now there are 11 part-time care managers—nurses, social workers and entitlement specialists plus a full-time patient care coordinator/office manager.

**Leoni:** I began in 1979. I did educational and therapeutic workshops with a partner for adult children regarding aging parents at universities and community centers. I started care management for individual families in 1981 as a solo practitioner in my home. I later moved to a commercial office. I now work with an RN as part of an interdisciplinary team.

**B.J.:** I started the business in 1982 in the study of my home

working by myself. I graduated to the back bedroom and hired a part-time social worker then moved to an apartment at the back of my house and hired two social workers and a bookkeeper. Shortly after, I moved to a commercial office. Today, the staff numbers 35.

**Question: Why did you start your care management business?**

**Rona:** I worked for an agency and tried to get them to do care management because I saw the need, especially for long distance caregivers. I wrote a federal grant on

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*How did we move from a perceived public-sector “social” case management model for low income, frail elderly to a respected, successful arena of business, and what might we expect in the future?*

## The Business of Care Management—Reflections from the Experts

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behalf of the agency, but they did not lobby for it and it wasn't funded. I was unable to find another suitable job in the aging community. At the same time, I had personal experience with two grandmothers and realized the impact on the family, as well as the elder. Deciding to experiment on my own, I quit my job and started my company.

**Phyllis:** We started the business to be able to do what we wanted—professional service without the overlay of meeting the goals of funding sources. We also wanted flexibility to meet our own family obligations (both partners had young children at the time). We knew there was a niche with the chronically ill, reasonably well-off elderly that were not being served by the “system”.

**Lenise:** I got frustrated with paper instead of people. I saw that many of my psychology clients had issues with elder care that could not be resolved by the office for the aging or other clinic entities that existed.

**Leoni:** I worked in a fine nursing home, but felt some residents had not been adequately prepared for placement. I felt that families could be helped to care for their relatives at home with support and the proper resources. I also wanted to be able to customize services for older people and their families and provide quality care.

**B.J.:** A friend, teacher and mentor had written some seminal material on care management in the community and research was being done on it at the University of Southern California where I received my Master's in Social Work degree. I worked in a couple of agencies that were developing case management programs then was asked by a friend to help with a courtesy case—my first client. The needed intervention was clear to me: build a case, hire help and get their lives on an even keel. I also saw that there were no services for older people outside institutions.

### Question: What were your biggest challenges in the first year or two?

**Rona:** Marketing, marketing, marketing. No one knew what care management was and few were interested in care of elders unless they had a personal experience. No one even wanted to talk about aging.

**Phyllis:** Getting our targeted sources (attorneys, trust offices, doctors, RNs, social workers) to think in terms of referring the elderly to a social worker who had to be paid. Getting the hospital discharge planning social workers to recognize that we were not a threat to them but could help with their tough clients. Organizing systems (intake forms, accounting systems, care plan reporting, etc.) was another challenge.

**Lenise:** The biggest challenges were marketing while trying to make a living; learning business practices and making sure ethical concerns were addressed (e.g., who is the client, who is paying for services, etc).

**Leoni:** One of the biggest challenges was finding clients. In the early 1980's the concept of care management was new. Most people didn't see the need for this service, and there was a lot of resistance to paying for it.

**B.J.:** As a social worker, I didn't know much about business or how to start one. I began with a capital investment of \$1,000. I soon learned about cash flow and arranged a letter of credit with the bank. I realized early that hiring staff through a registry did not give me the authority I needed to insure the quality of care I wanted for my clients, so I started hiring my own staff. Meeting a payroll was a big eye opener and that led me to hiring a bookkeeper and CPA. For several years I thought of my business as a private practice, then realized that if I was going to grow, I had to make a business out of it and begin to build an organization. In summary, my biggest challenges were financing a new business, developing caregiving staff and developing an organization.

### Question: When and how did you know that you would stay in business—that you were successful?

**Rona:** My first measure of success was that I loved what I was doing and the outcomes for the elders and the family, i.e. increased independence and dignity for the elders and less stress for the family. Business was increasing through word of mouth from clients, which told me that clients were happy with our services. Business was continuing to grow in good percentages, though I was not making a living until the third or fourth year.

**Phyllis:** Getting enough “happy mail” as we called it—checks in response to invoices we sent out. Also, getting recognition from other professionals that they could rely on us for the tough, hard situations that required a high level of professional assistance.

**Lenise:** I knew when I was earning what I did in my previous job.

**Leoni:** After several years of part time work, I committed myself to full-time practice. It was an act of faith and commitment to work that I loved. I felt more comfortable in dealing with challenging situations with a post-master's degree in family therapy and several years of experience. Connections with colleagues at the national and local levels through board membership and being President of the New York Chapter stimulated that commitment.

**B.J.:** When I learned that my revenue had topped \$1 million, I was elated. Shortly after that I made the decision to stop teaching and gave my full attention to the business. In a way I was burning my bridges behind me, so going forward was the only option.

### Question: What were key strategies or actions you took that led to success in your business?

**Rona:** Talking to anyone and everyone about our work, including free workshops, articles, and conference participation. Taking

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## The Business of Care Management—Reflections from the Experts

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leadership in the industry. Continuing to learn and grow, so that new opportunities could be seized.

**Phyllis:** We concentrated on the market we wanted to serve—the well-to-do elderly who could afford to pay for services privately and the very complex case situation that required a lot of professional know-how and expertise. We marketed to professionals who could understand and appreciate what we were trying to do, and saw the value to their own customers. We set up books and proceeded in an orderly fashion the business side of the business, learned about taxes, accounting procedures, set up billing protocols, timetables, and other aspects of operating a company.

**Lenise:** Quality, quality, quality. I made sure the services provided were customized and personalized. I also worked on exposure to the larger community.

**Leoni:** Networking with several colleagues in the NY area, (the fore-runner of the National Association), provided the necessary support with monthly meetings to discuss the many issues of practice in the private sector, ethical issues and business practices. Publishing the “Directory of Care Managers in the Greater New York Area,” increased our visibility. I wrote several articles for professional journals and did presentations at professional organizations

about the emergence of private care management that gained visibility for our organization at the national level.

**B.J.:** I didn’t go into debt or try to grow faster than the demand called for. I didn’t even rent an office until we were well on our way. I hired new care managers only when we were really loaded with clients. All the staff knew that quality service was the top priority. “Do the best job you can regardless of the cost.” I hired and trained our own caregivers and really made them an important

part of the team. We solved problems together. Case review was a group endeavor until we got too big. Everyone had a right to express an opinion. Of course, I always held veto power, but rarely used it.

**Question:** What would you say to someone who wants to start a CM business today?

**Rona:** Have a firm grounding in your professional background, including ethics, regulatory issues and legal issues;

have a well thought out business strategy; know that it takes time to build a practice and therefore you may need other sources of income in the meantime.

**Phyllis:** Being in business for yourself is not for everybody (as a plaque in my office says: “the only thing more overrated than natural childbirth is the joy of owning your own business.”) Try to find a partner, someone with whom you have a lot of value agreement, but who does not think like you, whose skill set is complementary to yours and who wants to work in a cooperative manner: two minds are definitely better than one, as long as you are

pulling in the same direction with roughly the same energy. *Write your plan down*—and then review it every 2-3 years, and write new goals and plans. This is a very, very big key to success.

**Lenise:** Be sure you know what you are doing. Only provide the services you are qualified to provide. Love people and their possibilities. Learn about good sound financial and business practices. Take GCM intensives at the conferences.

**Leoni:** Be prepared to work extremely hard, know your resources and develop the clinical and business skills needed. I would recommend apprenticeship with an established organization to learn the business and gain some experience in the work. Develop networks of support, i.e., individual and/ peer supervision; take courses and training in care-management. Attend both local and national conferences.

**B.J.:** Give your clients the best, highly individualized care you can. Good work is your best advertisement. Let your referral sources know what your values are regarding your clients. Listen to their problems and help them do a better job with the clients. For instance, with physicians, provide information, feedback and be collaborative. Never take on more clients than you can care for well.

**Question:** What do you see for the future of the business of care management?

**Rona:** There will always be a niche market for private care management; there will be continuing integration of care and case management (i.e. disease management techniques in the home environment); technology will drive standardization of the tools of practice; group markets will grow; there will be increasing regulation of the industry.

**Phyllis:** Care management makes a difference in people’s lives, and I think I have devised a way to begin to demonstrate that. One ongoing challenge is that everyone says they do care management; thus

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*"Give your clients the best, highly individualized care you can. Good work is your best advertisement. Let your referral sources know what your values are regarding your clients."*

## The Business of Care Management—Reflections from the Experts

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we continue to need to differentiate ourselves in the market place as a Professional Service, not for everyone, but for the tough cases, the people without family, the very, very entitled, and the long term chronically ill (physical and mental).

**Lenise:** The ethical, legal, business, and practice issues are always there. Be aware of the wider economy, know what business, demographic and local trends exist

that will impact the population you serve; e.g., multiculturalism, baby boomers, and technology.

**Leoni:** Care management services are needed to provide coordinated, personalized care options to frail elderly, their families and kin networks. Increasing accessibility of care management models to those who fall in between the cracks continues to be a challenge for our profession and society at large.

**B.J.:** In the 1980s a private practice was probably the norm. Several of us across the country have demonstrated that quality care management can be provided by larger organizations. Larger corporations can also see that care management can be profitable and will continue to enter the market. There will probably be room for quite a while for both the private practitioner and the corporations,

tioners. All were motivated by their desire to fill a concrete need and a vision of better services for the elderly and their families. Their initial challenges were about finances, getting clients and educating their communities about care management. They learned to target their marketing efforts, network with other professionals, and focus on providing only quality services and became successful. Clearly, their measures of success are not only financial rewards, but also doing what they love and doing it well. Their advice to new or potential GCM business owners could fill a semester course on care management. All see a bright future and believe that the need for quality care management services will be required for a long time.

*Clearly, their measures of success are not only financial rewards, but also doing what they love and doing it well. Their advice to new or potential GCM business owners could fill a semester course on care management.*

but as large employers look for employee benefits and insurance companies fund home care, the corporations providing care management will probably have an advantage over the small care management provider.

### Summary

Many similar responses emerged among this group. For example, the majority of them started their businesses in their homes as solo practi-

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# To Sell Or Not To Sell—The Story of Two GCMs Who Did

By Steve Barlam, LCSW, CMC and  
Claudia Fine, LCSW, CMC

As the care management industry has grown and matured, the nature of our practices has also changed. Increasing demand for our services led first to larger practices and to the integration of more services. Anticipating the coming of the “Age Wave,” the trend toward integration has evolved into the beginnings of industry consolidation, as individual practices have been bought out by and incorporated into larger businesses.

Joining a larger company poses a number of new questions for care managers and presents a number of new opportunities. If the trend continues, an increasing number of practitioners will have to evaluate whether selling their practices or joining larger companies works for them. As two care managers who took the plunge, we decided to share our experience and our evaluation process.

## Personal Histories, Psychologies And Styles

**Claudia:** I always saw myself as someone who wanted to work toward social change or to help people. As a hospital and agency social worker, I discovered that I enjoyed and was good at engaging older patients, but I also found those organizations’ bureaucratic structures immensely frustrating. Having a private practice allowed me to advocate for my clients and fight the systems’ inequities without having to face conflicting demands from a supervisor or from my organization, and it addressed my perfectionist tendencies. On the other hand, private practice didn’t provide the

collaborative aspects of agency or hospital work. Before I knew it, I’d hired an associate who soon became my partner.

Private practice provided a balanced outlet both for my idealistic tendencies and for my newly discovered entrepreneurial side. My partner and I had plenty of frustrations as social workers turned business owners. We lacked a lot of business and technological know-how, and the money to attract and retain all the staff we needed to serve our growing client base. But we never really thought about selling our business; we always imagined we would find some or all of those things in a third partner. When people began to approach *us* with an interest in buying our practice, I was initially skeptical. But as the offers continued, I sensed this was the start of a trend I would eventually have to address.

We decided to sell when I got sick and my partner did not want to bear sole responsibility for our practice. Having made that decision, we saw a host of opportunities it could provide; at the same time, we anticipated that it could raise some questions or problems for us and for our business.

**Steve:** Like many other sole proprietors, I at times felt stretched in multiple directions by the knowledge that I alone was accountable for the success of my operations. I worked an average of 65 hours per week with a full complement of clients (billing 30 hours each week), served as my company’s primary marketing and sales person, managed the back office administration, supervised and supported my four care managers, and

was a husband and father of two young children. After more than 10 years, I was interested in exploring new means of getting support. While I had always enjoyed the frenetic pace and multitasking aspects of running a business, I knew I wouldn’t be able to keep up the pace indefinitely. Also, as my company grew, I found that I lacked the business acumen to manage the growth effectively. While in the earlier years, I could get by with a “seat-of-your-pants” management style, I knew that such a style would not suffice for long.

When approached by BankAmerica Ventures, I entered into the discussion as a healthy skeptic, but I came quickly to the realization that a sale could provide me with a means of taking my business to the next level. My goal of reaching more clients with quality services was limited only by the availability of resources such as staff time and capitalization. I was interested in entering a larger arena, in which I would have expanded opportunities for professional growth, additional means of contributing to the field, and added financial support and security. What follows are some of the issues that we both grappled with as we each considered the sale of our respective companies.

## Opportunities For Professional Growth

**Claudia: Learning new business skills.** The process of negotiating a sale was an education in and of itself. I’d never taken a course in accounting or economics and didn’t see myself as a numbers person but I was excited by my exposure to business evaluation and business negotiation, and it was an opportunity to learn new concepts and skills.

**Learning about related fields.** As a care manager, I had always worked from a social model. SeniorBridge offered the opportunity to work on a different scope of practice using a model that integrated nursing services, which would enable me to learn more about the medical aspects of care management and

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## To Sell Or Not To Sell—The Story of Two GCMs Who Did

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about the issues related to government regulation of healthcare, with which I had always avoided grappling.

**Steve: Expanding your vision and developing a business model.** I was particularly interested in learning more about the “big picture” of growing a business. Working closely on the design and implementation of an innovative model with care management at its core would be exciting, and I would have the opportunity to work closely with industry experts who had strong core competencies in strategic planning, sales and marketing, finance, human relations, and operations.

**Moving from micro to macro.** I had always wondered how it would be to use my professional skills outside of the direct service work I had done for over 15 years. Having the time to focus on the model, on the communication of the brand, on involvement in professional organizations, on training staff and other professionals, would allow me to leverage what I do best to deliver maximum value to the new company. In each of these areas, I looked forward to continued growth, learning and development.

### Opportunities To Contribute To The Field Of Elder Care

**Claudia: Increasing public awareness of care management.** I was drawn to the idea of joining a care management company with national scope, because I saw it as a chance to help implant in the public mind the idea that care management is a valuable and necessary service. The marketing efforts of profitable companies play important roles in promoting their industries, using financial resources that are difficult for a fragmented industry of small individual practices to amass.

**Establishing a reliable, nationwide standard of care.** As an active member of NAGCM for many years, I

had become acquainted with colleagues all around the country. As I made referrals to colleagues in other areas, I was aware of the vast diversity of practices in our association and didn't believe I could have confidence in every member in the directory. The idea of a national company with unified standards on which I could depend seemed like a reasonable and appealing response and it was a concept I believed would also help consumers have faith in our services.

**Steve: Building strategic alliances.** Being part of a larger organization would afford me opportunities that would have otherwise been unavailable, for creating strategic alliances with key influencers in the eldercare market, with allied professional groups, and with business leaders, all of which could only help our profession gain even greater acceptance and credibility.

**Embracing an emerging trend.** To my knowledge, my practice would be one of the first care management-only practices to have been approached by venture capital investors. I wanted to help ensure the success of what I believed would be an important and significant trend and a wonderful opportunity for care managers.

### Financial Opportunities

**Claudia: Resources to improve your business.** Becoming part of a larger business would mean more money to spend on the practice. I was aware of several ways in which this could both improve the quality of our services and grow the business:

#### **Acquiring advanced technology.**

The first time I met the CEO of SeniorBridge (then Cambridge Companions), Larry Sosnow, I was awed by their technological resources. My own practice had afforded a single computer for billing. And I hadn't even learned to use email. Meanwhile, I was being shown networked personnel and client services systems I could access from the internet, which

were capable of carefully tracking not only client billing but also referrals and other resources, and which could benefit not only the business itself but the quality of the services I could offer clients.

#### **Training and maintaining a staff.**

Financial backing also provided the resources to train our staff, both professionally and in the use of new business technology. It also provided the opportunity to provide our staff with well-deserved benefits.

#### **Increasing**

**your client base.** In my own practice, I had relied more or less on word of mouth, personal contacts and referrals to attract new clients. The financial resources of a larger company would allow for a marketing budget to attract new clients and grow the business exponentially.

**Rewarding your years of hard work and investment.** I had seen colleagues grow their businesses and reputations, and then seen their businesses decline as their energies diminished. My partner and I had once paid as little as \$3,000 and 20% of the first year's earnings to buy the declining practice of another care manager. There was something sad

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*"I was drawn to the idea of joining a care management company with national scope, because I saw it as a chance to help implant in the public mind the idea that care management is a valuable and necessary service."*

## To Sell Or Not To Sell—The Story of Two GCMs Who Did

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about having so little to show for so many years of hard work. Selling my business while it was thriving gave me an exit strategy: I would get cash for what I had already accomplished, and the business would have a chance to continue growing beyond my own energies. Meanwhile, since I would receive stock in the new company, I would continue to benefit financially from the new company—potentially much more than I could possibly have done by incrementally growing my own business.

### **Steve: Resources to do it right.**

My goal, like Claudia's, had always been to grow and sustain my client base without compromising quality. I knew I could not continue growing without adequate capitalization, which could afford me support resulting in efficient economies of scale.

### **Adding a home care component.**

While I had thought of integrating a home care service into my existing care management business, I also knew that in order to be successful, I would have to do it right. This would entail being the employer, offering benefits, developing a training program, developing a means of effective supervision, and having a robust quality-assurance program. Doing it right takes resources, including the right specialists in human resources, operations, technology, and finance.

### **Marketing and outreach.**

Marketing dollars would be essential in order to reach beyond my existing contacts. Capital would be needed to create a brand and disseminate information; it would be critical to educate both clients and referral sources. Having the resources to help support allied organizations would pay off, as well.

### **Systems...Systems...Systems...**

Cost-effective service delivery for larger companies requires the right technological supports. These include not only phone systems and computers, but also effective software to ensure the smooth operations: billing, payroll, scheduling, client notes, assessments, and quality assurance.

### **Finding financial security.**

Owning a smaller company allowed me to take a good salary and to enjoy a number of financial perks. As I evaluated and negotiated the sale of my company, I realized that, as the business grew and became more successful, my salary and bonus opportunities would be greater than if I were to continue on my own. From the beginning, it was made clear to me that the sale of my practice would be primarily a "stock deal" which, as I learned after some investigation, is typical in start-up venture capital deals. This would give me partial ownership of the new company. After much thought, I decided that it would

daunting, particularly when I did not have control over who else would make up that team. I was very concerned that not everyone involved would share my values or work ethic.

**Losing a client-centered focus.** I also had some concerns that a new corporate structure would negatively affect my clients. First of all, I was worried that the profit motivation of the corporate world would compromise a commitment to client care. And secondly, I was worried about the impact of corporate bureaucracy. As we got bigger, would we lose connection to our client and to our clinical services?

**Losing industry diversity.** I could see numerous benefits to having a national company with unified standards. But I worried that consolidating the industry could homogenize it in a bad way. Care management is all about attentive, personalized service. The last thing I wanted to do was to promote the idea of "vanilla" care management.

### **Steve: There**

were many unknowns—I did not know anyone else with a similar-sized business that had gone through this kind of transition. The anticipated challenges came to me in waves of questions.

*"As I weighed the pros and cons of selling my business, I could foresee several downsides and potential problems I feared would be difficult for me or would negatively impact my business and work."*

be worth moving forward, since the potential payout would far exceed the calculated risk.

### **Anticipated Challenges**

**Claudia:** As I weighed the pros and cons of selling my business, I could foresee several downsides and potential problems I feared would be difficult for me or would negatively impact my business and work.

**Losing personal control.** Having had a private practice for many years, I was obviously concerned about not being in charge. On the other hand, when conflicts had arisen with my partner, we had always managed to work them out. Still, I found the idea of working on a corporate team

**Issues of control and autonomy.** How would it be to share the responsibility and accountability? How would conflict be resolved? Would my input be valued and listened to? What if the model would compromise the quality of professional services? Would others on the management team share my values and vision?

**Unknown new stressors.** While I knew what to expect in managing my care management business, home care was something new: new staff, roles, processes, protocols, responsibilities, liabilities, and accountabilities. Would I be successful in mastering these new areas? Would I enjoy the process?

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## To Sell Or Not To Sell—The Story of Two GCMs Who Did

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**Redefining success.** Given that the investors' expectations were tied to growth, I was assuming that there would be a significant change in the way in which we were operating. What would this change be like? Previously, I had measured my success by my ability to deliver quality services and generate enough revenue to accommodate a nice lifestyle. While I desired growth, it was not essential. Now, the perception of the business's success would be evaluated in terms of the growth of our client base, revenue, and profit margins, through the delivery of quality services.

### Epilogue

**Claudia:** It has been several years since I sold my business. I have learned far more than I ever imagined, and my new position has opened doors I would never have even approached as a private practitioner. I have had the opportunity to collaborate with and learn from leaders of related fields, which has been extremely exciting, and I have seen the potential for such collaborations to provide concrete benefits to our industry and our field. But all good things require tremendous amounts of work, and this may not be for everyone. It has been a difficult transition. I have had to be extremely flexible and tolerant of differences within our company. It has been challenging to maintain my own entrepreneurial style and values and apply them within a larger organization. But my ability to do so, and my continued investment in the new company, has made it a positive experience. Given the chance to go back, I would do it all over again.

**Steve:** I have enjoyed the last four and a half years since I sold my business, since the new business has

provided me with new learning experiences along with new challenges. I have appreciated our new company's focus on business metrics, quality assurance, and strategic planning. As I look back, the time has gone by very quickly. I am astonished to see what we have been able to accomplish in a relatively short time span. With the integration of a home care service, our revenues have grown to 55 times my original annual revenue. The pace at which I am working at times feels as if I were working in "dog years." But while the pace has changed, the focus on maintaining a care-management centered model has not. It has been a positive experience, one in which the rewards have clearly outweighed the challenges.

### Conclusion

We were pleased to have the opportunity to collaborate on this article. We see a trend of consolidation, and believe over time, more and more professionals with small to moderate sized businesses will be approached with an offer to join a larger company. We are keenly aware

that the issues and questions that emerge when considering "to sell" or "not to sell" are unique to the individual. Selling to a larger company is not the only option, as there are new models emerging in which smaller practices are coming together setting up cooperative larger ventures. Our hope is that the thoughts and ideas shared will provide the reader additional insight into what issues each of us faced as we evaluated selling our practices. The future for our industry is an exciting one, full of opportunities for growth and development.

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*Claudia Fine, PhD, CMC, is executive vice president of SeniorBridge Family in New York. She is a former president of the National Association of Professional Geriatric Care Managers.*

*"It has been several years since I sold my business. I have learned far more than I ever imagined, and my new position has opened doors I would never have even approached as a private practitioner."*

## Revised GCM Referral Brochure Available!

The GCM Referral Brochure has recently been revised and is now available for purchase. The brochure can be used by chapters or chapter affiliates, or by individual members of GCM as marketing piece that can be handed out at conferences, or to perspective referral sources, to educate about what geriatric care management is and how to find a professional geriatric care manager.

The brochure is available for 75 cents each, 100 for \$60 or 250 for \$125, and can be ordered by contacting Terri Anthony at the GCM office at [tanthony@kellencompany.com](mailto:tanthony@kellencompany.com) or by phone at (520) 881-8008, ext. 107.

# Starting and Maintaining a Solo Practice

*By Suzanne Modigliani, LICSW, CMC*

The decision to start a solo practice in geriatric care management may be easier than the decision to continue. The lure of independence is quickly tempered by the challenges in such a move. Professionals, including social workers, nurses and gerontologists may have had years of experience working in elder care settings. In addition to training in their own profession, they may have had jobs in hospitals, home health agencies, councils on aging, assisted living facilities or on geriatric mental health teams. Perhaps they have worked for other Professional Geriatric Care Managers (PGCMs). Already functioning at the independent level professionally, they may feel ready to start their own practice.

For those who have spent their careers working for others or in large organizations, the switch to independent practice is a big step. The new PGCM realizes cases are not assigned from above; it is now her/his job not only to work for, but also to generate clients. Although many have had positions of responsibility, the sole practitioner quickly realizes that the ultimate responsibility for the well being of clients and the business is hers alone.

## Setting Up a PGCM Practice

Any new independent practitioner needs an understanding of business organization. Starting a practice requires legal and accounting advice. It goes without saying that liability insurance is a must. Many PGCMs begin a small practice out of their homes, theorizing that the great majority of their work is done on the telephone or at client homes. Although the need may not be frequent, it is essential to have a professional space in which to meet family members

or interview potential home care workers. It might be a home office, but it needs to be a separate space away from family distractions.

It is essential for the PGCM to have a separate business telephone line. Hard as it may be to believe, some GCMs have started practices using their home telephones, which are sometimes answered by family members. Additional requirements include office equipment, computers, fax machines, and Internet service. Today's PGCM must be computer and Internet savvy before embarking on this venture. The National Association of Professional Geriatric Care Managers' (GCM) national list-serve is full of information. Resources and information are available on the Internet. E-mail is a vital link to client families. A brochure must be developed serving educational and marketing purposes. Stationery must be designed. Although not necessary to begin, a website may be considered.

These marketing materials are the face of your new business and need to be done in a professional manner. Time must be allocated for marketing. You may be a highly qualified practitioner, but unless people are aware of your service, the phone will not ring. Membership in professional associations, beginning with GCM is important. GCM has a forms book for sale that can help any new PGCM develop intake, care plan, release of information, introduction letters and other forms and procedures for their own practice. As with any new venture, a business plan is needed to calculate start up and ongoing expenses.

It is incumbent upon any practitioner to budget and plan for continuing education. The PGCM must budget time to keep up with the literature and developments in the

field nationally as well as local resources. From the beginning, hard questions must be addressed: How long can the PGCM afford to practice with limited income as the practice grows? That is, what amount of investment will be made in the business for future growth? At times, certain expenses, even professional memberships, may seem too costly. In fact, new GCMs are limiting their possibility of success if they do not expend for these basics from the beginning.

Services need to be valued. Expenses are mentioned above, but how about income? The person starting a solo practice must decide how much to charge and how to bill for time. Market research is necessary to determine the range of fees in your community. Some may feel that charging on the lower end will bring in more business quickly. This will get the practitioner out in the community, making valuable contacts while working on cases. Yet, price is not always the deciding factor for the consumer. Those referred by trusted advisors may have been given just one name and may not be shopping for price. Some consumers, right or wrong, may think that higher price equals higher quality. Will the practitioner who begins with smaller fees soon feel that her service is worth more, or that her income is not what she hoped for? Is it more efficient to set rates a little high at the beginning so as to not have to raise rates for existing clients within too short a period of time? Practices vary, but the individual must decide whether to bill for initial consultation, travel time and telephone time. Some bill for travel time at their full rate, reasoning that the time could have been spent on the phone or conducting an assessment. Others bill for travel time at half rate thinking that their professional rate is unjustified while driving. Some prefer to bill a flat monthly rate for all care management services. Will billing be done on the quarter hour or in smaller increments?

Many potential PGCMs consider starting a practice while keeping other

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## Starting and Maintaining a Solo Practice

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full or part time jobs. Perhaps the organizational work can be done while working elsewhere, but the nature of geriatric care management demands availability. How can one collaborate with doctors, home health agencies and attorneys if one is available for in only limited time slots? Our clients' crises are unpredictable and cannot be planned for the Tuesday you may have off from a part time job. The investment of time spent marketing, meeting others in the elder care network and getting to know resources well will not only be an important foundation for the practice, but can be extremely and unpredictably time consuming.

### What Does it Take to Succeed as a PGCM?

What qualities are required of the solo practitioner? It goes without saying that s/he must be an independent person used to making decisions for her/himself. S/he must be a self-starter. Unlike a practice where one person may be responsible for marketing and another for the care management work, the solo practitioner must feel comfortable doing it all. In many ways this variety is part of the satisfaction. Lunch with an elder care attorney may seem a pleasant change of pace after a morning seeing a client at a nursing home, stopping to visit a demented client at home and making a few phone calls to families.

For many who have spent previous parts of their careers working for others, the building of one's own business, may bring a new type of personal satisfaction. To have started from scratch and developed a practice is exciting. S/he must have confidence in her decision-making capabilities and wise enough to know when she is outside her knowledge or competence

base.

Although many in the helping professions are tempted, working 24/7, 365 days a year does no favor to the health of the PGCM or the client. We need to have balanced lives to be able to avoid burnout. Often solo practitioners cover for one another's vacations. For example, there is an informal group of solo practitioners in Connecticut who meet for supervision and cover for each other. Certainly we must be available for client emergencies. The solo practitioner must define what constitutes an emergency. Has a care plan been developed that provides ample support for the client? Sometimes this is easier said than done. If the solo GCM collaborates with independent home health agencies and monitors their effectiveness, staffing should be that agency's responsibility. Frequent emergencies in a particular case may be a sign that a higher level of care is needed. Many feel it is important to establish boundaries related to one's availability. Why should a call to a family be

*Some may ask whether the life of a solo practitioner is an isolated one. It is hard to imagine feeling isolated when each case has many collaborative professional contacts and family members involved.*

done in the evening when it can take place during the day or information conveyed via e-mail?

### Is A Solo PGCM Practice For You?

Some may ask whether the life of a solo practitioner is an isolated one. It is hard to imagine feeling isolated when each case has many collaborative professional contacts and family members involved. At the end of the day, some may be wishing for peace and quiet rather than social contact. It is, of course, essential for every PGCM to have some support for the very difficult work we do. Some may purchase supervision from a more

experienced PGCM or become part of a peer supervision group. Even a solo practice has to develop a system for assuring quality. GCM chapters can provide an excellent information and support network. At their best, these are collegial groups where members share information, resources and dilemmas. For those who are geographically isolated, the expenditure to attend a national GCM conference is well worth it. Many questions can be answered in formal and informal sessions; support and development of professional identity is gained by interacting with others in this very specialized field.

A solo practice does not rule out having some help running the office. Part time secretarial help to send out marketing material or respond to inquiries may give the PGCM time to get out to meetings or generate billable time. Some choose to have help with their billing, while others feel it is just as efficient to do one's own with appropriate bookkeeping software. Some PGCMs have helpers who run errands such as going to the post office, purchasing items for nursing home residents and the like. Just as one needs a lawyer and attorney, a computer consultant may come in handy when trying to learn new software.

As mentioned, a new solo PGCM will have to market to potential referral sources. As most quickly realize, it's not just a matter of initial contact. Relationships need to be nurtured and maintained—this takes time. Awareness of geriatric care management has grown nationally, so that with high professional standards and performance, the practice should grow. The practice builds on itself. The more the PGCM is out in the community doing good work, the more s/he will be known to area professionals in a position to refer business. Former clients—satisfied customers—may refer friends. Cases that started as brief

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## Starting and Maintaining a Solo Practice

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consultations or limited interventions may come back as intensive cases. Soon the PGCM may feel her caseload is full. All is going well. We are in America, isn't it obvious, it's time to expand! This decision is not so quickly or easily made.

Just as the PGCM had to examine factors in starting a practice so must s/he consider the decision to maintain it that way. Do you like the every-day practice or are you interested in running a business? Some may feel expansion gives a sense of relief from the pressures of being a PGCM while others would feel too removed from the work they love. Many solo practitioners feel they are good clinicians, but are less sure of their supervisory and administrative skills. Running a small organization is a skill in itself. One must honestly appraise one's own strengths and weaknesses.

## What to Consider as Your Practice Grows

Every PGCM, whether in solo or group practice is accustomed to the ebb and flow of cases. New cases often require intense involvement at the beginning of assessment and care planning and then settle down for a while when the care plan is implemented. Caution must be exercised in taking on too many new cases at once. Clients who once needed an hour and a half of our attention a week may have a crisis and require eight hours in a single week. Some may feel that the answer to this problem is additional staff. Those maintaining a solo practice may have to decide to skip the meeting of the Alzheimer's Association or a planned visit to a new assisted living facility. Triage may be necessary. For those clients who do not require weekly visits,

there may be some leeway in scheduling. There may be times that are inexplicably slow for referrals and then pick up out of the blue. The solo practitioner can use slow times to market and nurture professional relationships, the results of which may be reaped in the future. Quiet times may be times to review office procedures.

Overhead will increase with a larger practice. Solo practitioners are often able to maintain relatively low overhead. They do not need large office suites. They do not spend non-billable time communicating with co-workers. They don't spend time reading a secretary's messages; they respond to inquiries themselves. There are no staff meetings. Just as we face the dilemma of whether home care aides are employees of the clients or should receive 1099s, the same challenge relates to professional help in the PGCM practice. Is additional staff working part time on an as-needed basis out of their own home offices? Are they full time salaried employees? The PGCM who stays

down those who say, were given several possible referrals or found the PGCM's name on the GCM website. Naturally, an alternative referral must be offered. It may be a large psychological leap, but the PGCM must feel comfortable with the possibility of turning down business. Paradoxically, sometimes this scarcity of time can promote demand as the consumer sees the service as highly sought after. If there is consistently too much demand that the solo practitioner cannot meet s/he may consider raising prices to reduce demand. As with the initial decision on how to structure fees, this must be researched as well in order to not be out of line with community ranges.

## Conclusion

As our field has evolved to now include regional chains with multi-city offices and practices with many PGCMs in a single company, the solo practitioner may feel s/he is not part of the wave of the future. One might ask why the consumer would be

interested in a solo practitioner when they can have a "brand name" provider from a practice with more back up. Yet, associated professionals and clients know they will be receiving personal attention from you.

Potential clients know it is the person their trusted advisor has helped them find who will be personally taking on their case. The relationships you have developed are the ones that will continue. You have only to generate enough business to keep one person busy. And, if this work environment suits you, both you and your clients will be satisfied.

*If a person has decided after due consideration to keep the practice solo s/he may eventually find herself in a position some would envy: having too much business.*

solo does not have the pressure of meeting employee payroll if billable hours are down. Workers' compensation and increased cost of liability insurance are just two expenses to consider.

If a person has decided after due consideration to keep the practice solo s/he may eventually find herself in a position some would envy: having too much business. There are still just so many hours in the day. In fact, the solo practitioner at times may have to turn down business. One does not want to disappoint regular referral sources or friends of clients. The PGCM may decide to take on new cases from these categories and turn

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# Business Vs. Professional Ethics: Compatibility And Discord

By Nancy Alexander, JD, ACSW, CISW,  
DCSW, C-ASWCM, CPF

## Introduction

Human service professionals in private practice are often caught up in a whirlwind of service delivery, program development, and business practices. Private providers must constantly balance the needs of the clients with the needs of the business. The perspectives of all stakeholders involved in the development of programs must be taken into account, and all of this must be done ethically.

Professional schools at both the undergraduate and graduate levels make some effort, albeit minimal, to help their students deal with the thorny issues they will face in the real world. These ethics problems include topics with which we are all familiar including client autonomy, boundaries, dual relationships, gifting, honesty, and conflict of interest. The increasing complexity of our society, both technologically and culturally, means professional geriatric care managers (PGCMs) may want assistance with

understanding cultural diversity issues and technological advances.

Rarely do professional schools teach their students how to set up a business, how to establish fees and an accurate billing system, how to

deal with vendors, referral sources and, above all, how to handle employer-employee relationships. Human service providers generally tend to dislike dealing with these matters, yet they are fraught with problems and are frequently a source of lawsuits.

Most professions and their associations have codes of ethics and standards of practice. They generally deal fairly well with the complexities of problems facing clients in our difficult service delivery

systems. In addition, professional associations have peer review committees trained to help colleagues and consumers when questions of practice ethics arise.

*Human service professionals in private practice are often caught up in a whirlwind of service delivery, program development, and business practices. Private providers must constantly balance the needs of the clients with the needs of the business.*

## Organizational Ethics

The following precepts are a part of an organizational "Ethics Quick Test" developed by Frank Navron of the Ethics Resource Center. They are as follows:

1. The organization's values are consistent with each other and its expectations are clear.
2. Employees at all levels understand the organization's fundamental values.
3. Value statements are perceived as valid guidelines for decision-making in the absence of policy or precedent.
4. Stated values address the organization as it deals with employees.
5. The rules for doing business address the organization's dealings with customers, suppliers.
6. The rules for doing business stay the same in good times and when things are not going well.
7. People know where to go for guidance when they need an interpretation of organizational values.
8. The organization's stated values are consistent with the values and ethics of the business community.

There are other questions that might be asked. For example, is there congruency between values and policy and procedures? Do employees share the values of the organization? How is a "disconnect" between personal, professional, organizational, and societal values dealt with? Is there a vehicle whereby employees can address and resolve their concerns?

Approximately ninety percent of Fortune 500 companies and half of all other companies have some type of code.<sup>1</sup> Companies were required or encouraged to adopt codes after the corporate scandals of the 1960s, 1970s, and 1980s. Subsequently, the Federal Sentencing Guidelines, established by Congress were enacted in 1991. Under these guidelines, a

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## Business Vs. Professional Ethics: Compatibility And Discord

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company's liabilities due to unlawful actions by an employee can be reduced if the company can show the existence of an effective program to prevent such matters from arising in the first place.

The events of the past two years however, show that there is no single code of behavior governing the chief executives of large corporations in the United States. The Enron, Tyco, Anderson, and WorldCom debacles clearly demonstrate the need for such a code. A corporate code of behavior is only as good as those charged with enforcing it.<sup>2</sup> The corporation's Board of Directors can deter executives from code violations with appropriate oversight. The Sarbanes-Oxley legislation passed by Congress as a result of these most recent scandals began to address this issue. It mandates public disclosure of codes of ethics for specific officers and any waivers granted to them. How does this affect professional business practices?

### Professional Practices

Professional geriatric care management practices are, comparatively speaking, "mom and pop" operations and don't begin to rise to the level of an Enron corporation. Yet an argument can be made that the ethical decision-making process is the same for one and all. Four conditions exist for decision-making: 1) one must make a decision; 2) one must have available choices; 3) one knows when the decision can be made; and 4) one knows what is needed to make the choice. Assuming we have all the information necessary to make a decision, then the question of the process arises.<sup>3</sup> Many decision-making models are available. The process a person is most comfortable with can be used. One process, recommended by the Josephson's Institute of Ethics, is to:

1. **Stop and Think.** Calm analysis is essential in the decision-making process. It allows us to think ahead once we can step back from the ongoing rush of our daily work.
2. **Clarify Goals.** Before you choose, clarify your short- and long-term aims. Determine which of your many "wants" and "don't-wants" affected by the decision are the most important.
3. **Determine Facts:** Be sure you have adequate information to support an intelligent choice. To determine the facts, first resolve what you know and then what you need to know. Be prepared to get additional information and to verify assumptions and other uncertain information. Here are some guidelines:
  - Consider the reliability and credibility of the people providing the facts.
  - Consider the basis of the alleged facts. If the person giving you the information says he or she personally heard or saw something, evaluate that person in terms of honesty, accuracy, and ability to remember the facts.
  - Remember that assumptions, gossip and hearsay are not the same as facts.
  - Consider all perspectives, but be careful to consider whether the source of the information has values different than yours or has a personal interest that could affect her or his perception of the facts.
  - Where possible, seek out the opinions of other professionals whose judgment and character you respect.
  - Finally, evaluate the information you have in terms of completeness and reliability so you have a sense of the certainty and fallibility of your decisions.
4. **Develop Options.** Now that you know what you want to achieve and have made your best judgment as to the relevant facts, make a list of options—a set of actions you could take to accomplish your goals. If it's an important decision, talk to someone you trust so you can broaden your perspective and consider new choices.
5. **Consider Consequences.** Two techniques help reveal the potential consequences of any course of action.
  - Filter your choices through each of Josephson's Six Pillars of Character: trustworthiness, respect, responsibility, fairness, caring, and citizenship. Will the action violate any of the core ethical principles? Eliminate unethical options.
  - Identify the stakeholders and how the decision is likely to affect them. Consider your choices from the point of view of major stakeholders. Identify whom the decision will help or hurt.
6. **Choose.** It's time to make your decision. If the choice is not immediately clear, see if any of the following strategies help:
  - Talk to people whose judgment you respect. Seek out friends and mentors, but the ultimate responsibility is still yours.
  - What would you do if you were sure everyone would know? If everyone found out about your decision, would you be proud and comfortable? It's been said that character is *revealed* by how we behave when no one is looking and *strengthened* when we act as if everyone is looking.
  - Golden Rule: do unto others, as you would have them do unto you. The Golden Rule is one of the oldest and best guides to ethical decision-making.
7. **Monitor and Modify.** Monitor the effects of your choices. If they are not producing the intended results or are causing additional unintended and undesirable results, then re-assess the situation and make new decisions.

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## Business Vs. Professional Ethics: Compatibility And Discord

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Professional geriatric care managers are engaged in incredibly difficult and complex family situations. We are expected to enter the life of a client, wave a “magic wand” and make everything okay. Someone recently told me that the son of a client became quite angered when she had the audacity to suggest his mother—not he—was her client. Since he paid the bills, he assumed he was the client. He failed to understand that he was but one of the stakeholders. Other stakeholders included his mother, sister, niece, the care management agency and its staff, Adult Protective Services, the court in the county of origin, the attorneys involved, and other community service agencies. In this case, as in all others, professional and business ethics must be observed in order to resolve effectively the problems the client may be experiencing.

### Small Business Practices

In addition, as small businesses, PGCs need to ask who are the stakeholders in our ventures and how can we ethically and effectively work with all involved.

**Fee Structure.** The largest areas of professional malpractice suits arise in the matter of fees. Are your fees fair and reasonable? Does your billing system document the relationship between fees and the services performed? Most importantly, is your client fully informed of the fee structure prior to the onset of services? Is your contract explicit regarding charges?

**Billing System.** Is billing done in a timely and accurate manner? Do professional case notes

demonstrate accountability in relation to the billing system?

**Accounting Practices.** Does your firm conform to generally accepted accounting practices? Do you engage the services of an independent auditing firm on a regular basis? Does the independent firm have clearly stated ethical guidelines for its auditors?

**Management Information System.** No matter how small the firm, it is imperative to have a comprehensive MIS. Does your system demonstrate professional as well as fiscal accountability?

**Code of Ethics.** Does your organization have a Code of Ethics? Does the code of ethics incorporate obligations to employees, vendors, clients, and the community at large? Is your code distributed to relevant parties? Do you have a Board of Directors or, for small organizations, an Advisory Board? Does a process exist that keeps the Board informed regarding ethics and compliance issues and how problems have been addressed?

**Ethics Training.** Has your organization developed an ethics and compliance-training program that allows for honest, open communication? Has a system been devised that allows for honest, direct feedback from your employee(s) and/or client(s) regarding any ethics concerns they may have?

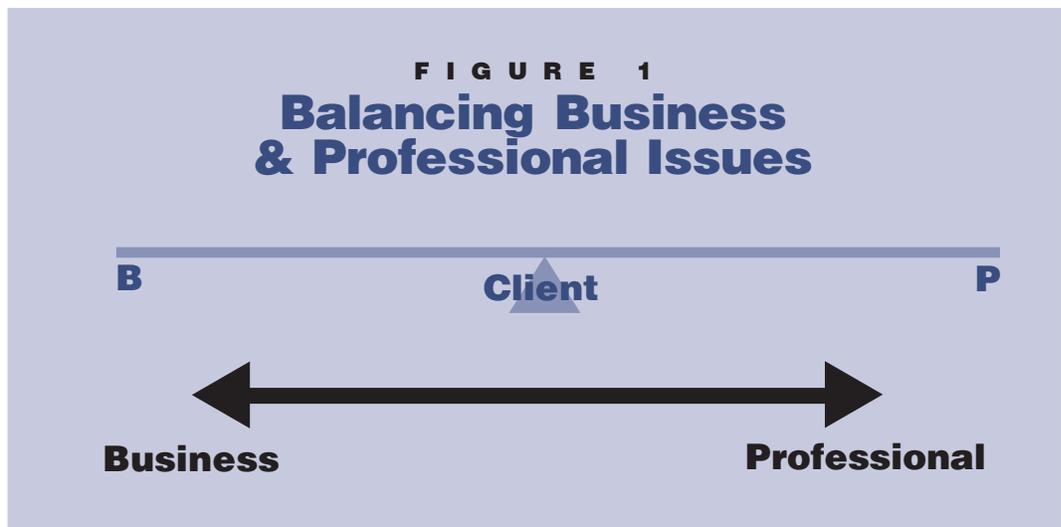
**Employee Supervision.** Professionals who are in a supervisory capacity have an ethical responsibility to their employees and their clients. A supervisor must be competent in his/her relevant field of supervision. A supervisor has a duty to oversee the staff person’s work and to evaluate the client and his/her progress. (There is much case law on this point that holds supervisors responsible for the actions of their employees.)

**Written Materials.** Do your marketing materials completely and accurately reflect what services you provide and their costs?

**Conflicts of Interest.** Does your code of ethics clearly state the policy regarding conflicts of interest? Have guidelines been developed disclosing existing or potential conflicts of interest?

**Honesty, Absolute Honesty.** A book written by Larry Johnson and Bob Phillips, *Building a Corporate Culture that Value Straight Talk and Reward Integrity*, discusses at length the issue of truthfulness. They write that teamwork can be carried to an extreme with too much stress placed on getting along with others. This can result in a non-confrontational culture with truth telling becoming a political inconvenience. Johnson and Phillips have six “laws” regarding truthfulness. They are:

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## Business Vs. Professional Ethics: Compatibility And Discord

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1. Tell the truth.
2. Tackle the problem encouraging the debate that is constructive.
3. Disagree and commit to supporting the decision.
4. Welcome the truth.
5. Thank the person calling attention to the problem.
6. Build an integrity platform with strong leadership and clear values.

### Summary

The question then arises whether there is congruency or discord between professional and business ethics. Professional ethics require us to act in the best interest of our clients. Business ethics require that each party protect its interest. Are the people we serve our clients or our customers? Are financial arrangements compromising our professional independence? Is there a built in conflict of interest?

It appears there is a de facto contract between our profession and members of our society. If so, how do we go about reconciling the difference?

This article has only touched on some of the topics facing professionals engaged in business. Other issues include referral fees, whistle blowing, employee, confidentiality; (e. g. drug testing), privacy, service charges, and certification and licensure to name but a few. The development of an organization built on integrity and of a profession based on truthfulness, respect, dignity, and fairness can only result in our being welcomed and honored by our clients, employees, and the community.

These topics, as well as those raised earlier in this article, involve professional as well as business ethics. Let us take one example: financial incentives. *The Wall Street Journal*<sup>4</sup> recently carried an article

about physicians and their relationship to the Biovail Corporation, a Canadian pharmaceutical company. Biovail is paying physicians \$1,000 if they put eleven to fifteen patients on the new drug, Cardizen LA. The doctor's office managers receive \$150. (We could certainly discuss gender and professional inequality given this discrepancy.)

Are the physicians accepting this financial incentive out of altruism or greed? Do doctors truly see it as a medicinal alternative or is their vision skewed somewhat by the money? Is the new medication being given to patients regardless of their economic status? Consumers, particularly in healthcare, frequently lack the knowledge and information to make decisions about their medications. Patients look to their doctor for guidance and direction. Are physicians providing full disclosure

regarding what appears to be an inherent conflict of interest to their patients? And how can the concept of "caveat emptor" possibly prevail in the field of medicine under these circumstances?

There are numerous questions of business and professional ethics that arise from this example. As PGCMs, we have much to learn from this example. As we engage with clients in our endeavors to assist them, we must be aware of propriety and the appearance

of impropriety. Ours is still a fledgling profession and industry in many ways. In order for us to grow our businesses, whether for profit or not-for-profit, we must maintain and defend our integrity. It is relatively easy to be swept away by financial as well as other incentives proffered to us by various sources. We must provide strong leadership to our profession and our individual

businesses and act with integrity.

**Patients look to their doctor for guidance and direction. Are physicians providing full disclosure regarding what appears to be an inherent conflict of interest to their patients? And how can the concept of "caveat emptor" possibly prevail in the field of medicine under these circumstances?**

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### Endnotes

1. 116 Harv.L.Rev. 2123
2. Ibid
3. 90 Mich.L.Rev. 2348
4. *Wall Street Journal*, July 21, 2003, Section C7

# Responsibilities and Liabilities of Non-profit Directors and Officers

By Hugh K. Webster, Esq.

## Introduction

Many care management business owners, executives and practitioners are involved in local or national boards of directors of non-profit organizations. Being selected to serve on a board of directors is often an impressive achievement resulting from an individual's status, position or expertise in a field. There are many reasons to serve on a board: It can be a networking or marketing opportunity, a way to contribute to decisions that may directly affect you or others in the field, or simply a way of giving back to the community. Regardless of the motivation, accepting a position on a board of directors is a serious matter. It is important to understand the expectations, roles and responsibilities of a director and should be carefully considered. This article addresses the duties of board members of non-profit organization and is intended to provide information on the legal and fiduciary aspects and obligations involved.

Many responsibilities derive from State corporate laws that impose various "fiduciary duties" on directors of non-profit corporations. Statistically, the risk of a non-profit director being named in a lawsuit is, fortunately, not great. Nevertheless, directors should bear in mind the remark of one legal commentator that "even if the risk of liability were no greater than that of being struck by a lightning bolt, one must observe that prudent men and women do not wander needlessly in a thunderstorm; some are in fact terrified by lightning."

## Fiduciary Duties

A fundamental rule in the law of corporations, both profit and non-profit, is that ultimate authority for overseeing the affairs of the corporation is vested in the board of directors.

But because the law grants directors such authority, the law also imposes on directors the obligation to act in the best interests of the corporation and to manage its affairs with the same care, diligence, and prudence that they would use to manage their own business. This, in essence, is what is meant by the "fiduciary obligations" of members of boards and directors.

Every non-profit corporation statute includes a provision that sets forth, in very general terms, the fiduciary obligations or duties of a non-profit director. Most such statutes require directors to act: (1) in good faith; (2) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interest of the corporation. This, somewhat vague, standard has been interpreted by the courts to include three basic duties: (1) the duty of loyalty; (2) the duty of care; and (3) the duty of obedience.

### 1. Duty of Loyalty

By assuming office, the non-profit director commits allegiance to the non-profit and acknowledges that the best interests of the non-profit must prevail over any individual interest of the director, the director's employer, and the director's family and associates. As a director, actions and decisions must promote the non-profit's purpose and well being, rather than any private interest. The duty of loyalty in essence involves avoiding conflicting economic, personal, or other similar interests. While multiple loyalties or apparent conflicts are insufficient in themselves to establish a breach of loyalty, the

duty of loyalty is transgressed when a corporate fiduciary, whether director or officer, uses his or her corporate office to promote, advance, or effectuate a transaction between the non-profit and such person, and that transaction is not substantively fair to the non-profit. The test as to undivided loyalty of directors is whether corporate action is the result of the exercise by the directors of their unbiased judgment in determining that such action will promote the corporate interests. Another important aspect of the duty of loyalty is to maintain the confidentiality of proprietary and sensitive information.

### 2. Duty of Care

The second major fiduciary duty of a non-profit director is the duty of care. It is the violation of this duty that most often results in liability. There are several components to the duty of care.

- a. **Attendance.** It may seem obvious to most, but it is worth stating that directors must attend board meetings. There is no recognition in the law of a so-called "figure head directors" or "dummy directors," and courts will have no sympathy for directors who claim as a defense to any legal action that they did not know of a particular issue or did not participate in a particular action because of repeated failures to attend meetings. Directors who do not attend meetings are nevertheless bound by actions taken at those meetings and will be held responsible if any such actions are deemed negligent. In fact, the act of failing to attend meetings may itself be deemed negligent behavior.
- b. **Delegation vs. Abdication.** While the board of directors make the important policy decisions that guide and determine the activities of the non-profit, it typically must rely on others to carry out those decisions, primarily the non-profit staff. Boards also delegate their duties to committees and perhaps outside parties as well. Such delegation is entirely acceptable

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under the law, as long as the board of directors does not completely abdicate its duties. That is, a board must monitor those to whom it has delegated certain authority to insure that such persons are acting responsibly.

- c. Information Flow.** According to the so-called “business judgment rule,” members of non-profit boards will not, generally speaking, have their business decisions second-guessed even if those decisions turn out to have been ill-advised. But the law is less tolerant of directors, or entire boards, who are not sufficiently informed about the activities of their organization. For this reason, the directors’ duty of care is often referred to as the duty to be informed. As stated by one court in the for-profit context:

It is an elementary fact that relevant and timely information is an essential predicate for satisfaction of the board’s supervisory and monitoring role. Directors must assure themselves that information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning the corporation’s compliance with law and its business performance.

- d. Reasoned Decisions.** In exercising its authority, a board’s decisions not only must be informed, but also must be reasoned. This is especially true with respect to significant transactions or decisions, which can be challenged legally if undertaken by a board in a sloppy or hasty manner.

### 3. Duty of Obedience

Directors have a duty to follow the organization’s governing documents (Articles of Incorporation and Bylaws), to carry out the

organization’s mission and to ensure that funds are used for lawful purposes. Also, directors must comply with other state and federal laws that relate to the organization and the state(s) in which it conducts its business.

### 4. Other Duties

In addition to the above three general fiduciary duties, there are a number of specific responsibilities which must be observed by non-profit corporate board members.

- a. Overseeing Finances.** One of the board’s responsibilities is to oversee the organization’s financial affairs including making sure that the organization has adequate internal accounting systems and controls. The board should be responsible for approving the organization’s annual budget.
- b. Safeguarding Assets.** The board should oversee the effective use of the resources of the organization. Policies should be adopted and large transactions approved to ensure that the organization’s assets are not misapplied or wasted. The board should ensure that the assets are invested prudently.
- c. Observing Donor Restrictions.** All donations must be used in a manner that is consistent with the organization’s stated mission. However, some donors designate that gifts are to be used for a particular purpose. It is important to keep faith with donor intentions.

## Conflicts of Interest

### Defining a “Conflict”

As discussed previously in connection with the duty of loyalty, directors have an absolute duty of complete, undivided loyalty to the non-profit. This means that directors should avoid using their position or the non-profit’s assets in a way that would result in pecuniary or monetary gain for them. A director should put the good of the non-profit first and avoid engaging in transactions with the non-profit from which the director will benefit personally. This is not to

suggest that a non-profit director can never do business with the non-profit. In fact, often when a non-profit is in need of an author, instructor, presenter, or other qualified individual, the board may be the best source. The “cream rises to the top,” and non-profit directors typically are the leaders of their industry or profession. In addition, these persons have demonstrated, by virtue of their service on the board, a commitment to work for the non-profit. What is important is that the transaction be fair to the non-profit. That is, the non-profit receives a quality service that the non-profit needs, at a fair price.

There also should be a written procedure in place that provides for, at least, three protections or precautions:

- (1) **Disclosure.** If a director believes that he or she may be perceived to have a conflict of interest, this should be disclosed to the board. Even if the director’s opinion is that there is no conflict, if there could be a perception of such, then disclosure is the best course.
- (2) **Abstention.** An interested director should not participate in discussion (unless necessary) or voting with respect to the conflicted matter. For example, if the board is considering a contract that the director might wish to perform, he or she should recuse him/her self from proceedings related thereto.
- (3) **Fairness.** Above all, as stated, the transaction must be fair and reasonable from the non-profit’s perspective.

## Protections for Directors

In addition to complying with the duties of care, loyalty, and obedience as described above, there are affirmative protections available to non-profit directors.

### 1. Business Judgment Rule

A fundamental doctrine of corporate law, again applicable to both profit and non-profit organizations, is the so-called “business judgment rule,” which generally provides that a court of law will not second guess the decisions or actions of a board of

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directors, assuming those decisions and actions were taken in conformance with general fiduciary standards for directors. This is true even if the decisions of a particular board may, in retrospect, have been wrong or even injurious to the corporation.

#### 2. Right of Access to Information

Because directors are ultimately responsible for the operations of the corporation, and can be held personally responsible under certain circumstances, the law also provides that board members have a general right of access to information regarding the operations of the corporation.

#### 3. Reliance on Advisors

Most state non-profit statutes provide that a director may rely on reports and other information provided by certain persons, specifically: officers, directors, and staff of the non-profit; legal counsel; accountants; and board committees.

#### 4. Volunteer Protection Laws

There is a federal law and many State laws that provide a measure of protection from civil liability for

directors and officers of non-profit organizations. Typically, these laws provide that a person wishing to impose personal liability on a non-profit director or officer must prove that their conduct was particularly egregious; for example, the director or officer engaged in reckless misconduct, rather than mere negligence.

#### 5. Indemnification

All states have enacted laws that allow, and in certain instances require, non-profits to indemnify their directors. While these laws can vary, typically if a director is named in a lawsuit by virtue of his or her status as a director, and he or she acted in good faith in the best interests of the non-profit, then the non-profit is *permitted* to indemnify that director against all financial liability, including amounts paid in settlement. This permissive indemnification may be made an obligation of the non-profit by a provision to that effect in the non-profit bylaws. Most state statutes also *mandate* indemnification of a director if he or she is wholly successful in defending him/herself in a legal proceeding.

Something that can be very valuable to directors is payment of legal fees in advance and, again, most states allow for this. However, if a director is ultimately found liable and to have acted in bad faith, the advanced amounts may have to be

refunded. Of course, indemnification is beneficial only if the non-profit can afford to fund it. Because of the high cost of litigation, most non-profits purchase insurance to cover indemnification obligations.

#### 6. Directors and Officer Liability Insurance

Non-profit organizations are permitted to, and in most instances should, purchase insurance to protect their directors and officers. Even if a claim is without merit, the legal fees incurred to defend a lawsuit can be significant.

### Conclusion

Many people feel honored when asked to serve on a board of directors, and it can be a real privilege to be associated with a non-profit organization. At the same time, it is important that all aspects of accepting such a position are understood. Before agreeing to serve, check on the organization's financial and legal status, business practices and protections for directors and officers, and then be prepared to fulfill your duties.

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