



GREY AREAS NEWSLETTER

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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Prioritizing Board Time – Part 2

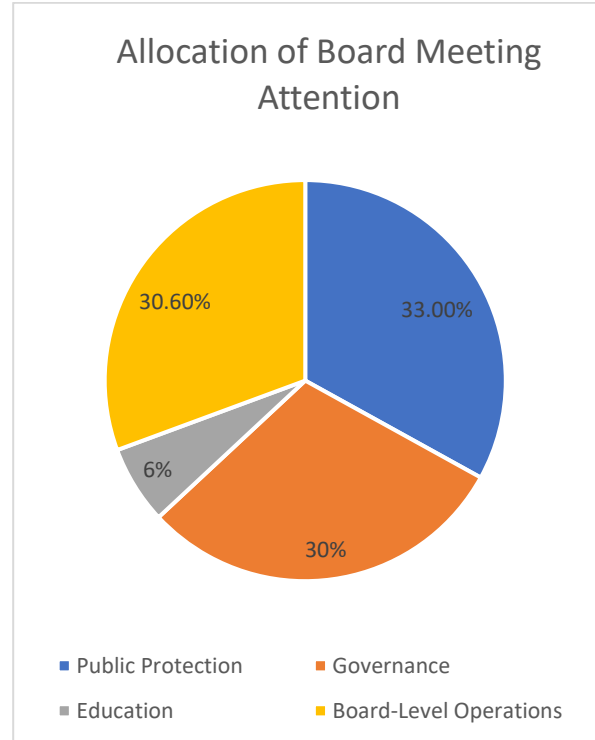
by Rebecca Durcan
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In the last issue of Grey Areas, we analyzed the allocation of the attention by Boards of Directors of regulators within four categories:

1. Public Protection
2. Governance
3. Education of the Board, and
4. Board-Level Operations.

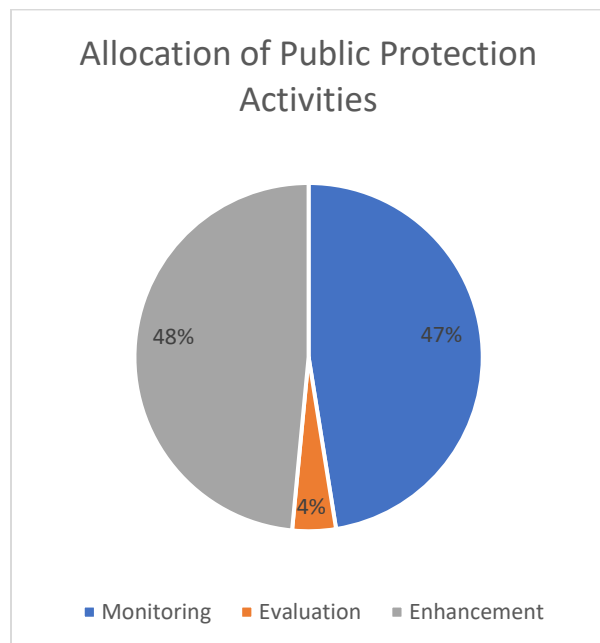
By categorizing the publicly available pages of Board meeting materials, we noted the average allocation of Board attention as set out in the next column.

In this article we will examine more closely the allocation within the three main categories: public protection, governance, and operations. Readers are encouraged to review, again, the limitations in our review discussed in Part 1 of this series to place the precision of the information below into context.



Public Protection

For the public protection category, we examined how much Board attention was devoted to monitoring, evaluating, and enhancing the protection of the public. Monitoring includes activities such as receiving reports from regulatory committees (e.g., registration, complaints, discipline) and statistical breakdowns (e.g., the number of complaints, the type of complaints, the disposition of complaints, and the time taken to dispose of a complaint). Evaluating includes activities such as measuring regulatory activities against a target (e.g., how many applications for registration exceeded the timeliness objective) and external evaluations of effectiveness, typically done by consultants. Enhancing protections includes activities such as revising a standard or policy designed to guide the profession and the public about proper practice. We did not evaluate the wisdom of any enhancing activities, including where safeguards (such as certification of registrants' advanced skills) were removed as no longer being necessary. The average within each category is as follows:



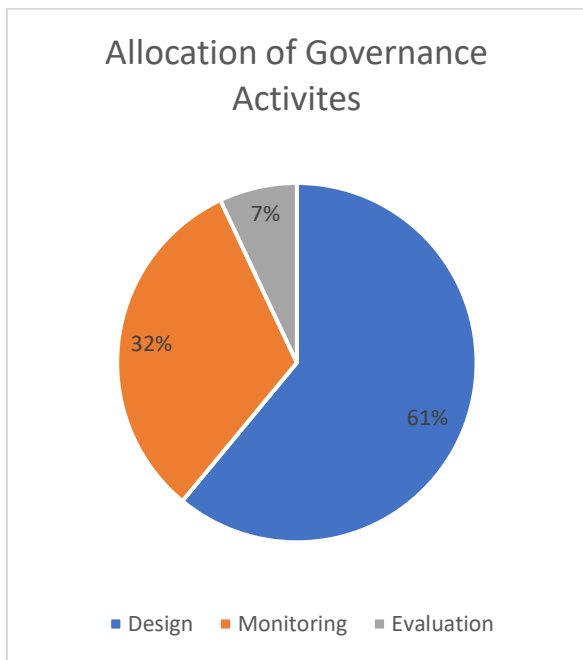
The most noticeable feature is that very little attention appears to have been devoted to the evaluation of the effectiveness of the organization's regulatory activities. We recognize that the 4% figure may understate the situation somewhat. It is possible that monitoring reports lead to evaluative discussions at the Board table. For example, a Board member might ask why the backlog of complaints and discipline matters is growing. Also, most health regulators (which formed 26 of the 30 regulators who published their Board meeting materials) generally consider their College Performance Measurement Framework report at the beginning of the year (our review was conducted for meetings generally occurring in the fall). Further, briefing materials on enhancement decisions might sometimes have topic-specific evaluative materials embedded in them (e.g., research as to why the current standard or policy is ineffective or unnecessary).

Evaluative data is notoriously difficult to gather. Nevertheless, despite these limitations, Boards of regulators may wish to develop additional evaluative tools in order to better fulfill their public protection role.

Governance

For the governance category we examined how much Board attention was devoted to monitoring, evaluating, and designing its governance approach. Monitoring includes activities such as receiving reports from its non-regulatory committees (e.g., an executive committee or a finance and audit committee), considering Board election plans, and reviewing the conflict of interest declarations by Board members. Evaluating includes activities such as self-evaluation surveys on the effectiveness of the previous Board meeting and reports from external experts on a regulator's governance approach. Designing includes activities such as developing or amending by-laws and policies on the roles and responsibilities of staff, committees, and Board members.

Several regulators are also developing competency-based descriptions for selection to the Board and its committees, which would fall into the design category. The average in each category is as follows:

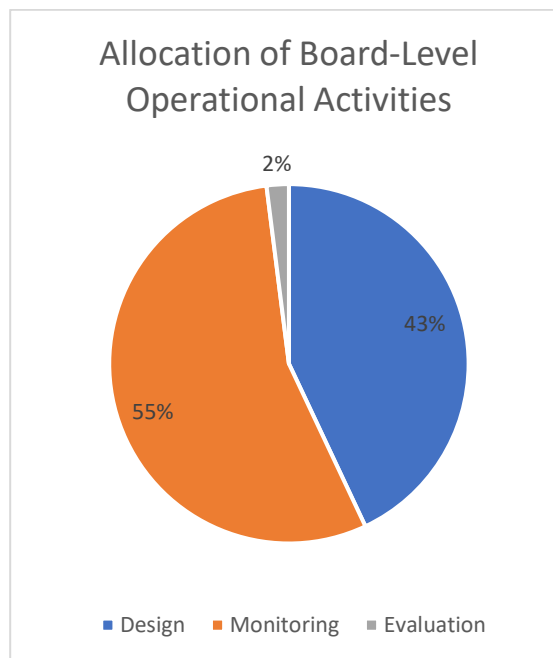


The allocation of time to the design category is quite high, constituting almost two-thirds of governance activities. As noted, many health regulators are actively revising their governance by-laws and policies because of the Ministry of Health's push for governance modernization, including enhancing competency-based selection processes, for Board and committee members.

While still relatively low, the evaluation of governance category is almost double what it is for public protection. There are several possible explanations for this higher proportion. Many regulators now conduct a self evaluation survey for each Board meeting and several regulators are currently undergoing external governance reviews.

Board-Level Operations

For the operations category we examined how much Board attention was devoted to monitoring, evaluating, and designing the organization's operations. Monitoring includes activities such as ensuring the accuracy and implementation of Board meeting minutes, scrutinizing progress to meeting the operational (as opposed to public protection) strategic priorities of the organization (e.g., addressing the risk of an IT or privacy breach), reviewing financial statements, and receiving operational reports from the Registrar/CEO. Evaluating includes activities such as risk management assessments of the risks to the organization (as opposed to risks to the public). Designing includes activities such as developing or amending operational policies, preparing budgets, setting registration fees, and choosing an auditor. The average in each category is as follows:



It seems appropriate for the majority of a Board's attention on operations to be spent on monitoring and evaluating. Most operational design should be spearheaded by the Registrar/CEO, with suitable exceptions such as approving the regulator's

budget and appointing the auditor. There was a wide variation amongst regulators as to the amount of attention devoted to operational design. Some devoted more than a third of their entire Council meeting attention to designing operational policies. Indeed, one Council devoted more than half of their attention to reviewing and approving operational policies. If that is a persistent pattern, then the Board might be viewed as being distracted from what should be its top priority which is protecting the public.

Again, on average only 2% of attention was devoted to evaluating operations. Regulators might strive to develop dashboards that provide, at a glance, information on whether various aspects of operations meet the organization's targets. Examples might relate to the proportion of inquiries that receive a defined timely response, whether a new EDI page is receiving the anticipated hits, and customer satisfaction surveys. Indeed, a dashboard on how much time the Board devoted to public protection, governance, and operations compared to the Board's target allocation could be a useful reminder for each Board meeting. Evaluative activities could help focus Board attention to priority operational matters. Reviewing external assessments (e.g., of the security of the organization's data) would also be an appropriate level of Board involvement (as opposed to designing the organization's privacy policy itself).

Conclusion

In addition to measuring the allocation of Board attention to public protection, governance, and operational activities, regulators might consider measuring Board attention within each category. The subcategories of monitoring, evaluation, and design/enhancement can be helpful. Regulators might set targets suitable to their context and goals. For example, increasing attention to enhancing public protection activities might be seen as more valuable than designing operational policies. As a general observation, it appears that evaluative activities within each of the categories could generally be improved.

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