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Market Basket's Governance Crisis Provides Lessons for Healthcare Boards

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“There’s only one boss in the company. There’s not two. There’s not three. There’s not five.” — Arthur T. Demoulas, former CEO and president of Market Basket

Arthur was wrong.

In explaining to his board back in 2012 “who’s the boss,” Market Basket Chief Executive Officer Arthur T. Demoulas seems to have inverted a fundamental principle of corporate governance: chief executives serve at the pleasure of a company’s directors.

This principle has taken on a central role in the litigation resulting from Mr. Demoulas’ September 2025 termination. DSM Holdco, Inc., parent of the Market Basket supermarket chain, is undergoing a multiyear governance crisis resulting from Mr. Demoulas’ alleged disregard of board authority, his withholding of vital information, and his attempts to control succession planning without board involvement. When Mr. Demoulas was terminated from his roles, DSM HoldCo and three director-plaintiffs filed a complaint seeking judicial confirmation that his removal was valid and effective. In response, Mr. Demoulas filed a counterclaim on October 1, 2025, asserting that the board’s and directors’ actions were unlawful and not in the best interests of the corporation and its shareholders.

Had Mr. Demoulas overstepped his role as chief executive officer? Had the board of directors waited too long before fulfilling their duty to actively oversee the business operations? The answers are probably yes and yes. But either way you slice it, the Market Basket saga is an example of poor corporate governance by all parties, plain and simple. The resulting litigation before the

Delaware Court of Chancery—*DSM HoldCo, Inc. et al. v. Demoulas*—is a salient reminder of the consequences corporate boards face when they lack rigor in fulfilling their fiduciary obligations.

Corporate governance principles at stake

The dispute at the heart of *DSM HoldCo* reminds us of what the principles of effective board governance are and why they are there in the first place. First and foremost is the concept of fiduciary duty. Directors owe duties of care, loyalty, and good faith, and must act in the best interests of shareholders. These duties are vested in the board as an organization's ultimate governing body, and executives—including the CEO and others in the c-suite—are accountable to the board. Providing timely, accurate information to the board and adhering to board decisions are big parts of that accountability. Because of directors' unique obligations to shareholders, independence is a key concept that runs parallel to fiduciary duty. Directors must avoid capitulating to internal or external pressure and must always act in the organization's long-term interests. These concepts are critical safeguards as well as legal requirements.

The heightened responsibilities of healthcare directors

In addition to general corporate governance obligations, healthcare organizations and their directors carry their own unique fiduciary duties as they operate in a distinct environment—one shaped by public service, regulatory complexity, and, frequently, nonprofit status. This context gives rise to unique fiduciary duties that go beyond traditional corporate governance. There is a level of community accountability that most other enterprises do not share. There are added layers of ethical and professional accountability that are unique to healthcare. There is a complex web of healthcare-specific laws, including HIPAA, Stark Law, and Anti-Kickback Statutes, where noncompliance can result in significant legal and reputational risks. And for nonprofits and charitable organizations, directors are responsible for safeguarding assets and directing them toward the public benefit (which is why they are commonly referred to as "public charities").

Oversight of public charities is provided at the state level by the attorney general's office and at the federal level by the Internal Revenue Service (IRS), ensuring that charities operate legally, use assets for their intended charitable purposes, and maintain transparency and accountability to the public.

State attorneys general investigate allegations of fraud, breach of fiduciary duty, and other violations and can take enforcement actions, including pursuing relief against directors and officers or even dissolving nonprofits.

Board failures and legal liability

When we say that executives serve at the pleasure of their boards, the nub of the issue concerns a board's unique fiduciary duties and the legal liabilities that attach to them. This is especially clear in the healthcare setting. Some recent enforcement actions in the nonprofit sector demonstrate how serious these legal repercussions can be.

In re Lemington Home for the Aged: The Third Circuit affirmed a $2.25 million compensatory damages award against former directors and officers of a nonprofit nursing home. The executives were found *personally liable* for breach of fiduciary duties, including failing to oversee operations in the face of repeated warnings and deficiency findings.

Attorney General of Washington, DC v. Raheem AI: The DC Attorney General filed suit against Raheem AI and its executive director, alleging misuse of nonprofit funds, failure to pay wages, and other violations. The complaint specifically alleges that the board failed to monitor spending and allowed the executive director's conduct to go unchecked, thereby enabling the alleged abuses.

Minnesota Attorney General Settlement with Borealis Art Guild: The Minnesota AG's office found that the nonprofit board failed to oversee executives who used $139,000 of nonprofit assets to improve their own property. The board also removed directors who questioned finances and failed to comply with required registration. The settlement underscores the board's duty to actively oversee management and safeguard charitable assets.

Stark v. State: In this case, the court found the president of a nonprofit personally liable for breaching his fiduciary duties by failing to notify the board or seek its approval before attempting to transfer substantially all of the nonprofit's assets to a new entity he controlled. The court held that Stark's intentional failure to inform the board and seek approval, as required, constituted a willful breach of duty.

Arrest of Nonprofit Executive for Fraud and Theft: The former executive director of Open Arms Village, a nursing home, was arrested and charged with grand theft and organized fraud after allegedly defrauding the nonprofit of over $100,000. According to police reports, the ED was accused of issuing unauthorized checks, conducting fraudulent credit card and PayPal transactions, and manipulating financial records. Importantly, the ED is alleged to have deliberately misled the board by altering financial documents and providing false information to conceal his misuse of funds, and the board was unable to discover the concealment due to inadequate financial oversight mechanisms.

Strategies for effective board management and oversight

In light of *DSM HoldCo* and other recent cases, healthcare boards should establish and regularly review governance protocols that explicitly define clinical oversight, compliance, financial controls, and executive authority to ensure effective governance and mitigate risks. Moreover, boards must insist on full and timely access to all relevant operational information, including clinical quality reports, compliance updates, budgets, and strategic plans, and document all requests and responses.

Additionally, regular communication with executive leadership, compliance officers, and clinical staff is essential and will foster an environment where open dialogue and dissenting views are encouraged. When conflicts of interest arise, whether from management or within the board, directors must act decisively, which may include recusal, independent investigation, or removal of non-cooperative officers.

Thorough documentation of board actions and any resistance encountered further protects both the organization and its directors, especially if the organization is audited or subject to government intervention. If an organization is audited by the auditor general or a similar authority, the process can be highly disruptive, requiring extensive documentation, multiple information requests, and close scrutiny of board decisions. During this process, any lack of clarity, incomplete records, or unresolved issues within the organization will attract significant attention from the auditor and may result in serious regulatory or reputational consequences. As a result, thorough documentation and proactive governance are the best defenses. Boards should not hesitate to engage legal and governance experts when their authority is challenged, their duties are impeded, or conflicts of interest threaten their ability to act in the best interests of the healthcare organization and its stakeholders.

What this means to you

DSM HoldCo highlights the importance of strong, independent board oversight and unwavering adherence to fiduciary duties for healthcare organizations. Directors must remain vigilant, act in the best interests of the organization and its stakeholders, and proactively address any management misconduct or governance failures. By doing so, healthcare boards can better protect their organizations from regulatory, legal, and reputational risks while upholding the highest standards of patient care and public trust.