

Boardroom Confidential

For more than 25 years, Shady Grove Community Foundation had been giving grants to support programs in the arts and education. Carmen had been an effective board chair for five years, and Barry had been a well-liked, hardworking board member for four years.

Barry enjoyed serving on the board, and other board members appreciated his innovative thinking, easy-going style, and boundless enthusiasm. He worked hard, always volunteering to take on tasks that other board members avoided. In part, Barry did this because he was retired and had free time. But mostly he did it because he was committed to Shady Grove's mission and had a "just do it" philosophy.

Carmen was keenly aware of Barry's value to the board but, in less charitable moments, thought he could be a loose cannon whose enthusiasm got him into trouble. For example, Barry's next-door neighbor (the artistic director of a local theater) had applied for a Shady Grove grant. Wanting to be the bearer of good news, Barry confided to the neighbor that board discussions of her proposal had

been very positive and that her organization would probably get the grant. But when the final decision was made, the neighbor's organization wasn't chosen.

On another occasion, when the Shady Grove board was recruiting a new chief executive, Barry really "clicked" with one of the candidates. In an effort to convey to this candidate how impressed the board was, Barry shared information with her about two other candidates, even though all of the candidates had been told that their applications would be kept confidential.

Recently, Barry had been interviewed by a local newspaper (he always agreed to interviews because he saw them as opportunities to promote Shady Grove and his favorite programs). In the course of the interview, he let it slip that he thought it would be a shame if a particular program that Shady Grove funded was discontinued. When pressed by the reporter, Barry said that the board had been arguing about whether to continue the funding, but that he was 100 percent behind it and he hoped he could convince others to change their minds.



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A merger challenges a board's usual goal of transparency with a competing need for confidentiality under a special circumstance where details must be kept secret during initial discussions between the parties. Barry's inability to maintain board confidentiality (clearly violating his fiduciary and legal responsibilities) is likely to make a difficult process even more challenging.

Carmen should establish a small task force to evaluate the merger and to fulfill the board's requirements for due diligence before even bringing a merger proposal to the full board. The task force should be comprised of seasoned board members and senior staff known for their acumen and discretion. For obvious reasons, Barry should not be on the task force. Initially, it should assess Shady Grove's organizational readiness and capacity

to merge while evaluating the merits of a merger with the Sunnyside Foundation.

If the assessment determines Shady Grove's readiness and establishes a sound rationale for this option, then Carmen and the task force can bring the matter to the full board for debate and potential authorization to begin discussions with Sunnyside. During Shady Grove's deliberations, the task force should stress the desirability, need, and legal requirements for complete board confidentiality throughout the merger process until it is a "done deal" and publicly announced by both parties. It should also emphasize that confidentiality is even more important in the event the merger is not consummated.

Prior to the task force coming to the board with its recommendations, Carmen and her executive committee (or other select board members) and counsel should take Barry to lunch. They should discuss his prior breaches of confidentiality and that confidentiality is a fundamental board responsibility and the basis for termination from the board if he breaches it in the future.



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Barry has been a valuable board member in many ways and it would be a shame to lose him and his passion for the organization. However, there is no excuse for breaking confidentiality, other than ignorance. Perhaps, he has never been fully trained in the requirements for board service.

Short of inviting Barry to leave the board, I see four things the board could do immediately to improve the situation:

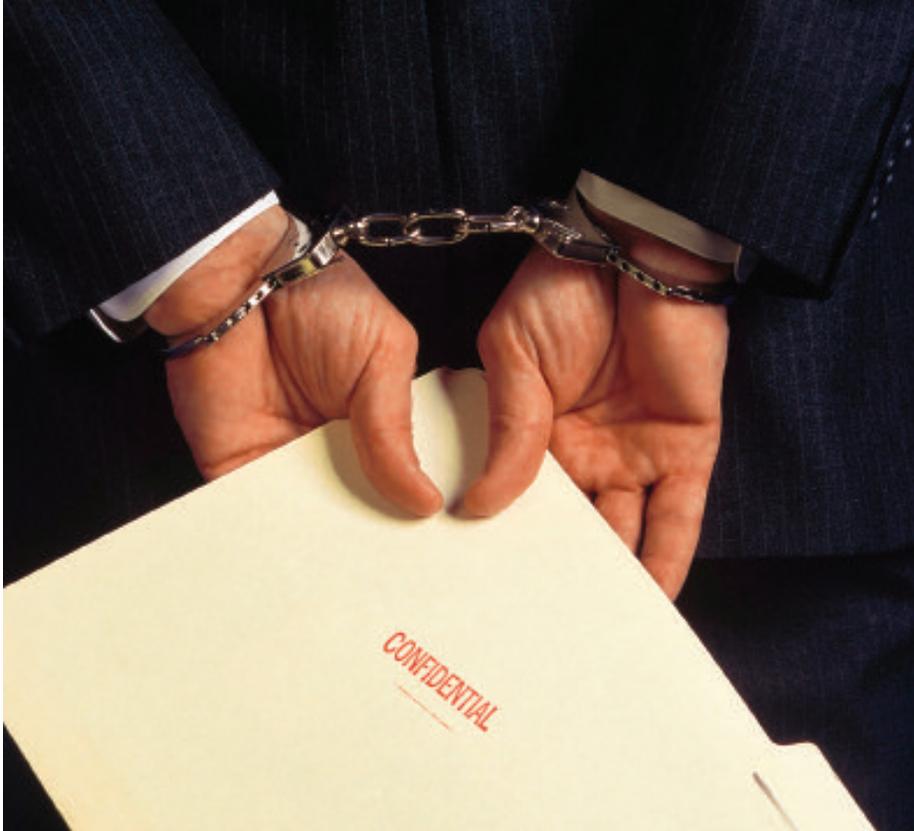
- Bring in a facilitator — someone neutral and, perhaps, unknown to board members — to educate the entire board about confidentiality requirements and proper behavior in confidential situations. Information about confidentiality must be in writing for board

After each of these missteps, Carmen had told Barry that he needed to keep confidential board matters confidential. Now she had a bigger reason to worry: At the next meeting, she was planning to raise the issue of Shady Grove merging with the Sunnyside Community Foundation, a move that would benefit both communities. As with any merger, it was essential that all discussions be kept confidential until the merger details had been worked out. Carmen wasn't sure she could trust Barry to keep quiet. What should she do?

RESOURCES:

“Best Practices in Action: Orientation” by Mary K. Totten and James E. Orlikoff. *Trustee*, July/August 2003.

Ten Basic Responsibilities of Nonprofit Boards by Richard T. Ingram. BoardSource, 2003.



members to keep in their board books for handy reference.

- Have Carmen and the executive committee speak to Barry privately and seek a firm promise that such errors of judgment will not reoccur. Unfortunately, there's a chance that Barry may be embarrassed, irritated, or simply won't get the message.
- Ask board members of both organizations to sign a formal confidentiality statement to bind board members until a decision has been made. This is commonly done in the for-profit world; the act of signing a document usually reinforces its importance.
- Identify one person on the board to be the “external communicator” who talks to the media, potential grantees, and others with an interest in the business of Shady Grove.

While it is somewhat dangerous to give Barry one more chance, his ongoing contributions might make it worth the risk. Taking the steps listed above will help him understand the importance of

confidentiality and allow him to see more clearly the consequences of his actions, should he be asked to resign from the board later.



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With the upcoming merger, the issue of confidentiality is critical. That said, it is important that board members fully understand and respect confidentiality at all times. Unfortunately, Carmen's situation isn't unique. Many organizations have had to deal with board members who feel the need to share their personal opinions about board decisions.

Carmen should address “proper communication” as the first order of business at the next board meeting. She could review the existing communications policy (if there isn't one, the staff should create one

immediately). The policy should specify a media contact (usually the executive director or board chair or someone who can be the spokesperson in special circumstances) and clarify the need for board members, as part of their roles and responsibilities, to keep board business strictly confidential. The communications policy (and a confidentiality policy) should become part of the board's orientation so future board members will understand the expectations around these issues. A clear understanding by all board members should help eliminate future problems.

Shady Grove should have a clause in its bylaws that allows recourse by the board if a member's actions are detrimental to the organization. If Barry shares confidential information again, the board could terminate his board service. Given Barry's numerous contributions to board activities, Shady Grove would lose a valuable member. Carmen and the board should take this action only as a last resort, if no other “precautions” work with Barry.