

NHPCO's 29th Management and Leadership
 Conference
 Session 6J - Walking the 990 Tightrope
 March 28, 2014: 11:00 AM-12:00 PM

Today's Presenters

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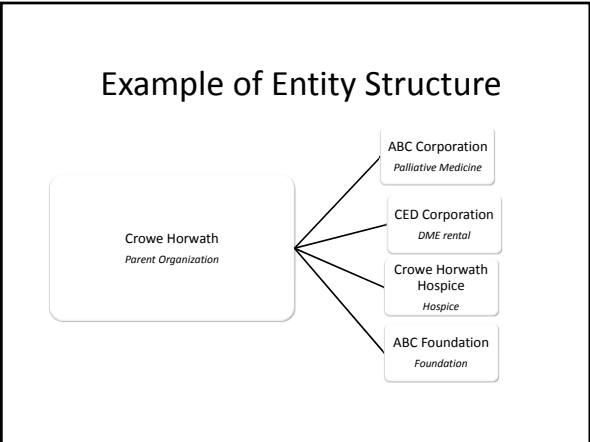
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Form 990 – *Informational* Return

- Form 990 is a critical document -- two key enterprise risks:
 - **Public Relations** -- The Form 990 is the most comprehensive, publicly-available source of information about the activities of your organization.
 - **Maintenance of Exempt Status** -- The IRS and state and local taxing authorities will use the Form 990 to assess compliance with tax laws and adherence to mission and practices as an exempt organization.

What's Important?

1. Maintenance of Tax Exempt Status
 1. Revenue Sources – are activities in alignment with the tax exempt purpose
 2. Compliance with Federal, State & International tax requirements
 3. Conducting only appropriate activities – prohibited from political activities
2. Fulfillment of Exempt Purpose
 1. Statement of Functional Expenses (Part IX) – are funds used to support the exempt purpose? Provide in Program Service Accomplishments (Part III). Description should include:
 - Specific measurements – clients served, days of care provided, number of sessions or events held, or publications issued;
 - Objectives – current and long-term goals;
 - Reasonable estimates for any statistical information.
 2. Fundraising – how much does it cost your organization to raise a \$.
 • Total Contributions/Fundraising Expenses
 3. Appropriate board composition and management team to be effective
3. Stewardship of Assets
 1. Appropriate compensation
 2. Monitoring of conflicts of interest
 3. Active participation in governance



The Real World - Media Perception

"Hospice reported its largest expense paid to any contractor or entity was \$xx million for management services to the sole member."

REALITY

- Little regard for corporate structure that typically includes centralized services at top level.
- Perception that funds are being diverted to a parent company.

Example of Intercompany Transactions



Compensation Oversight & Review Process

- 15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?
- a The organization's CEO, Executive Director, or top management official 15a
- b Other officers or key employees of the organization 15b

FORM 990, PART VI, SECTION B, LINE 15A	PROCESS USED TO ESTABLISH COMPENSATION OF TOP MANAGEMENT OFFICIAL	THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS USES A COMPARATIVE SALARY SURVEY AND AN INDEPENDENT COMPENSATION CONSULTANT FOR THE PRESIDENT & CEO. THE COMPENSATION COMMITTEE'S RECOMMENDED COMPENSATION IS APPROVED BY THE BOARD OF DIRECTORS. THIS REVIEW LAST TOOK PLACE IN FEBRUARY 2013 AND IS DOCUMENTED IN THE BOARD AND COMMITTEE MINUTES.
FORM 990, PART VI, SECTION B, LINE 15B	PROCESS USED TO ESTABLISH COMPENSATION OF OTHER OFFICERS/KEY EMPLOYEES	THE ORGANIZATION'S COMPENSATION COMMITTEE REVIEWS THE COMPENSATION OF THE OTHER OFFICERS AND KEY EMPLOYEES. THE COMMITTEE USES COMPARABILITY DATA AND AN INDEPENDENT COMPENSATION CONSULTANT TO DETERMINE THE COMPENSATION AND THEN THE COMMITTEE'S RECOMMENDATION IS APPROVED BY THE BOARD OF DIRECTORS. THIS REVIEW LAST TOOK PLACE IN FEBRUARY 2013 AND IS DOCUMENTED IN THE BOARD AND COMMITTEE MINUTES.

The Real World - Media Perception

"The average compensation of the top 12 executives has grown by \$xxx etc."

REALITY

- Perception that officer compensation is set by the officers.
- Oversight by Board and Compensation Consultants typically ignored.



Form 990 Update – Core Form Part VII Compensation

- Part VII, Compensation: Hours devoted to related organizations
 - The IRS has split columns (A) and (B) into two lines per person. Organizations now report the hours worked for the reporting organization and related organization(s) on the same page.

(A) Name and Title	(B)		(C) Position				
	Average hours per week (do not include hours for related organizations below dotted line)	Number of weeks worked	Director	Officer	Key Employee	Other	None
(1) Jane Doe Board Secretary	5	1	✓	✓			

The Real World - Media Perception

"The CEO devotes 40 hours a week to a related nonprofit organization and one hour a week to Hospice."

REALITY

- Typically ignore the fact that organizations are intermingled and that officer time cannot always be accounted for by company.

Schedule J: Compensation Information

Part I Questions Regarding Compensation

	Yes	No
1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.		
<input type="checkbox"/> First-class or charter travel	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Travel for companions	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Tax indemnification and gross-up payments	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Discretionary spending account	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Housing allowance or residence for personal use	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Payments for business use of personal residence	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Health or social club dues or initiation fees	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Personal services (e.g., maid, chauffeur, chef)	<input type="checkbox"/>	<input type="checkbox"/>
b If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain.	1b	
2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a?	2	
3 Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.		
<input type="checkbox"/> Compensation committee	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Independent compensation consultant	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Form 990 of other organizations	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Written employment contract	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Compensation survey or study	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Approval by the board or compensation committee	<input type="checkbox"/>	<input type="checkbox"/>

Schedule J: Compensation Information

(A) Name and Title	(B) Breakdown of 2012 and/or 1099-ABC compensation			(C) Retirement and other deferred compensation	(D) Non-taxable benefits	(E) Total of columns (B)-(D)	(F) Compensation reported as salary in prior form 990
	(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other non-taxable compensation				
ALAN DELVEGOSIO VICE PRESIDENT & CFO	\$ 187,861	0	6,648	10,416	14,871	198,915	0
DR MICHAEL J. BERRY DIRECTOR MEDICAL EDUCATION	\$ 389,774	800	8,362	10,225	19,252	409,251	0
DR CHRISTOPHER BALEY, D.D. ADMIN. MEDICAL DIRECTOR	\$ 275,209	600	21,323	13,969	0	311,101	0
DR ISABELLA SWANSON, M.D. VP MEDICAL AFFAIRS	\$ 250,555	100	10,241	7,847	18,174	286,817	0
DR FREDERICK WEE UNIT MEDICAL DIRECTOR	\$ 203,990	100	4,312	13,420	0	221,822	0
DR LUIS ANDRÉS VITO, MEDICAL DIRECTOR	\$ 283,700	1,100	21,900	13,244	16,250	335,594	0
DR MARK KENNEDY, M.D. MEDICAL DIRECTOR	\$ 291,848	1,440	6,987	10,521	3,255	323,551	0
JOSE F. FERNANDEZ VICE PRESIDENT & CAO	\$ 173,172	40,800	6,646	13,373	19,260	243,151	0
MARTIN LYNCH PRESIDENT & CEO	\$ 323,327	0	9,811	7,394	15,449	356,001	0
SANDRA ESPINOSA VP QUALITY & EDUCATION	\$ 134,365	7,818	1,423	1,087	10,529	154,742	0
SUBROJ BANERJEE FORMER VICE PRESIDENT & COO	\$ 140,298	0	89,754	3,385	0	233,437	0
	\$ 0	0	0	0	0	0	0

The Real World - Media Perception

“Staff cuts as executive pay rises”
“Groups seek donations for Hospice while boosting executive pay”

REALITY

- Be sure to clearly identify that compensation is for a Calendar Year, particularly is you file on a Fiscal Year – events may not match the timing of compensation.
- Perception that donations go straight to executive pay.
- Have a clear policy that matches donations and grants to funded programs – be obsessive about following this in practice.

Power of Schedule O

FORM 990, PART VII, SECTION A	ADDITIONAL INFORMATION REGARDING COMPENSATION	MARTIN LYNCH
		COMPENSATION REPORTED FOR MR. LYNCH IS FOR CALENDAR YEAR 2012. HE SERVES AS CEO FOR CROWE HORWATH HOSPICE, ABC CORPORATION, CED CORPORATION, YSP CORPORATION AND CROWE HOSPICE FOUNDATION. HIS TIME IS SHARED BY ALL ENTITIES. OTHER COMPENSATION FOR CY 2012 IS FOR HIS EMPLOYEE HEALTH AND RETIREMENT BENEFITS WHICH ARE UNDER THE SAME PLANS PROVIDED TO ALL EMPLOYEES.
		DR. ISABELLA SWANSON, M.D. COMPENSATION REPORTED FOR DR. SWANSON IS FOR CALENDAR YEAR 2012. SHE OVERSEES MEDICAL AFFAIRS FOR CROWE HORWATH HOSPICE, ABC CORPORATION, CED CORPORATION AND CROWE HOSPICE FOUNDATION. HER TIME IS SHARED EQUALLY BY ALL ENTITIES. A PORTION OF HER COMPENSATION IS FROM HIS PHYSICIAN FEES FOR SERVICE. OTHER COMPENSATION FOR CY 2012 IS FOR HER EMPLOYEE HEALTH AND RETIREMENT BENEFITS WHICH ARE UNDER THE SAME PLANS PROVIDED TO ALL EMPLOYEES.
		JORGE F. FERNANDEZ COMPENSATION REPORTED FOR MR. FERNANDEZ IS FOR CALENDAR YEAR 2012. HE SERVES AS CAO FOR CROWE HORWATH HOSPICE, ABC CORPORATION, CED CORPORATION, YSP CORPORATION AND CROWE HOSPICE FOUNDATION. HIS TIME IS SHARED EQUALLY BY ALL ENTITIES. OTHER COMPENSATION FOR CY 2012 IS FOR HIS EMPLOYEE HEALTH AND RETIREMENT BENEFITS WHICH ARE UNDER THE SAME PLANS PROVIDED TO ALL EMPLOYEES.
		SIMON APPELLEE COMPENSATION REPORTED FOR MR. APPELLEE IS FOR A PARTIAL CALENDAR YEAR 2012. HE SERVES AS COO FOR CROWE HORWATH HOSPICE, ABC CORPORATION, CED CORPORATION, YSP CORPORATION AND CROWE HOSPICE FOUNDATION. HIS TIME IS SHARED EQUALLY BY ALL ENTITIES. OTHER COMPENSATION FOR CY 2012 IS FOR HIS EMPLOYEE HEALTH AND RETIREMENT BENEFITS WHICH ARE UNDER THE SAME PLANS PROVIDED TO ALL EMPLOYEES.

Adding Transparency to Schedule O

- Make sure Doctors are clearly identified by full title: Dr. John Smith, M.D.
- Make sure Doctor's fees are clearly identified: Dr. Smith's compensation includes his fees for patient visits.
- Break out special payments such as retention bonuses: Mr. Smith received a \$10,000 retention bonus that was established by the Board in previous years.
- Be clear about what else is included in compensation: Mr. Smith's compensation includes the same health care benefits that ALL employees receive.

Governance: Conflicts of Interest

Page 6

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response to any question in this Part VI.

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

	Yes	No
12a Does the organization have a written conflict of interest policy? If "No," go to line 13	12a	<input checked="" type="checkbox"/>
b Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b	<input checked="" type="checkbox"/>
c Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done.	12c	<input checked="" type="checkbox"/>

THE ORGANIZATION SENDS OUT THE CONFLICT OF INTEREST QUESTIONNAIRES TO BOARD MEMBERS AND OFFICERS ANNUALLY. THE RESPONSES TO THE QUESTIONNAIRES ARE MONITORED AND COLLECTED BY THE CFO. SHOULD A CONFLICT EXIST THE PERSON WITH THE CONFLICT WILL ABSTAIN FROM VOTING ON THE ISSUE IN QUESTION.

Conflicts of Interest/Family & Business Relationships

- 26 Was a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person outstanding as of the end of the organization's tax year? If "Yes," complete Schedule L, Part II
- 27 Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? If "Yes," complete Schedule L, Part III
- 28 Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):
 - a A current or former officer, director, trustee, or key employee? If "Yes," complete Schedule L, Part IV
 - b A family member of a current or former officer, director, trustee, or key employee? If "Yes," complete Schedule L, Part IV
 - c An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? If "Yes," complete Schedule L, Part IV
- 2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?

The Real World - Media Perception

"ABC Hospice does business with firms connected to board, executives"

REALITY

- Implication that such transactions are illegal.
- Ignores the fact that these were properly disclosed in the 990 and approved by the Board.

Governance: Independent Board

	Foundation
Number of voting members of the governing body	15
Number of Independent voting members of the governing body	15
% Independent	100%

- A member of the governing body is considered to be **"independent"** only if all three of the following applied during the tax year:
 - The member was not compensated as an **officer or other employee** of the organization;
 - The member did not receive total compensation or other payments from the organization exceeding **\$10,000**; and
 - Neither the member, nor any family member of the member, was involved in a **transaction** with the organization.

Schedule G: Supplemental Information Regarding Fundraising or Gaming Activities

Schedule G (Form 990 or 990-EZ 2013) page 2

Part I Fundraising Events. Complete if the organization answered "Yes" to Form 990, Part IV, line 18, or reported more than \$15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than \$5,000.

	(A) Event A1		(B) Event A2	(C) Other events	(D) Total events (lines 1 through 11)
	(Event type)	(Event type)	(Event number)	(Event number)	
Revenue					
1 Gross receipts					
2 Less: Contributions					
3 Gross income (line 1 minus line 2)					
Direct Expenses					
4 Cash prizes					
5 Noncash prizes					
6 Rent/facility costs					
7 Food and beverages					
8 Entertainment					
9 Other direct expenses					
10 Direct expense summary. Add lines 4 through 9 in column (D)					
11 Net income summary. Subtract line 10 from line 3, column (D)					

Schedule F: Statement of Activities Outside the US

- Tax-exempt organizations must report detail related to foreign activities with aggregate revenues or expenses of more than \$10,000 (or investments over \$100,000) on Schedule F

Part I General Information on Activities Outside the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 14b.

1 For grantmakers. Does the organization maintain records to substantiate the amount of its grants and other assistance, the grantee's eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? Yes No

2 For grantmakers. Describe in Part V the organization's procedures for monitoring the use of its grants and other assistance outside the United States.

3 Activities per Region. (The following Part I, line 3 table can be duplicated if additional space is needed)

(A) Region	(B) Number of offices in the region	(C) Number of employees, grants, and other-outside contributions in region	(D) Revenue conducted in region (by type of activity): (1) program services, (2) management, (3) investment, (4) other (specify type of activity in the region)	(E) Total expenditures for all activities in region
(1)				
(2)				

Schedule F: Statement of Activities Outside the US

Part IV Foreign Forms

1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? If "Yes," the organization may be required to file Form 920, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 920) Yes No

2 Did the organization have an interest in a foreign trust during the tax year? If "Yes," the organization may be required to file Form 3520, Annual Return to Report Transactions with Foreign Trusts and Recipients of Certain Foreign Gifts, and/or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520-A) Yes No

3 Did the organization have an ownership interest in a foreign corporation during the tax year? If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations (see Instructions for Form 5471) Yes No

4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? If "Yes," the organization may be required to file Form 8611, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8611) Yes No

5 Did the organization have an ownership interest in a foreign partnership during the tax year? If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect To Certain Foreign Partnerships (see Instructions for Form 8865) Yes No

6 Did the organization have any operations in or related to any boycotting countries during the tax year? If "Yes," the organization may be required to file Form 5713, International Boycott Report (see Instructions for Form 5713) Yes No

Schedule F (Form 990) 2013

The Real World - Media Perception

“About \$xx million of the hospice’s assets are invested in ‘Central America and the Caribbean.’”

REALITY

- Donors and the community are rightfully concerned about any offshore funds.
- Form 990 classifications leave little room to fully explain, so it makes an interesting headline.

What is an Alternative Investment?

- An alternative investment is an investment product other than traditional investments such as stocks, bonds or cash.
- For example, alternative investments include venture capital, private equity, hedge funds, limited partnerships, LLCs and other derivative funds.
- Many of these investments are off-shore funds.
- Investments may cause additional filing requirements with IRS
 - Penalties for not filing forms can be extreme
- Many investments create UBI
 - Can result in taxation at the federal and state levels
 - Often, the amounts of UBI are not known until after year end, so this can result in an unpleasant surprise

Using the Form 990 to tell your best story...

- Allocation of Functional Expenses to Program Service, Management and General and Fundraising
- Fundraising Expenses to Total Contributions
- Officer Compensation to Total Compensation
- Officer Compensation to Total Salaries
- Working Capital Ratio
- Etc, etc.



Charity Navigator

Mission Statement - *Charity Navigator works to guide intelligent giving. By guiding intelligent giving, we aim to advance a more efficient and responsive philanthropic marketplace, in which givers and the charities they support work in tandem to overcome our nation’s and the world’s most persistent challenges.*

Ratings based on:

- Financial Health
- Accountability & Transparency
- Results Reporting



Over 6,200,000 visits to the website in 2012.

Rating Accountability & Transparency

Accountability & Transparency Performance Metrics	
Information Provided on the Form 990	
Independent Voting Board Members	<input checked="" type="checkbox"/>
No Material diversion of assets	<input checked="" type="checkbox"/>
Audited Financials prepared by independent accountant	<input checked="" type="checkbox"/>
Does Not Provide Loans to or Receive Loans from related parties	<input checked="" type="checkbox"/>
Documents Board Meeting Minutes	<input checked="" type="checkbox"/>
Provided copy of Form 990 to organizations governing body of filing	<input checked="" type="checkbox"/>
Conflict of Interest Policy	<input checked="" type="checkbox"/>
Whistleblower Policy	<input checked="" type="checkbox"/>
Records Retention and Destruction Policy	<input checked="" type="checkbox"/>
CEO listed with salary	<input checked="" type="checkbox"/>
Process for determining CEO compensation	<input checked="" type="checkbox"/>
Board Listed / Board Members Not Compensated	<input checked="" type="checkbox"/>

Is the following information easily accessible on the charity’s website?	
Donor Privacy Policy	<input checked="" type="checkbox"/>
Board Members Listed	<input checked="" type="checkbox"/>
Audited Financials	<input checked="" type="checkbox"/>
Form 990	<input checked="" type="checkbox"/>
Key Staff listed	<input checked="" type="checkbox"/>

Questions

