

## Governance Update: Supreme Court's *Conrad Black* Decision May Limit Claims Of "Honest Services" Fraud

The upcoming Supreme Court argument regarding the financial fraud convictions of media magnate Conrad Black has implications for health care organizations. The appeal most directly concerns the scope of the "honest services fraud" doctrine in the criminal law which can apply to persons acting to the detriment of an organization to which they owe a fiduciary duty.

Of course, officers and directors have a fiduciary duty to their employer or organization, its shareholders, and maybe--in some circumstances--even to donors. In addition, the issue of conflicts of interest has been the subject of intense regulatory focus. A board member who fails to disclose a conflict of interest in a particular transaction being acted on by the board--for the benefit of that board member and perhaps to the detriment of the organization--may be argued to have violated a federal criminal fraud law embracing the organization's right to that board member's honest services. Moreover, other board members' lack of knowledge of the conflict may be no defense if their ignorance was the product of willful or "deliberate ignorance."

In short, this is a high-risk area and the *Black* decision will bear on it. For more detail about the *Black* prosecution and the honest services theory, please see [Ron Levine's Corporate Governance Update](#) reprinted with permission of the American Health Lawyers Association.

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