

EXAMINERS' ANALYSIS OF QUESTION NO. 12

The Board of Directors has a fiduciary duty to exercise its best judgment in the management of the affairs of the corporation. See generally, *Marvin v Solventol Chemical Products*, 298 Mich 296, 301-302 (1941). According to MCL 450.1541a(1), directors must discharge their duties to the corporation (a) in good faith; (b) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) in a manner he or she reasonably believes to be in the best interests of the corporation. Thus, the board has an affirmative duty to mitigate the damage caused by Dwayne to the corporation.

This does not mean, however, that the board can remove Dwayne. If Dwayne had been appointed by the board, he could be removed by the board with or without cause. MCL 450.1535(1). However, Dwayne was not appointed by the Board of Directors - he was elected by the shareholders, and can only be removed by the shareholders. *Id.* Therefore, Dwayne cannot be removed by the board.

However, the Board of Directors can suspend Dwayne's authority to act as President, provided the board has cause. *Id.* As described in the facts, Dwayne's "rude and pompous" behavior negatively affects clients, employees and the corporation's profits, providing ample cause for the suspension of Dwayne's authority to act as President. While Dwayne would continue to collect his salary, his ability to cause further damage to the corporation by acting as President would be discontinued. Additionally, the board may call a special meeting of shareholders in order to seek Dwayne's removal by the shareholders. MCL 450.1403.