



Compliance

TODAY

December 2013

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

WWW.HCCA-INFO.ORG



Timothy Ferriss
Compliance Specialist – Privacy
Alaska Native Tribal Health Consortium



Jan Cunningham
Director of Risk Management
Compliance Officer, Qualis Health

A discussion on celebrating Corporate Compliance & Ethics Week *See page 16*

23

Compliance officer and the audit committee: Building an effective relationship
Steven Forman

28

Tax-exempt hospitals: Putting your hospital's IRS exemption at risk
Gerald Griffith, James King, and Catherine E. Livingston

36

Physician-owned entity fraud alert: Hospital compliance officers take note
Tom Bulleit, Eliza Andonova, and Natalie D. Morris

40

Compliance and quality of care, Part 1: Laws and case studies
Michelle Moses Chaitt, Mark L. Mattioli, Richard E. Moses, and D. Scott Jones

by Steven Forman, CPA

Compliance officer and the audit committee: Building an effective relationship

- » The successful compliance officer is an important audit committee resource.
- » Compliance matters must have equal footing with operations on the agenda.
- » Continuous education is important.
- » Communication is crucial—no surprises for either the committee or management.
- » The committee needs to understand the complete compliance program picture.

Steven Forman (sforman@strategicm.com) is a Senior Vice President with Strategic Management Services, Inc. in Boca Raton, FL.

Both the compliance officer and the audit committee play important roles in a healthcare provider's compliance program. The compliance officer administers the program and the audit committee has oversight responsibilities. In some organizations

the compliance officer may report to the audit committee as well as to a senior management official. As with any form of dual (or matrix) reporting relationship, tensions can arise.

A compliance officer generally understands that keeping the audit committee (and the board) informed and involved is essential, but often struggles to determine *when* to inform the audit committee and *how much* information is appropriate. If you asked an audit committee for its perspective on this dilemma, the answer would be simple. Nearly any audit committee would prefer to have more information than less, and to learn the information sooner, rather than later. Its members have a fiduciary responsibility in governing the organization and, to

effectively do so, the audit committee needs complete and timely reports, especially as significant compliance issues or problems arise. Failure to discharge duties properly can result in actions against board members and, in egregious cases, discharging the entire board.

Therefore, compliance officers often struggle with two questions: (1) How can the compliance officer strike the happy balance of providing the audit committee the appropriate amount of information at the appropriate time? and (2) How can the compliance officer engender trust and confidence from both the audit committee and senior management? Many compliance officers have management experience and, therefore, it may feel more natural to build and maintain a positive relationship with management. Most compliance officers understand organizational structures, reporting relationships, and communication mechanisms in a traditional hierarchical setting. But how do you manage the additional relationship with the audit committee?

Some initial thoughts

Traditionally, the typical audit committee selects the external audit firm that will



Forman

conduct the company's annual financial statement audit, oversee the process, and receive the final audit and management report. If the company has an Internal Audit function, the audit committee may also exercise oversight in that area. Oftentimes the executive liaison(s) to that audit committee is the chief financial officer and/or the internal auditor.

In recent years, more and more audit committees are exercising oversight over the compliance program. The addition of compliance program responsibilities brings a new dimension to the audit committee. Members of the audit committee might have some familiarity with government investigations and enforcement initiatives, but they might not understand the nuances of a compliance program, how it is supposed to work, its benefit to the health-care provider, and how it must conform to the guidelines established by the Department of Health and Human Services Office of Inspector General and the U.S. Sentencing Commission. It is the compliance officer's responsibility to help ensure that the audit committee fulfills its compliance program-related duties effectively and thoroughly.

Some suggestions

The following are some ideas for fostering a productive relationship with the audit committee and helping to enhance its effectiveness.

Start with basics

In 1959 Vince Lombardi took over as coach of the Green Bay Packers. For the previous season, Green Bay's record was 2-12 (last place

in its division). At his first team meeting Mr. Lombardi said, "Gentlemen, this is a football." John Wooden, the legendary basketball coach at UCLA gave instructions to his players on precisely how to tie their shoes—a mundane but important task. Audit committee members often have business, financial, or legal expertise but do not have relevant experience or knowledge about compliance programs.

After the corporate scandals of the early 2000s, a best and common practice was to

Members of the audit committee might have some familiarity with government investigations and enforcement initiatives, but they might not understand the nuances of a compliance program...

require that audit committee members, or at least the chair, were well-versed in financial matters and concepts relating to the organization they oversaw. Now that it has become commonplace for audit committees to maintain oversight over the compliance program, members

of audit committees need to obtain similar acumen with regard to compliance. The easiest way may be to find qualified people to add to the audit committee. Alternatively, existing audit committee members may be trained in compliance-related issues. Either way, the compliance officer must ensure that audit committee members are up to speed as quickly as possible and, specifically, are well-versed on the seven elements (eight in New York) of an effective compliance program, so the audit committee may be able determine if the compliance program is operating properly.

Similarly, as new members are selected to serve on the audit committee, the compliance officer should provide appropriate training and information to the new members to help them get properly oriented and ready to serve effectively. This may include providing

one-on-one training. At a minimum, all members should have ready access to the OIG guidance and material on board member responsibilities, including questions they should ask about the compliance program to determine if it is operating as intended.

The compliance officer has to compete for attention

Audit committee agendas are full and time-consuming. Meetings can last in excess of two hours. Members' patience for more material may be limited, especially in light of competing demands and schedule pressures. The compliance officer's challenge is to ensure that compliance program-related material is addressed in a meaningful and appropriate manner, while competing with traditional financial and audit-related matters. Part of the answer may be for the compliance officer to lay out for the audit committee, in advance, issues that need to be covered in the meeting and how these issues fit into the context of an effective compliance program.

The compliance officer should consider developing the compliance agendas for the audit committee for the entire year at once, because this will enable the compliance officer to present the yearly agenda plan to audit committee members and show them what will be covered at each meeting. Of course, the annual plan is not cast in stone; ad-hoc reports on particular issues, problems, or regulatory changes can always be added to the agenda. However, providing the audit committee an annual "roadmap" will help them understand the relevant issues that will be discussed throughout the year and how these issues relate to the standards and expectations of the regulators.

Keep the members current

The regulatory environment is dynamic and constantly changing. Keeping audit committee members informed of new government

initiatives, changing compliance program requirements, enforcement actions, etc. is a necessity. A didactic in some form should be part of every meeting agenda. This could be a presentation by the compliance officer, an outside expert on a specific compliance topic, or even simply printed material for members' review and discussion at the meeting. One suggestion is to solicit from the members what they want to learn and, based on the responses, develop a training program that addresses the information gaps to be presented over the course of the year.

No-one likes surprises

Meeting materials should be prepared and distributed in advance—both to the audit committee and to senior management. A good rule of thumb is to give everyone at least a week to review the materials, keeping in mind that audit committee members and senior managers have other jobs and pressures. In addition, the compliance officer should meet with the audit committee chair in advance of the meeting to make sure that person is adequately prepared. Based on the discussion with the chair, the compliance officer should inform the appropriate senior managers about any "provocative" issues that might be raised. The objective here is to ensure that everyone is prepared for the meeting and a meaningful discussion can ensue. There is no point for managers to be blind-sided, because this will only lead to distrust and communication barriers in the future. It would be better to have senior managers well prepared in advance of the meeting to address any concerns raised by the audit committee. In some instances, especially when particularly sensitive matters are going to be raised, it may be helpful to have the appropriate senior managers actually meet with the audit committee chair before the meeting to explain the issue and how they are resolving it.

Similarly, it is important for the compliance officer to keep the audit committee chair informed about significant compliance matters as they unfold, particularly if a significant investigation will occur and regulatory agencies will have to be notified. For example, the audit committee chair should be notified in advance should there be a major HIPAA breach exceeding 500 patient records, because this would require the organization to notify the Office for Civil Rights. The objective is to have the compliance officer assure the chair that the matter is being addressed appropriately and to expect a report on the results at a future time.

Cover all aspects of the program

In its Compliance program guidance, *Corporate Responsibility and Corporate Compliance*,¹ the Office of Inspector General and American Health Lawyers Association reaffirm the key principle that to have an effective compliance program, the organization's governing authority must be knowledgeable about the content and operations of the compliance program and exercise reasonable oversight. OIG guidance also suggests that the compliance program should be periodically reviewed by an external party to determine if it is meeting the expectations and standards of the regulators. However, the audit committee should not have to wait for an external review to determine if the program is working properly. In fact, the external review should only confirm information that the audit committee already knows, and perhaps provide some suggestions regarding best practices and improving effectiveness and efficiency.

However,
the audit committee
should not have to wait
for an external review to
determine if the program
is working properly.

In essence, this means that the compliance officer needs to verify that all elements of the compliance program are presented to the audit committee during the year and that metrics indicating effectiveness (or weaknesses) are similarly presented. This does not mean that all elements must be presented at every meeting. Rather, the compliance officer may want to designate specific meetings to cover specific elements, keeping in mind that there will be regular, recurring reports to keep the audit committee up to date (e.g., results of compliance audits, the status of plans of correction from those audits, results of investigations—both internal and external, etc.)

At the last meeting of the year, the compliance officer should present for approval the compliance audit and training plans for the upcoming year. Both should be based on a periodic risk assessment that incorporates all relevant compliance risks to the organization. Importantly, in conducting the risk assessment, the compliance officer should solicit input from

the audit committee members to make sure their concerns are considered.

At the same time, the compliance officer should prepare an annual report, summarizing activities related to all compliance program elements. The report should include the

accomplishments of the Compliance Office, and compare them with the goals and objectives established at the beginning of the year.

Introduce the compliance staff

The audit committee has the opportunity to observe the compliance officer firsthand. In addition, the audit committee should

also have a good sense as to the talents and abilities of the Compliance Office staff, who are often tasked with much of the day-to-day compliance-related duties. If possible, Compliance Office staff should be permitted to attend the audit committee meetings to observe for themselves the operations and expectations of the audit committee. The compliance officer should take that opportunity to introduce the staff to the audit committee personally. In addition, the compliance officer should give the audit committee a training plan for the Compliance Office staff. This can help assure the audit committee that staff will be adequately prepared and able to perform their functions in the year ahead. Likewise, the compliance officer should include background information about each member of the Compliance Office staff's training, certifications, and degrees in the annual report.

Protect the committee

The audit committee charter will outline its duties and responsibilities. As a best practice, the audit committee should annually conduct a self-evaluation and report the results to the full board. The compliance officer may be asked to provide some input; however, this not the time when issues or gaps should be identified. To prevent such an occurrence, when the compliance officer is planning the audit

committee agendas for the year, he/she needs to verify that all required audit committee tasks are accounted for and incorporated into the agenda. For example, if the audit committee is required to review the code of conduct annually, that review should be incorporated into the agenda with a specific timeframe attached to the task. In this way, the audit committee can focus on operating effectiveness, rather than worrying about whether all required tasks have been completed.

Conclusion

The compliance officer's success or failure will depend, to a large degree, on how well he/she meets the needs of the audit committee. That committee has a very important role to play and it is the compliance officer's duty to help them fulfill that role. Understanding the audit committee's requirements, planning effectively, and communicating promptly are essential. In addition, the compliance officer should never forget his/her responsibilities with regard to management. It may be a balancing act, but in the end, it is the organization that benefits. ☺

1. Office of Inspector General, U.S. Department of Health & Human Services and the American Health Lawyers Association: *Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors*, 2007; *An Integrated Approach to Corporate Compliance*, 2004; and *Corporate Responsibility and Corporate Compliance, A Resource for Health Care Boards of Directors*, 2003. Available at <http://bit.ly/HMuKzK>

Authors Earn CEUs: CCB awards 2 CEUs to authors of articles published in *Compliance Today*

Compliance Today needs you!

Every month *Compliance Today* offers healthcare compliance professionals information on a wide variety of enforcement, regulatory, legal, and compliance program development and management issues.

We are particularly interested in articles covering compliance concerns involving hospitals, outpatient services, behavioral health, rehab, physician practices, long-term care/homecare/hospice, ambulatory surgery centers, and more.

Articles are generally between 1,000–2,500 words (not a limit). Submit your article as a Word doc with limited formatting. The article title and author's contact information must be included in the article.

Email margaret.dragon@hcca-info.org with your topic ideas, format questions, and more.

