

Compliance Literacy is a Linchpin of Effective Healthcare

Compliance Governance

In today's article meet our guest blogger Tom O'Neil, a leading governance and compliance expert.

Over the past decade, the governance expectations of external stakeholders—patients, regulators, enforcement agencies, customers, clients, joint venture partners and investors — have become better informed and, consequently, more rigorous. Effective oversight of an organization's compliance and ethics program is now a critical dimension of a board's fiduciary duties and responsibilities. To meet these legal and regulatory expectations, boards are recruiting members who are experienced former C-suite executives and compliance experts with governance and risk management expertise.

Not surprisingly, the Department of Justice and the Department of Health and Human Services Office of Inspector General have stressed the importance of having compliance literacy and expertise in the boardroom. While it is now a well-established best governance practice to retain an independent external advisor to, among other things, assess periodically the effectiveness of a program, the appointment of a well-qualified director or trustee can be even more impactful. Board-level expertise enables effective oversight and serves as a vital resource for the organization's leadership team, most notably the chief compliance and ethics officer. It also sends a powerful message to employees and external stakeholders about the company's commitments to legal and regulatory compliance and to the core values of integrity, accountability, acceptance of responsibility, and operational transparency.

Governing body and corporate director compliance oversight obligations extend to far more than mitigating sustained or systemic program failures. Likewise, the applicable best practice is not satisfied by having only a general awareness of a compliance program's structure and operation.

Leaders are ultimately responsible for the foundational values and “Tone at the Top” of the organization. Board members are required to confirm that the organization’s systems are reasonably designed to detect and prevent compliance failures and timely address gaps in the program’s operational controls.

A board must also verify the existence and operational efficacy of the reporting systems and communications channels to ensure that directors are timely informed of compliance and ethics matters. They must also develop a governance model that enables prompt identification of risks and effective oversight of their assessment and prioritization, as well as related mitigation and remediation initiatives.

A board must remain fully informed of key developments in the legal, regulatory and enforcement environment. To discharge their oversight responsibilities, board members must understand: (a) the organization’s business model; (b) the sector in which it operates; (c) the competitive landscape; (d) key risks (legal and regulatory, operational and reputational); and (e) stakeholder expectations. Governing bodies are also now expected to be well-informed about the design, content, implementation, and ongoing operation of a compliance and ethics program. This includes being able to assess the adequacy and quality of the resources dedicated to a Compliance Program, the scope and quality of the compliance risk assessment process, the operational effectiveness of key controls (e.g., policies and procedures, training and education programs; and reporting channels and mechanisms), and the scope and reliability of verification initiatives (e.g., testing, auditing, and monitoring).

It is advisable for the governing body to evaluate its composition annually and determine whether the requisite expertise is at the table. If not, the board should engage an external resource to be available as needed. With a sense of purpose and urgency, the board should launch a search for a highly qualified director who is compliance literate.

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