

## **Board Member Compliance Literacy**

**Richard P. Kusserow | July 2023**

### **Key Points:**

- **Retired Compliance Officers are good choices for board membership**
- **Board compliance program oversight is a fundamental responsibility and duty**
- **DOJ/OIG increasing focus on board oversight of compliance**
- **Compliance literate board members is a best practice**
- **Compliance literate members can avoid CIA mandates to engage Compliance Experts**

The role of a board member is largely one of being an advisor to management and holding them accountable for business decisions. This requires getting involved in business strategies and planning and the result of that effort. The key to meeting all their duties and obligations is possessing a wide range of backgrounds, experience, and perspectives. Among their fundamental responsibilities is being active in establishing, providing oversight, and supporting a corporate compliance program. Just papering the program with charters, forms, and policies is only the starting point. Compliance Officers often report to boards with little appreciation and understanding of what they need to meet their fiduciary compliance obligations, a critical weakness for an effective compliance program. Including members who are compliance experts on the board permits more effective compliance oversight of risk areas. They will know how to ask the right questions, evaluate how the compliance program functions, and what can be done to be more effective. As such, boards should consider adding members who are knowledgeable about compliance.

### **Increased DOJ/OIG focus on boards**

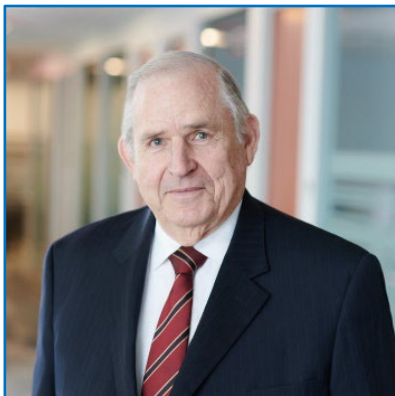
The DOJ and OIG have increased their focus on the board's meeting their compliance programs oversight obligations. When healthcare organizations run afoul of the law, the DOJ follows guidelines to determine whether violations were by a rogue employee who violated compliance guidance, guidelines, and controls or if the leadership failed to adequately promote compliance. They determine the level of top-down commitment and support of the program, beginning at the board level. The absence of evidence of board

active support and oversight of the compliance is an aggravating factor in determining the level of penalties. It will also result in OIG Corporate Integrity Agreement mandates for annual attestation and certification that the compliance program is operating effectively and require the board to engage a Compliance Expert to assist them in making the determination. It is far better to have compliance-literate members leading oversight than being forced to engage outside experts to do it.

### **Compliance-literate board members**

For financial and audit oversight, it is standard practice to have board members who are financially literate on the board audit committee. In the case of publicly traded organizations, this is legally mandated. Financial literacy is education, skills, and knowledge that allows individuals to make informed and effective decisions with all their financial resources. This same concept should also be applied to compliance. Compliance literacy requires more than a degree in law, accounting, business administration, etc. It means individuals will need hands-on corporate compliance experience, such as serving as a compliance officer or a consultant and building, managing, and evaluating compliance programs. It is only by experience and background that an individual can ask the right questions about the program and assess and evaluate the information received about its operation. A few years ago, it was unusual to find a former compliance officer or consultant on the board. However, this is not the case today.

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### **About the Author**

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.