

Continuing a Partnership for Effective Compliance

A Summary of the Government-Industry Roundtable on the Role of Governance in Compliance Programs

*June 16, 2004, Office of Inspector General
U.S. Department of Health and Human Services*

Background and Introduction

On June 16, 2004 the Office of Inspector General (OIG) co-sponsored with the Health Care Compliance Association (HCCA), a government-industry roundtable on the role of governance in compliance programs. This is the fourth government-industry forum the OIG has co-sponsored with HCCA.

The OIG believes the role played by health care organizations' Boards of Directors is a key component of an effective compliance program. In addition to promoting a dialogue with the health care industry, OIG has worked closely with the American Health Lawyers Association (AHLA) to develop two resources for health care organization boards of directors – *Corporate Responsibility and Corporate Compliance*, and *An Integrated Approach to Corporate Compliance* – Both documents can be found at the following website under Compliance Resource Materials:

<http://oig.hhs.gov/fraud/complianceguidance.html#2>

Nearly 80 people, including compliance professionals, board members, internal and external legal counsel, and government representatives attended the day-long meeting.

Purpose

The day's agenda included presentations by four member organizations of HCCA. Each presentation included the compliance officer, a member from the Board of Directors, and General Counsel from the respective organizations. Each presentation focused on answering the questions posed by the AHLA and the OIG in their *Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors* publication.

The presenters were from the following organizations:

- *Catholic Health East, Newtown Square, PA*
- *CHRISTUS Health, Irving, TX*
- *University Health Systems of Eastern Carolina, Greenville, NC*
- *Samaritan Medical Center, Watertown, NY*

The objective of the meeting was not to reach a consensus on the many issues that surround the role of governance in compliance programs, but rather to share perspectives on the methods health care organizations and their boards of directors use to oversee their compliance programs. It was a rare opportunity for Board members from across the country to gather and discuss the role they play in their organizations' compliance program efforts.

Summary of Board Member Comments

The Board members agreed the reason they voluntarily serve as Board members is the strong belief they have in their organizations' mission, vision, and values. The Board members advocated the importance of promoting a culture of compliance for employees, i.e., a culture that is open and where employees can feel comfortable to report potential violations and not fear retaliation or retribution for their actions. To create such a culture, compliance must be integrated into the organization's mission, vision, and values.

One Board member told those attending the Roundtable that his philosophy is that corporate compliance equals corporate integrity. He believes employers can "exercise integrity just as much as ambition" and believes that "compliance is not anti anything."

The following summarizes the day's discussion which generally revolved around these four topic areas:

- Structure and Process for Reporting to the Board
- Methods for Boards to Ensure Compliance Program Effectiveness
- Board Organization/Assembling an Effective Board
- Legal Issues

Structure and Process for Reporting to the Board

- At Catholic Health East (CHE) the Corporate Compliance Officer reports to the corporate Board's Compliance and Audit Committee on all compliance matters for the organization.
 - The regional compliance officers for CHE assist in this effort by collecting compliance data at the regional level and providing it to the Corporate Compliance Officer. The regional compliance officers also report on a quarterly basis to the compliance committee of their Boards and CHE relies on the local boards to "shepherd their compliance programs."
- At CHRISTUS Health, the Integrity Officer has a dual reporting relationship to the Audit Committee and to the Mission, Ethics, and Spiritual Committee. The Integrity Officer provides a full report, which is reviewed by the Board during Executive Sessions. Executive Sessions are attended by Board members and

CHRISTUS Health's President. The Board meets quarterly and Board Executive Sessions are held before every Board Meeting.

- At University Health Systems of Eastern Carolina (UHS), the Compliance Officer reports directly to Chair of the Audit and Compliance Committee and the Chief Executive Officer (CEO) and meets monthly with the Audit and Compliance Committee Chair. In addition, the Compliance Officer meets twice a year with the full Board without the CEO present. To further its compliance efforts, UHS has a number of initiatives to inform and educate its Board about compliance matters. Such initiatives include: annual compliance education developed for the board; a compliance newsletter that is included in every Board packet; and monthly (as well as a more detailed quarterly report) reports that are submitted to the Audit and Compliance Committee.
- At Samaritan Medical Center (SMC) the Compliance Officer is one of six Vice Presidents and is a member of Senior Management. The Compliance Officer reports to the Board and the Board's Compliance Committee on a quarterly basis.

Methods for Boards to Ensure Compliance Program Effectiveness

Throughout the day discussion focused on Boards' involvement in ensuring the compliance programs effectiveness as well as the questions the Board should ask to determine if the organization has an effective compliance program. According to one Board member "quality" does not happen in the Board room, it happens in the patient's room and, therefore Board members have an obligation to ask the right questions to ensure this is happening. In addition, the Board has an obligation to ensure employees perceive the organization's management is committed to compliance.

- Methods for holding senior management accountable for their compliance efforts; for example, making compliance an element in the performance evaluation of the CEO and Chief Financial Officer.
- Ensuring the Compliance Officer has the authority and tools needed to fully integrate compliance into the organization's structure and culture. The Board should ensure that adequate resources for compliance exist.
 - At CHRISTUS Health, the Integrity Officer is authorized to issue guidelines supporting Management Directives which are issued by the President based on leadership recommendations; to establish budgets and to access funding (the Integrity Officer may access resources not in the budget); to implement compliance work plan; to initiate audits and access audit resources; to suspend billing, to engage outside counsel/consultants; to recommend and establish internal controls; and to request executive sessions.

- Exit interviews. Conduct exit interviews with departing Compliance Officers and report the results to the Compliance Committee of the Board.
- Ensure the organization's Code of Conduct is made available in languages employees understand. For example, at CHRISTUS Health the Code is printed in English and Spanish.
- The type of compliance information and data that should be reported to the Board. At SMC the Compliance Officer reports to the Compliance Committee of the Board on issues such as: current hot topics in health care, compliance trends and patterns, status of employee compliance training, and disciplinary actions. The report also includes information on the types and number of disclosures reported each quarter, as well as the outcome of the investigations and the type of corrective action developed as a result.
- Awareness of Compliance Officer's work load; balancing compliance and non-compliance responsibilities.
- Whether or not not-for-profit entities should adopt provisions of the Sarbanes-Oxley Act (SOX). Although, SOX mainly targets publicly traded companies, approximately one fourth of participants from not-for-profit entities had adopted relevant parts of SOX.
- Methods for expanding the Board's role in compliance. For instance, how can the board assist in creating a culture of compliance? What methods can the board use to ensure the organization is embracing compliance? Someone suggested integrating questions related to compliance in employee satisfaction surveys and reporting the results to the Board.
- Beyond education, UHS's other primary tool to prevent violations is conducting annual risk assessments. To identify annual risk areas, UHS holds an annual retreat with managers and compliance staff. Prior to the retreat managers are sent the *OIG Work Plan*, asking them to identify applicable risks, and identify two or three risks not mentioned in the *OIG Work Plan*. At the retreat, a UHS work plan is developed, which is sent to the compliance steering committee and the Board of Directors. In addition, a Management Response Document is developed which includes compliance findings and recommendations and requires management to return with action plans that identify responsible person for developing correcting action in response to the issues raised.
- SMC's compliance program includes a process for reporting potential violations to government authorities. This process includes involving Legal Counsel who assists SMC in determining if an issue is a routine overpayment or a matter that should be reported to the appropriate government agency. The policy also requires that the Board be informed through out the entire process.

Compliance Officers expressed the overall difficulty in determining if the information provided to the Board is meaningful, and if the provided information gave the Board the comfort level needed to ensure the organization has an effective compliance program.

Board Organization/Assembling an Effective Board

- **Methods for assembling an effective Board.** For example, some Compliance Officers noted the difficulty in finding Board members with skills sets that would benefit the organization. One organization acknowledged some Board members were less than zealous advocates of their compliance program efforts. Participants discussed methods used to assemble an effective compliance committee and how to determine which Board members should sit on the compliance committee.
- **Recruiting and Retaining Board Members.** Due to the heightened scrutiny resulting from the passage of SOX, participants expressed concerns regarding the recruitment and retention of Board members. As a result, some organizations are considering moving from a voluntary Board to a compensated Board.

Legal Issues

- **How to resolve the natural tension that occurs between attorney-client communication and maintaining a transparent process;** this tension result from Counsel wanting to protect the institution. One suggestion: plan ahead - if a voluntary disclosure is probable, then treat it as not privileged from day one. Participants noted the constant challenge between integrity and stewardship, and both must be met.
- **Compliance Officer's relationship with General Counsel.** External counsel noted that CHRISTUS standards are in the engagement letter "At the inception of the relationship and you are expected formally to adhere to their standards."

Conclusion

The participants agreed that the outcome of this collaborative effort between the OIG and the industry was a positive one. Participants explored many of the issues confronting health care organizations and their Boards of Directors. They gained new insights into the challenges faced by health care organizations and their boards of directors and had the opportunity to experience perspectives from both the Government and others in the health care industry. The outcome of the roundtable discussions will increase communication between the Government and the industry to foster their ability to work together to protect the integrity of the health care system. Given the constructive discussion among the participants, consideration will be given to creating additional opportunities for Government-industry exchanges on these and other issues surrounding health care compliance.