

HCCA



HEALTH CARE
COMPLIANCE
ASSOCIATION

COMPLIANCE TODAY

Volume Five
Number Eleven
November 2003
Published Monthly

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with
Sharon
Hoyle

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or see page 35 of this issue.

Letter from the CEO

ROY SNELL

Compliance vs. the legal department

In a September 5 letter to Tenet Healthcare, Senator Grassley stated there was an inherent conflict with Tenet's Compliance Officer and the General Counsel positions being held by the same person. He wrote "It doesn't take a pig farmer from Iowa to smell the stench of conflict in that arrangement." Given that he risked offending all of the pig farmers in Iowa (his constituency) he must feel very strongly about the issue. (please note that Tenet announced it had separated the General Counsel and Compliance Officer function in an August 4 press release prior to Senator Grassley's September 5 letter.)

Grassley is not alone on this issue. Many believe that if you want to get off on the wrong foot with a government investigation, tell them your General Counsel and Compliance Officer is one in the same person. If the General Counsel does not also perform the compliance function many believe the second most irritating thing is to have the Compliance Officer report to the General Counsel.

For the record I have seen organizations that have combined the functions somewhat successfully. The Compliance Officer was respected enough by the enforcement community to pull off both jobs. Unfortunately the organization I site most frequently announced last week they were splitting up the function. I am sure there are others. The question is not, "Can it be done successfully?" Rather, the question should be "Is it a wise move?"

What is Senator Grassley's point?

He feels that there is a conflict of interest. He believes it is difficult to defend the organization from the outside world as General Counsel and look out for the organization's stakeholders as Compliance Officer. Investigators frequently complain about the conflict and the OIG guidance suggests that the Compliance Office should be independent from the General Counsel function.

Why do organizations combine the functions?

Some organizations choose to combine the functions because the jobs are similar. They both study regulations, investigate problems, respond to complaints, etc. There are similarities in the two functions, but the difference in the overarching mission of each function may make it difficult to perform both tasks. The legal department should be able to do what ever it takes to defend the organization from outside attack.

The compliance department should do what ever it takes to ensure the organization is treating its stakeholders fairly. The two departments are working for two entirely different constituencies. To the outside world (especially Senator Grassley), combining the functions is akin to having a court case where the prosecutor and the defense counsel are one in the same person.

Some organizations combine the functions because they are so small they can't afford the added expense. It is true that small organizations can not afford to increase expenses. However, outsiders wonder why you would add the compliance function to a "conflicted individual." Outsiders look at the organization and ask, "Why not add the function to the Quality Assurance Department or someone else who is not charged with defense of the organization?"

What's the enforcement community's perspective?

They often think the functions are combined (or the CO reports to the General Counsel) "to keep the compliance function in line." Why have they come to that conclusion? Apparently during investigations some employees have claimed to have heard directly or indirectly that the functions were combined because management wanted to "keep a lid on the compliance function."

Senator Grassley's letter has stirred up a controversy which has been going on for some time. There are different perspectives and most of the people involved feel very strongly. This is a controversy that will not be ending any time soon. ■

