

HCCA



HEALTH CARE  
COMPLIANCE  
ASSOCIATION

# COMPLIANCE TODAY

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Meet

**Bill Parke**  
**Vice President**  
**Corporate Compliance**  
**Rutherford Hospital**

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Executive  
compensation in  
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# Letter from the CEO

## Ethics works if everybody is ethical

I have been in a constant battle with the entire universe about Compliance vs. Ethics. I feel ethics is an outcome (there is at least one exception) and compliance is a process that leads to ethical behavior. You can't talk about ethical behavior and achieve an ethical environment; you must enforce it with the Seven Elements of Compliance. Please send all your hate mail to Dan Roach at droach@chw.edu. He will agree with you, he is on our Board, and he will beat me up personally. If you want to get to me directly, e-mail me at roy.snell@hcca-info.org. I will forward them all to Dan.

Let's talk about the exception I know of. There may be more, but I haven't seen it. By looking at this exception, I think you will see how rare it is. You will see how unrealistic it is. It's extremely difficult to duplicate. The exception is professional golfers. I am sure there are a few exceptions, but these guys are maniacally honest. They call penalties on themselves all the time. They can do it, because they all do it. Everyone expects it. It is an ethical culture, because somebody said it would be ethical and it worked. Everyone agreed and followed through.

Let me give you the most amazing example. J.P. (John) Hayes was playing in the PGA tour qualifier. Qualify and you play in most any tournament you want the next year. If you don't qualify, you can still play in some tournaments but the financial difference is staggering. J.P. played in the qualifier and, for two strokes, used a ball that was not "approved." He realized his mistake immediately and changed balls. On the hole where he used the unapproved ball, he played badly, one over par. A few days after the qualifier, he realized that there was a rule stating that if you used an unapproved ball, even for one shot, you were disqualified. He called the ball manufacture, who said the ball would probably be approved but it was as he thought, not yet approved.

No one saw him play it. No one would ever know he played it. If he called and turned himself in, it would make life very difficult for him and his family. He did not hesitate. He called and told the Professional Golfers Association that he must be disqualified. With a few exceptions, he will not be playing on tour next year.



ROY SNELL

As a side note, almost all tournaments have a couple exemptions they give out to anyone. They often give their few exemptions to someone who will be a big draw, some young up-and-comer for example. J.P. Hayes does not qualify as a draw, but those people better all give him one of their exemptions or they will be hearing from me. I am sure they are quaking in their boots.

Golfers are the real deal. J.P. Hayes exemplifies what we are all fighting for in compliance and ethics. The number of exemptions J.P. gets will be a great test of our society's respect for integrity. Don't hold your breath. As I write this, two Minnesota Viking football players have been suspended for the last four games of the season for using a banned substance. The Vikings have a shot at winning the division. The press has covered it more than the Hayes case. Lawyers are fighting to block the suspensions. A judge has issued a stay. The players union is spending hours defending these guys. Pardon my pessimism, but I just don't think that the average person really gives a crap about Hayes. It was an interesting story for a while, but if you want to get everyone's attention, start talking about winning a football game. That is why I think it is difficult to expect "ethics" to be enough or better or more effective than compliance. People don't do what you expect; they do what you inspect. They don't reward integrity; they reward winning, productivity, the bottom line, glamour, etc.

When people tell me ethics is enough or better than compliance, I get mad. Like everyone, I wish it were true. I wish it would work. But if you look at the facts, such as there are few examples of cases where it works, it is difficult to support the concept that ethics is enough. Have I seen it work anywhere? Do I see constant examples where the ethics video by the CEO and code of conduct are not enough? I just don't think that flailing away at variations of "do the right thing" works in many environments. Can you tell me another example, other than golf? I am sure there are a few companies. I can't imagine there are many. And, if you do find an ethical environment, there is probably no tolerance for poor behavior. In other words, there are

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# COMPLIANCE AUDIO/WEB CONFERENCES

## Quality of Care

March 5 and 13, 2009, Two Parts

The Agency for Healthcare Research and Quality (AHRQ) Guide on Adoption of Health Care Innovations – What does mean? Where are we now?

**Lisa Murtha**, Managing Director Health and Education Consulting Practice Huron Consulting Group, and Compliance Officer

**Cheryl Wagonhurst**, Partner, Foley and Lardner  
**Cory Flickinger**, Huron Consulting Group.

## Conflict of Interest

March 12, 2009

**Kendra Diamond**, Director, Daylight Forensic & Advisory LLC,

**Angelia Dorsey**, Research Ccompliance Officer, MedStar Health

## Health Care IT Security – A Corporate Compliance Matter

March 24, 2009

**Carolyn Regen**, Interim Chief Compliance Officer and Privacy Officer of the Corporate Compliance and Privacy Administration of Gwinnett Hospital System, Inc.

**Michele Madison**, Partner Morris, Manning & Martin LLP

**J. Tom Jinks**, Director, Moore Colson

**Bret Roy**, Partner, Moore Colson

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probably auditing and monitoring, enforcement discipline, etc. supporting the ethical behavior. Golf is the only place where I see little enforcement and tremendous results. It doesn't work in any other sport I know of. If a player called a foul on themselves in football, they would be gone in 60 seconds.

For instance, all four of my girls play(ed) volleyball. The coaches don't teach the players to call fouls on themselves. I used to play volleyball in pick-up games without refs at the YMCA. We had to use the honor system, somewhat like golf. There were disagreements, but most of the players were pretty good about it. In volleyball, you can't touch the net. The one rule that stood out the most was: If you touched the net, you would grab the net and shake it until the play stopped. My friends and I often called ourselves on the net when no one would ever have seen it. Some touches were so slight that the net hardly moved, but we knew and we would call it. I liked the integrity of those games at the YMCA. I want my daughters to play with integrity, but they don't. They can't.

If they called a foul on themselves, nobody would accept it. The coach would blow a gasket. The players would ostracize them. The fans would boo them. In most cases, the refs wouldn't even acknowledge the call. The system is set up to "get away with it if you can." The system that works in golf is the only effective ethics system I know.

I don't think ethics alone will work. That is why the enforcement community requires compliance programs in some settlements and encourages them everywhere else. The US Sentencing Commission added ethics to the US Sentencing Guidelines recently, but judges still look for compliance programs to determine if a company is trying to find and fix problems. The judges don't mandate ethics programs. Recently, a law was passed to mandate compliance programs for government contractors. The lobbyists got it reduced to a code of conduct, just before the regulation was published. The Department of Justice (DOJ) got mad and supported a "Contractors Fraud Loophole Act." The Act said that government contractors had to implement the seven elements as described in the Sentencing Guidelines. The DOJ considered the last minute change from compliance to ethics to be a loophole. They want both, but they really are looking for compliance programs. I keep hearing the people who are horribly conflicted (they don't want the pain and cost of compliance) or idealistic saying that ethics is enough. I keep hearing the people who are tired of chasing down cheaters (the enforcement community) say that if you want to be effective or if you want a break, put in a compliance program.

Ethics works if every one is ethical. Everyone else needs a compliance program. Ethics is important. Having a code of ethics and telling everyone to do the right thing is important. However, if you want to get people to be ethical, you must establish standards and procedures, audit and monitor, investigate, discipline, train and educate, and report to the Board. ■