

HCCA



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Meet

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PAGE 14

Also:

Compliance and the rise in uncompensated care

PAGE 28

Earn CEU credit

SEE INSERT

Regulatory review of recruiting and relocation

PAGE 4

Feature Focus:
Code RAC

PAGE 24



Letter from the CEO

The Board's Role in Compliance and Ethics

It is the Board's duty to ensure proper oversight of the compliance efforts within its organization. However, it is also the Board's role to ensure that the company hires and retains the best management team. If the Board is not careful, it can do as much damage with onerous compliance and ethical oversight as it could with no oversight at all. Audits of financials, controls audits, ethics surveys, and investigations can take a toll on management. Anonymous tips and other complaints against management are often followed up and investigated for weeks without asking the accused their side of the story. The outside auditors have now incorporated executive sessions which exclude management for portions of meetings. These executive sessions are used to determine if those in the room have any complaints about management that they don't feel comfortable sharing in front of management. Doubt, uncertainty, and the apparent presumption of guilt that is cast upon innocent people or people who have committed a small mistake can be very damaging. Honest, hard-working people, who have dedicated years of service to the organization, can become caught in the crossfire of the onslaught of oversight. We need to ensure that our organizations are compliant and ethical while simultaneously respecting those who are under the microscope.

Financial audits have been around for some time. Although they are routine for many veteran managers, the auditors (at the request of society) have become more onerous. Financial audits are more onerous. What was once called a "management suggestion" is now called a "significant deficiency." These are often appropriate and should be addressed. The problem is that it is just a part of the casting of doubt and aspersions on management.

Among other things, the Sarbanes-Oxley Act requires a controls audit for publicly traded companies. A controls audit is a good idea for any organization. The challenge is that the analysis and criticism of management is piling up.

Some companies are conducting ethics surveys. These, too, are very helpful. They can get at pockets of problems within the organization.

However, there are always people within any organization that will use this opportunity to take shots at ethical and hard-working managers. Alone, this should probably be something a strong manager should be able to take. However, after the financial audit, controls audit, and surveys, management can become discouraged.



ROY SNELL

Hotline complaints are probably the most important tool of the compliance and ethics program. Problems that used to sit and fester can now be discovered and resolved quickly. Unfortunately, some people use the anonymous reporting mechanism to seek revenge on a manager who has been disciplining an employee who needs it. Some people, who wish no ill intent, report issues that they incorrectly assume to exist. They do not understand the law or they incorrectly assume someone is doing something that they are not doing. The French and Germans are taking the lead on insisting that the rights of the accused are respected. Investigations must be handled correctly or innocent peoples' reputations can be hurt.

The executive session is an important tool of the Board and auditors. Real regulatory problems can be discovered. However, the executive session can be used to cast aspersions on management that have no place in an executive session. If the executive session goes beyond its purpose of determining whether regulatory infractions exist, it can become a problem. If someone has a non-regulatory problem, they should be encouraged to bring it to the person directly. If the Board or the auditor becomes involved in settling operational disagreements between managers, they will have difficulty solving those problems and will facilitate a very negative problem resolution process.

Management should have thick skin and should understand that some degree of criticism is part of the job. Compliance and ethics is very important. A lot of problems have been corrected as a result of compliance and ethics efforts. Society is better off today because of past efforts to clean up organizational wrongdoing. But, as is often the case, the pendulum could swing too far. Innocent people can be hurt. If publicly traded companies become an untenable or undesirable environment for management to operate in, managers may slowly migrate to private and non-profit companies. Damage from non-complaint behavior can be significant. Damage from constantly casting aspersions and doubt on hard-working, honest people can be just as damaging. ■