

**HCCA**



**HEALTH CARE  
COMPLIANCE  
ASSOCIATION**

# COMPLIANCE TODAY

**Volume Thirteen  
Number Eight  
August 2011  
Published Monthly**

**Meet**

**Catherine Wakefield  
Vice President  
Corporate Compliance  
and Internal Audit,  
MultiCare Health System**

**PAGE 14**

**Feature Focus:**

**Compliance officers  
beware! Feds targeting  
executives for  
prosecution and exclusion**

**PAGE 30**

**Earn CEU Credit**

[WWW.HCCA-INFO.ORG/QUIZ](http://WWW.HCCA-INFO.ORG/QUIZ)—SEE PAGE 66

**Managing conflict  
in the hospital: A  
Joint Commission  
requirement**

**PAGE 9**

# Letter from the CEO

*If you have any questions that you would like Roy to answer in future columns, please e-mail them to: [roy.snell@hcca-info.org](mailto:roy.snell@hcca-info.org).*

## **The deny-and-defend crowd vs. the reveal-and-remediate crowd**

I had lunch with one of the brightest outside counsels I have ever met. Although he has other skills, what I am specifically referring to is his “compliance perspective” as an outside counsel. The main reason I agree with him is that he agrees with me. I think people who think like I do are very bright. He is also a very rare breed. Not many outside counsel think like he does. I believe he is the outside counsel of the future. He and I have a distaste for drinking Kool Aid. The world needs all kinds of outside counsel, but we need more outside counsel like Chris Madel of Robins, Kaplan, Miller & Ciresi LLP.

I do not dispute the need to get the best legal help to defend your organization when you get into trouble. But, what we need is more outside counsel who will help you reveal and remediate when you can, as opposed to always denying and defending. I used the term “deny and defend” and he shot back with “reveal and remediate.” This was one of those conversations where two people had a perspective that was individually interesting, and maybe a bit valuable, but when put together was more valuable than the sum of its parts. What I am saying in a roundabout way is that I am stealing his phrase, “reveal and remediate” for this article and I want to be transparent about it.

As I was on my fourth edit of this article, I had an interesting observation. Is my stealing his phrase OK if I reveal it? I think I am going to get away with

it. In fact, I think he will be pleased that I stole his phrase. If I had not revealed that I was stealing it from him and just used it, I think he would have been upset. I think he is going to be happy that I stole it, simply because I revealed that I stole it. As you read this article, you will see the relevance of this observation. You will see I am advocating that we adopt the reveal-and-remediate approach as an alternative to the deny-and-defend approach....on occasion. I am making an observation in this article that revealing you made a mistake, from time to time, just might result in a lesser penalty.

The whole reason why the compliance profession exists is because society has pretty much had it with the deny-and-defend approach. Business got carried away. They listened to the deny-and-defend crowd, and not to the reveal-and-remediate crowd. They did not effectively look for, find, and openly deal with problems. There must be a balance. I get that. We can't be totally transparent all the time; however, we can reveal and remediate more often than we have. If we don't reveal and remediate a little more often, I am concerned society is going to regulate us into oblivion or replace capitalism altogether.

Reveal and remediate is a term Chris used as the flip side to my rant about the deny-and-defend crowd. The deny-and-defend crowd seems to have a grip on CEOs, boards, and business in general. General counsel have been placed on a pedestal, kind of like physicians. It seems that whatever they say goes. No one wants to take a chance arguing with a physician or an outside counsel. When you treat people as though they are gods, or are infallible, bad things happen eventually. I think the deny-and-defend crowd have taken us to a very bad place. We need to rethink our placement of these people on a pedestal.

*Continued on page 64*



I think the deny-and-defend crowd needs to strike a balance. Unfortunately, I don't think the old school deny-and-defend crowd has the ability to take any other approach. Chris is a breath of fresh air and he is a very rare breed. It turns out he has been trying to get more of his clients to take a more open approach to dealing with their problems. In fact, I think he might just suggest that organizations who take this approach, may, on occasion, come out better than if they take the deny-and-defend approach. He talked about an organization that had him investigate a very serious issue and publish the final report on their website. Their view was that they wanted to deal with their problems openly and fix what needed to be fixed. They are sending a message to the enforcement community, to their employees, to their local community, and to their partners.

In some cases, the enforcement community might just go easier on you if you hold nothing back. Controversial? Yes. Is the deny-and-defend crowd blowing a gasket as they read this right now? Undoubtedly. Can reveal and remediate work often enough to make it a better option than deny and defend? Some of us believe it to be true. Let's say it doesn't work. Let's say the enforcement community thinks your reveal-and-remediate approach deserves no reward or recognition. Let's say the enforcement community still hammers you. It may be that you will still come out ahead.

Let's say you find a problem, investigate, and report your findings for everyone to see. Let's say you also report to everyone in your company how you dealt with those who deliberately did something wrong and how you will prevent it from happening again. What do you think will happen to your organizational culture? Those looking on, who have a propensity for being unethical or pushing legal boundaries, will be aghast. They are going to be horrified to see that you may not deny and defend if you get caught. They will be very disappointed in

you. They will wonder how a person with limited integrity will be able to operate in a reveal-and-remediate organization.

If you deal with your problems, you are going to let a lot of people down. Some might find another job, thinking that their approach might be more appreciated elsewhere. On the other hand, there are some people who might just be pleased. There may be some employees who, to date, have been reluctant to report wrongdoing. They might just come forward and help you eliminate other issues that could cost you millions of dollars and bad press. Some employees who really wanted to work for a high-integrity company and were thinking about leaving your company might be inclined to stay. You might just get that one great hire you have been after, because they are looking for an organization that has integrity. Your partnerships with other organizations might get stronger. Your culture might become stronger. You see, there is more to life than court cases, prosecutors, and settlements. There are a lot of other people negatively affected by the deny-and-defend approach.

There is a famous case study: Tenet Health's settlement with the government. Their approach before the settlement was to deny and defend. After the settlement, their approach was more denying and defending. Then there was another settlement, followed by more denying and defending. Then there was yet another settlement and more denying and defending. These were huge multi-million dollar settlements totaling hundreds of millions of dollars. It was at this point that someone or some group within Tenet apparently had had enough. They got rid of a couple of the ring leaders of the deny-and-defend approach (key leadership positions). They replaced them with a couple of people who would invoke the reveal-and-remediate approach when possible. Subsequently, two things happened. The number of settlements dropped

precipitously and the enforcement community took legal action against at least one of the people who had previously led the company down the deny-and-defend path.

What is the return on investment (ROI) on reveal and remediate? In Tenet's case, it is possible that it could have saved them millions, possibly hundreds of millions of dollars. What is the ROI on deny and defend? There are no good numbers; so we are left with theory and speculation. Personally, I feel the deny-and-defend crowd have been overselling their approach. It can't be the best idea all the time, can it? I think they may have something to hide, or maybe they are so stuck in their ways that they can't stop. What I can't believe is how they can use this approach, fail so often, and still look their CEO and board members in the eye and say, "Let's keep doing this." And, how about those CEOs who see this approach fail time after time and keep buying what the deniers and defenders keep selling?

It's as though the deny-and-defend crowd have been trained from birth to do this one way and can't stop. It's as though they are somehow brainwashed. When I talk to these people, it's like talking about politics or religion with an extremist. They are just adamant that deny and defend is the one and only way. They imply that the rest of us are wimps and cowards—a very damning claim that sends many people scurrying for the nearest exit. They treat the government like they are morons. They claim every regulation is vague or unfair. They rationalize their organization's behavior. It's just a blind, one-sided defense. Maybe they think this is all a game that you win by pushing the envelope and then intimidating people. They can't discuss anything else; they can't think about anything else; and they won't consider any alternative, which is very strange for me, because I think they are running the business community into the ground. People, society is fed up.

The problem with the deny-and-defend crowd is that they are not flexible. Although I will acknowledge that, on occasion, you must do whatever you can to avoid "the death penalty" and take the deny-and-defend approach, the deny-and-defend crowd will not give me and the reveal-and-remediate crowd the same recognition. They assume that every case of wrongdoing should be dealt with by denying and defending. Now, how can that be true? And look at their track record. Many people get into trouble, not because they did something wrong, but because they took the deny-and-defend approach. They got into more trouble because they denied and defended. This could be a case of old-school thinking. However, I am beginning to see a chink in their armor. The next time some overbearing, in your face, deny-and-defend type comes up and tries to beat their philosophy into me, I might just push back.

In fact, I think a lot of people are starting to push back on the deny-and-defend crowd. In fact, I think that the deny-and-defend crowd realizes that their days might be numbered. I think they are hypersensitive, because they think they are losing their control on business. Society just might be passing them by. When criticized, some of the deny-and-defend crowd are getting pretty sensitive. They are acting like they are losing their battle to get every organization they support to go with their deny-and-defend approach. This may be a "the emperor has no clothes" moment. They may be concerned that society may change to an occasional reveal-and-remediate approach and society will look back and say, "How could we have bought the deny-and-defend approach for so long? They have ruined us!" People just might get mad. Their reputation might get tarnished. What if reveal and remediate becomes a better approach to many problems? What will we do with all the deny-and-defend crowd? ■