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**Meet  
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**PHYSICIAN  
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# Letter from the CEO

Roy Snell

## Effectiveness:

As I wrote this article, my spell check caught me spelling effectiveness as effectivemess, and the Freudian slip sounded like a great title. It pretty much sums up my view on the whole effort to measure the effectiveness of compliance programs. I have seen millions of dollars spent by the industry's most knowledgeable compliance professionals on attempts to develop a way to measure the effectiveness of a compliance program. This has been the single most interesting thing I have observed in the compliance profession. Almost everyone thinks it is necessary and almost everyone thinks it can be done. It seems obvious, easy, doable, and so very important. However, I have yet to see two people agree on how it should be done. David Orbuch and I agreed on something once but I forgot what it was.

I think we should at least be able to agree that there is a difference between measuring effectiveness and measuring the existence of the seven elements. We lump them together as though they are the same, but they couldn't be more different. Separating these discussions during our debate may help make this easier.

For six years, I have sat in rooms full of industry experts trying to develop a compliance program measurement tool. There has been significant frustration. I have been through three major attempts to set a standard to measure effectiveness, and all three times the group has gone through similar stages. The stages are:

- (1) They are full of glee because they are finally going to achieve this great accomplishment (probably thinking about the ease of measuring the existence of the elements).
- (2) They pound the living daylight out of each other for hours (arguing about measuring effectiveness).
- (3) Then they compromise and walk away feeling less than satisfied.

Some evaluation methodologies seem simple and straight forward, and would probably conclude that if several problems are revealed, your compliance program is not working. That is an easy method of evaluating a compliance program, but is it accurate? Let's take Boeing for example.



They have one of the country's most exhaustive ethics programs. They have given money to Seattle University to set up the Boeing Chair of Ethics. The Chair is occupied by John Dienhart, a great Ethicist. Boeing has had three huge compliance issues in the recent past. In one case, the top management (including the CEO) left, after allegedly hiring a procurement officer from the government in an effort to get a big contract. The incoming CEO was selected to send a message to the employees that Boeing was committed to ethics. He was asked to leave for allegedly having an affair with an employee.

One could say that Boeing's ethics/compliance program doesn't work. However, one could argue that it works effectively because they found and fixed the problems. Isn't that what compliance programs do? Their program appears to have "big teeth." The discipline seems more than adequate. It is not a question of whether you have problems, but rather, how you deal with them. Did they deal with them? I am sure you could criticize something that Boeing did, but their actions appear pretty serious to me. I really could argue it either way, but the point is that the existence of problems is not necessarily an effective indicator of compliance program effectiveness.

There are a myriad of issues that complicate this effort to measure compliance program effectiveness-issues which are not apparent to many people. Because the pitfalls are not apparent, and the cause so important, it creates a perfect storm for argument. We want effectiveness measurement very badly and because we can't see why it won't work, we really get frustrated. People are so absolutely sure how it ought to be done; however, they all see it differently. There is so little agreement that there are no competing philosophies. There are no "groups of people" who are pushing for one way to do it. Why, because to form a group, two people would have to agree.

The following are specific examples of the debate that occurs

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during effectiveness meetings. Two of the brightest people I know argued that audit results should not be a measurable outcome. I still don't get that one, nor can I even explain their logic, but I will tell you that they are two of our best, brightest, and most respected compliance professionals in the industry. The second example is the value of the anonymous reporting mechanism. What if you don't have one? Most people would say that if you don't have one, your compliance program is not effective. Are there companies that don't have one, have no history of compliance issues, all employees feel comfortable going to their supervisor, and complaints are followed up on? I know there may not be many companies that can do this, but an evaluation tool may reject an organization's compliance program erroneously.

Even though measuring outcomes or effectiveness is better than measuring the existence of the elements, it can still be imperfect. Take education for example. Measuring the existence of education is relatively easy. Measuring the effectiveness of education is better. Most people would say measure retention. They debate endlessly how to do it; pre-test, post-test and/or retention tests are often discussed. They argue about testing 30, 60, 90, days after education for retention. However, if you measure the retention of education, does that mean that the education is effective? If employees retain education, do they put it into action? Some may know what to do and could pass a compliance education retention test six years later, but they may choose not to do the right thing. You have to audit their actions, not just their retention.

I was talking to Jim Sheehan from the Department of Justice about this and my most recent observation (it's always changing) is that the best you can do is to sample an organization's actions/outcomes, not just the existence of elements. As cited in the education example, you also have to be careful not just to measure "1st tier" outcomes. You have to look at how specific investigations were conducted. You would have to do some auditing. You have to review follow up on complaints. Along the way you will talk to many people. Probably one of the best indicators is the general attitude and effort. It sounds a bit simplistic but I really don't think there is an easy formula. We all want a formula. We are all sure it is highly measurable. But is it?

There is no formula for hiring the right people. We don't think that there is a way to measure the beauty of a painting. These are subjective things.

Compliance effectiveness measurement may just end up being a subjective call. For some things, the best you can say is, "I know it when I see it." It's a lousy solution, but it just may be all we have. I know of a consulting firm that will certify your compliance program, but I really don't know how they do it. I would think that the best they could do it is to measure the existence of the seven elements. Would you call that certification? Would you value that certification? My view is that it has some value, but it is not the Holy Grail.

Let's try to agree on something. To ease some of the painful debate, it might be helpful to stop lumping, into the same conversation, measuring effectiveness

and measuring existence. Let's make sure that we clarify which we are talking about before we start debating again. Maybe we could agree that auditing for the existence of elements is easier and has some limited value. We could agree that measuring the effectiveness is hard but it has greater value.

The key to all this, as it is with many things, is that effort counts. I have found that whatever you work very hard on usually ends up being successful. I know it sounds like the "blinding statement of the obvious" but we can become discouraged if we can't see specific results along the way or if there is no clear roadmap. Sometimes I charge in a general direction with no clear instructions about what I should do. It usually works out. Don't get discouraged. Don't quit just because the path is not clear and there is little professional agreement about what to do. Do something. We may never agree on effectiveness, but trying to measure effectiveness will tell you something. Even though measuring effectiveness is imprecise, and measuring the existence of the seven elements is of dubious value, they are both better than doing nothing. ■