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# COMPLIANCE TODAY

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# Letter from the CEO

## The compliance profession will soon no longer be needed

When something doesn't go as planned in business, we find out afterwards that if we had focused on execution, it might have gone better. Some ideas fail because they were bad ideas; however, I believe most failures can be traced back to a lack of focus on execution. People love to plan, they love to meet, and they love to spend money. But when it comes to execution, they often want to get on to the next big idea.

They particularly want to move on if the execution of the plan involves any pain. Lots of people want to start; not as many want to finish. Personally this drives me a little crazy. People agree to do something, and later we find it wasn't done. Sometimes it wasn't done because it was mundane, tedious, or unglamorous. Some people couldn't follow up if their lives depended on it. The people who impress me always follow up on what they promise to do, no matter how hard or how mundane the task is, or how busy they seem to be. Our profession is headed in the wrong direction, because too many of us want to plan, think, and analyze, rather than focus on the execution of finding and fixing fraud. The compliance/ethics profession is here simply because those who came before us failed to execute compliance with the law.

People who knew the law managed to stay busy before there was a compliance/ethics profession, but many failed to always execute compliance with the law. People whose job it was to look for problems failed to execute compliance with the law. People who studied all the possible things that could go wrong failed to execute compliance with the law. People were overseeing the entire organization-approved codes of conduct, but failed to execute compliance with the law. They were all very busy. They all did their jobs, but they failed to execute compliance with the law because....

- Their job did not include execution of compliance with the law, or
- They were too busy doing other things, or
- They wanted to avoid the pain, or
- They simply wanted to analyze, study, and talk.

This is the point where someone always reminds that there are too

many laws or the laws are too vague, and that's why those who came before compliance/ethics professionals failed. Then I remind them that many of the laws being broken are so obviously wrong, a 5th grader could have told you they were wrong (e.g., Enron, WorldCom, HealthSouth, Tyco, Madoff, etc.). Those problems went unresolved—but not because of numerous or vague laws. They went unresolved by choice.



Everyone talks a great game. But, they failed so badly to execute compliance with the law over the last 30 years, a new profession has evolved to focus and execute compliance with the law: the compliance and ethics professional. We are here simply because those of who came before us were talking, analyzing, thinking, planning, meeting, and then going home for the day. They failed to finish. If you believe that our profession was created because those who preceded us failed to focus on execution, then you should be very concerned. You should be concerned, because some people want the compliance/ethics profession to revert back to an approach that doesn't focus on execution of compliance with the law. We are losing focus. We are headed down the same path that those who came before us did. If these people end up defining our profession, there will be no need for our profession.

The United States Sentencing Guidelines (USSG) compliance program guidance is entirely focused on finding and fixing problems. It focuses on execution, because those who came before us failed to execute. It focuses on execution, because those who came before us created flow charts, lists of problems, reams of documents, studied the law, and pleaded with people to do the right thing; however, they failed to focus on finding and fixing problems. Now we have some of these very same people telling our profession what to do. Some of these very same people are trying to define our profession. Some of these very same people are hijacking our profession and, if they succeed, there will be no need for our profession.

People who are concerned about making money, taking control, or avoiding pain are trying to move us in the same direction as those who came before us. They are trying to redefine our profession and move away from the USSG. Some are focusing on Enterprise Risk Management (ERM), which consumes huge resources and includes a great deal of time spent on non-compliance/regulatory risks. They are trying to make ERM the focus. ERM doesn't find or fix problems.

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While these people are rearranging hundreds of risks, a problem that resulted in multiple fines to similar companies goes uninvestigated. ERM is important, but it can't be our focus.

Some are combining compliance with other departments that don't focus on finding and fixing compliance/regulatory problems. Much of the activity in these departments has nothing to do with trying to find fraud that their company is committing against others. Their focus is on finding fraud committed against their own company. Combining departments can diminish our authority to act and dilutes our resources. We have people wanting us to add governance to our list of duties. They want us to focus on overall management of the organization. Governance is important. Risk is important. However, we must focus on fixing problems. Some people want us to rely solely on the code of conduct and a video from the CEO saying "We do the right thing." Theoretically, if we set the right tone at the top, everyone will do the right thing. It often works for all-but-one person, but it doesn't work for everyone. The USSG was not written because we were not telling people to do the right thing, or because we were not governing properly, or because we did not study risk. The USSG were written because we failed to execute.

The compliance/ethics profession began, because too many people were focused on too many things, rather than just focusing on finding and fixing problems. We can't just be in meetings—we need to find and fix problems. We can't just be rearranging problems on a list—we need to be finding and fixing fraud. We can't be worried about the governance of the organization—we need to step up to powerful people and suggest another way for them to accomplish their objectives. All of these distraction were distractions before the USSG were written. It

didn't work then, and it won't work now.

This profession was started because too many people were looking around, talking, and rarely stepping up to insist that the fraud be stopped. We are slowly migrating back to the way things were before our profession started. If we diffuse this job enough, there will no need for compliance/ethics professionals. The people who studied the law, set the tone, looked for problems, and studied what order to put all the potential problems in, failed to be effective prior to our profession being created. They can fail again, if we go back to a lack of focus. They can do so without us, and they can do it without the added expense of us being here. We need to take back our profession. We need those who understand why we are here to prevent this trend from continuing.

There is absolutely no need for the added expense of compliance/ethics professionals, if we are going to dilute our efforts to find and fix problems as those who came before us did. Before our profession was created, people sat around all day and pleaded with employees to do the right thing and hoped it worked out. They hoped it worked out, because it wasn't their job to find and fix fraud. Some want to us to go back.

Before our profession started, people sat around all day rearranging problems on a spreadsheet, with no intention of going out and telling some powerful person to find another way to get their job done because breaking the law is not an option. Before our profession was established, many people you would have thought would stop employees from breaking the law didn't. What they did was notify someone that something was against the law and they did a risk analysis of getting caught. The "pointer sisters" looked for fraud and when they found it, they raised

their paws up and froze in position. All too often, problems went unresolved. All these people were paraded up in front of the senators at Congressional hearings that were designed to discover how all these people failed to find the problem or fix the problem. "Why you didn't do something?" They had various answers of "It's not my job" or "I told somebody." So the world said, "We need another profession." We need a compliance/ethics professional, and they need to focus and execute on finding and fixing fraud.

We are here simply to finish. Not just talk, but finish. Not just rearrange the problems, but to finish. Not just look for problems, but to finish. Not to govern, but to finish. Not to be a part of another department, but to finish. Not just study the law, but to finish. If you let these people hijack your profession, there will be no need for your profession.

The Health Care Compliance Association is here to help the members professionalize the profession. By year's end, we will have more than 2,000 certified compliance professionals. We are helping the profession define the profession. By year's end we will have more than 6,000 members. Our best shot to manage our profession is through our professional association, just as all the professions that came before us did. The stronger our professional association is, the better our chances of success will be. As we increase the number of members and the number of certified compliance professionals, we grow stronger and increase our chances of being relevant. ■