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COMPLIANCE TODAY

Volume Five
Number Twelve
December 2003
Published Monthly

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Letter from the CEO

ROY SNELL

“People don’t do what the boss expects—People do what the boss inspects.”

Compliance vs. ethics

Do compliance programs create an ethical environment? Do ethics programs create a compliant environment? Before I delve into this issue I want to go on record as an individual who believes unethical behavior is unacceptable. My parents ingrained this in me by setting an example of living their life with integrity, honesty, and ethical behavior. That is why I am passionate about the compliance field.

My frustration

What concerns me is when organizations implement an ethics program and say it’s enough. What I am concerned about are organizations that implement an ethics program and when asked about compliance and they say “It’s a part of ethics.” All too often those who put the emphasis on ethics ignore or give lip service to compliance.

I would argue that ethics programs and compliance programs are two separate activities. They should not be compared. They serve separate functions. Teaching ethical behavior is a philosophy or a way of conducting oneself. The danger comes when people think that teaching ethical behavior will find and fix problems. Teaching ethical behavior does not find or fix problems. Ethicists tell people how they should behave and hope it all works out. A compliance programs ensures that, among other things, ethical behavior occurs. Not only are ethics programs not enough, but without compliance programs it is difficult to create an ethical environment.

If it smells like a duck

When I ask people who run ethics programs about auditing, monitoring, and enforcement they say ethics programs include all of that. When I ask what tasks they have accomplished over the past year they tell me about mission statements, memos from the CEO, sensitivity training, and a game they use to teach people how to be ethical. If you are going to teach people to be ethical, call it ethics training, don’t pretend it’s compliance.

If you are going to run a compliance program don’t pretend its ethics training. If it is a compliance program it should be called a compliance program. Ethics training is a part of compliance.



Some people have been promoting ethics programs as the savior, almost to the exclusion of compliance. What ever approach you take, if you can’t or won’t measure your effectiveness all you can do is hope. Health care has been hoping for a long, long time and it has not gotten us very far. If you look back at mission statements from health care organizations over the past 30 years you will find statements like “This is an ethical organization.” We even have the Hippocratic Oath.

Despite being one of the most ethically oriented industries in the United States, health care has become one of the most penalized industries in the United States. There is a disconnect. Defenders of health care will say we are not successful at following regulations because of the complexity of regulations and the regulatory vagaries. Look at the settlements; the fines being paid for mistakes are so black and white we don’t even want a jury to look at them. We settle out of court. Our failures are a result of a lack of effort and effectiveness. Our failures are a result of not stepping up. We are failing because we just tell people to do the right thing, but we don’t make sure that they are.

Teaching ethical behavior doesn’t help those who think they are “doing the right thing” but are not. Teaching ethical behavior does not help those who are doing the wrong thing until they get caught.

We don’t ask our attorneys to tell us right from wrong; we ask them to tell us the risks associated with a wrong decision. Given our track record of estimating risk maybe we should change the name of the Risk Management department to the department of Risk Elimination. Of course we can’t eliminate risk but we clearly have erred on the side of too much risk. Even though we have attorneys, auditors, risk managers, quality review, quality assurance, and ethicists, the enforcement community says that we should have compliance programs.

People don’t always do what is expected but they have a tendency

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to do what is enforced. Compliance helps enforce ethical behavior. You can have an ethical leader, teach ethical behavior to employees, fill your mission statement full of ethics, and put four-color posters on the wall of Mother Teresa, however, if you don't enforce ethical behavior you may not be able to create an ethical environment. Ethical behavior doesn't come from leadership being ethical. Ethical behavior comes from ethical leaders who set policies and audit, monitor, investigate, and enforce those policies.

US Sentencing Commission and the OIG

Why did the USSC put compliance programs in the sentencing guidelines? Why does the Office of Inspector General (OIG) put mandatory compliance programs in CIA's? Why do all of the guidance documents issued by the OIG specifically mention compliance programs? Why don't all of these people just tell us to be ethical and do the right thing? It's because we were telling people to do the right thing and it was not enough.

The USSC has come out with proposed changes to the corporate compliance section of the US Sentencing Guidelines. You won't find much in the guidelines or the proposed changes regarding ethics. It is difficult for them to put in much about ethics because it is so difficult to measure. Maybe they are not convinced that telling people to do the right thing by itself is effective. It would be difficult for a judge to determine a sentence based on ethics programs. A judge can measure the existence of auditing, monitoring, enforcement, discipline, and education. The US Sentencing Commission believes that evidence of a compliance program should be considered when determining a sentence. Teaching ethics is important and vital to our culture, but when it comes to changing behavior more must be done.

Compliance has teeth

Why is compliance different from past attempts to get it right? Is it because compliance has teeth? Is it because compliance has discipline? Is it because compliance has enforcement? Some compliance professionals have de-emphasized components of compliance because they want compliance to be accepted. They don't want compliance to be perceived as "The police" or onerous. We have many existing departments in health care organizations that have been trying to prevent problems for years. Have UR, QI, QA, peer review, risk management, the legal department and ethicists failed to prevent problems because they wanted to be accepted? Have they been reluctant to look for problems, investi-

gate, enforce, and discipline? If so, has it hindered their effectiveness? Will organizations that de-emphasize compliance and emphasize ethics just to be accepted meet with the same fate?

It is difficult to investigate. It is difficult to audit. It is difficult to monitor. It is difficult to discipline. It is what makes compliance different. It is what makes compliance effective. Rooting out problems is nothing to apologize for. Some compliance professionals are apologetic about the enforcement component of compliance. They should rejoice in the difficult aspects of compliance because it is what makes compliance different and effective. Compliance is working. Health care is rooting out mistakes and unethical people with compliance tools. Auditing, monitoring, investigations, and hotlines are unpleasant but necessary tools that let people know what is expected.

How do you create an ethical culture?

When you ask ethicists how to create an ethical environment you get an academic answer. The following words came directly from a recent article on increasing ethical sensitivity: "recognize," "resolve," "examine," "study," "encourage," "organize," and "remind." The academic approach can be very helpful, however if unethical behavior is not rooted out the academic approach can be very ineffective. Another way to look at this is to ask the opposite question: "How do you create an unethical culture?" If you want to create an unethical environment do not audit, monitor, enforce, investigate, and discipline unethical behavior. If you want to ensure unethical behavior you must implement an ethics program, tell people you're an ethical organization, and not enforce ethical behavior. Give lip service to ethical behavior and you will incite employees into more inappropriate behavior. When they see their peers "getting away with it" they will feel entitled to inappropriate behavior.

It is easy to say "Do the right thing". It is easy to trust people. It is noble to espouse the virtues of ethics. We need ethics. We need to tell people to be ethical. We need leadership to be ethical, however we can not stop there. We also need to make sure we are being ethical. Compliance helps encourage ethical behavior. Tell people to do the right thing and make sure you let people know that unethical behavior is not acceptable and will not be tolerated. Use effective auditing, monitoring, enforcement, and discipline to root out unethical behavior. We are the most penalized industry on planet Earth. It's time for a change. ■