Preventing a Whistleblower…

Debra Maul, Qui Tam Relator "*Whistleblower*"

Barb Senters, PHR, CCEP
Chief Compliance & Ethics Officer
Ameritox

The Ameritox Mission is to improve patient care and prevent human tragedy.
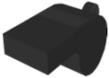
Ameritox
Medication Monitoring Solutions

Whistleblowers

- Have positive feelings about their jobs
- Have good job performance
- Believe that the company will be responsive to their complaints
- View whistle-blowing as integral to their role in the organization.

McMillan, Michael (2012, Oct).Retaliation against Whistle-Blowers: No Good Deed Goes Unpunished. Www.*CFAInstitute.org*

Ameritox
Medication Monitoring Solutions

2

"Whistle-blowing, is not an act of disloyalty, but the ultimate manifestation of employee loyalty to the organization … allegiance to the organization's mission, its goals, its value statement, and its code of conduct."

McMillan, Michael (2012, Oct).Retaliation against Whistle-Blowers: No Good Deed Goes Unpunished. Www.*CFAInstitute.org*

Ameritox
Medication Monitoring Solutions

3

Whistleblower Statistics

60% Received No Response

85% Blew Whistle TWICE Internally

39% <2yrs with Company

Source: "Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health and Social Care"

4

Ameritox
Medication Monitoring Solutions

Employees Prefer to Resolve Their Concerns Internally

84% of whistleblowers that reported a compliance concern outside their company first reported the concern internally.

Only after the employer failed to address the concern satisfactorily did the employee report the concern to a third party outside the company.

National Business Ethics Survey 2013. www.ethics.org

Ameritox
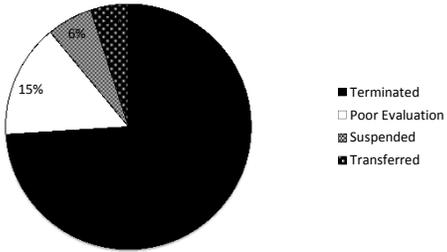*Medication Monitoring Solutions*

Most Whistleblowers were Fired

6%

15%

■ Terminated
□ Poor Evaluation
▨ Suspended
■ Transferred

National Business Ethics Survey 2013. www.ethics.org

Ameritox
Medication Monitoring Solutions

Whistleblower Reporting

How Incident Was Reported	Percent Utilizing Reporting Method
Supervisor	**82%**
Higher Management	52%
Human Resources	32%
Hotline/Help Line	16%
Ethics Officer	15%
Outside person (not governmental or regulatory authority)	13%
Legal	11%
Governmental or Regulatory Authority	9%

Overall, 20% of reporters ever chose to tell someone outside the company.

Responses total more than 100% because respondents selected all that applied.
National Business Ethics Survey 2013. www.ethics.org

Ameritox
Medication Monitoring Solutions

7

Themes of the story…

- Reporting Outlets
- Outside Legal Opinion
- Retaliation by Middle Manager
- Communication with the Whistleblower during Investigations
- Human Resources Issues

Ameritox
Medication Monitoring Solutions

8

Agenda-Preventing a Whistleblower

Effectively Address Employee Concerns

Compliance & Human Resources Partnership

Culture & Perceptions

Effective Compliance Program

Ameritox
Medication Monitoring Solutions

9

Addressing Employee Concerns

Bottom Line: An employee's (reporter) acceptance of the outcome and continued commitment to the organization is whether or not they believe the procedure used to handle their concern was fair.

1. **Listen to them!** - **Give them the opportunity to describe all of his or her concerns.** Show that the company cares and will follow up. Ensure they know they are doing the right thing by reporting.

2. **Don't Stonewall! Ensure they see the process is fair…build trust.**
   ✓ Address their concerns irrespective of merit. Perceptions can be costly!
   ✓ Change what needs changed. Timely.
   ✓ Ensure there is no retaliation
   ✓ Close the loop but do not share information about evidence, investigation, etc.

10

Ameritox
Medication Monitoring Solutions

Preventing a Whistleblower

Effectively Address Employee Concerns

Compliance & Human Resources Partnership

Culture & Perceptions

Effective Compliance Program

11

Ameritox
Medication Monitoring Solutions

Perception
The Blind Men and the Elephant

It's a Fan!
It's a Wall!
It's a Rope!
It's a Spear!
It's a Snake!
It's a Tree!

12

Ameritox
Medication Monitoring Solutions
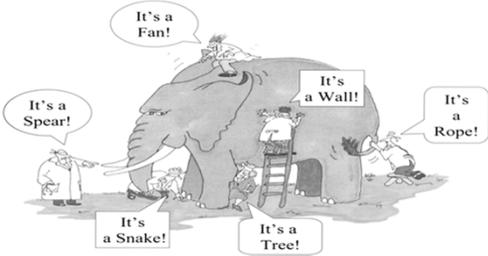
Shape Perceptions to see the big picture

✓ **Proactively Inform Employees of the Specific Risks and Controls**

Tell them about the elephant before they experience the tusks!

Example: An employee transfers from a low producing dental office to another practice with an extremely fast paced dentist. The employee is concerned the doctor is either 1)not performing the services being billed or 2)must be performing them with sub-par quality. They didn't know about the audit plan.

13

Ameritox
Medication Monitoring Solutions

Shape Perceptions to see the big picture

• Do employees know the controls in place to address the risks that pertain to their job, department?

– Inform them of the specific risks and how the company works to prevent & deter them.

– Engage them as the experts on their job to enhance the Compliance Program

– Don't keep your audits a secret

14

Ameritox
Medication Monitoring Solutions

Proactively Address Perceptions with your Compliance Program

• Approach Education as though you are training every employee to be a Compliance Officer. Explain "Why".

• Risk Assessment- Increase employee engagement by including the department in the development.

| Risk | Prevention | Controls |

Risk Assessment

15

Ameritox
Medication Monitoring Solutions

U.S. Sentencing Guidelines (Chapter 8)

§8B2.1.   Effective Compliance and Ethics Program
(a)   To have an effective compliance and ethics program, for purposes of subsection (f) of §8C2.5 (Culpability Score) and subsection (b)(1) of §8D1.4 (Recommended Conditions of Probation - Organizations), an organization shall—

(1) exercise due diligence to prevent and detect criminal conduct; and

(2) otherwise promote an **organizational culture** that encourages ethical conduct and a commitment to compliance with the law.

16

Ameritox
Medication Monitoring Solutions

What is Organizational Culture?

A Set of shared values, written and unwritten rules that guide employee behavior.

It affects the way people and groups interact with each other, with clients, and with stakeholders. In addition, organizational culture may affect how much employees identify with an organization thus impacting performance and morale.

17

Ameritox
Medication Monitoring Solutions

Organizational Culture

What influences culture?

- **Artifacts**- Visible components of culture
  - Rituals and Ceremonies: New Hire/Annual Training, awards, Policies & Procedures
  - Symbols & Slogans-summarize intrinsic behavior.
    - Example: "No excuses, just results" or "Patients First"

- **Values** - the kind of behavior the organization wants to promote and reward vs. what behavior is actually promoted and rewarded.

- **Stories** - Narratives based on true events. Stories become company heroes. Good or bad. Employees relate to the current organization due to events that happened in the past and carries on the legacy.
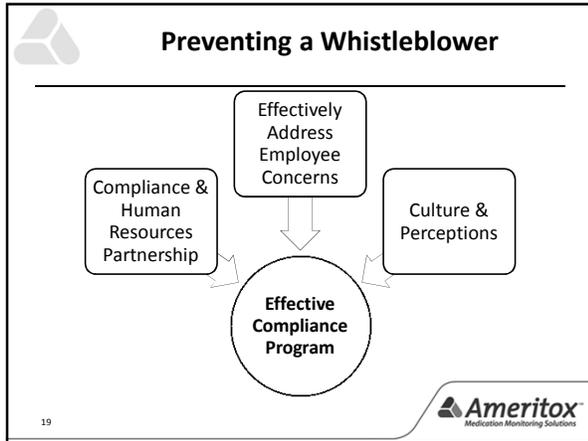
18

Ameritox
Medication Monitoring Solutions

Preventing a Whistleblower

Effectively Address Employee Concerns

Compliance & Human Resources Partnership

Culture & Perceptions

Effective Compliance Program

19

Ameritox
Medication Monitoring Solutions

Compliance & HR Partnership

Organizational Culture Indicators You Need to Know:
- Employee Satisfaction Surveys
- Disgruntled departments, employees, and leaders - Why?
- Exit Interviews

Human Resources Partnership:
- Include/Inform of Compliance Investigations
- Know HR protocols
- Inform of potential Retaliation scenarios
- New Hire Training
- Culture Strategy

BFF ♥ 4ever

20

Ameritox
Medication Monitoring Solutions

Summary-Preventing a Whistleblower

✓ Audit the Outliers
✓ Address concerns irrespective of merit
✓ Proactively Shape Perceptions
  ✓ Tell them about the elephant before they encounter the tusks!
✓ Work on the "Tone at the Middle". (Most employees report issues to their Supervisor before reporting outside the company.)
✓ Assess and Influence Culture
✓ Engage and Partner with Human Resources

21   Privileged & Confidential

Ameritox
Medication Monitoring Solutions

The surest way to happiness is to lose yourself in a cause greater than yourself.

-Unknown

22

Ameritox
Medication Monitoring Solutions