

ETHICS...THE CORNERSTONE AND FOUNDATION

2019 HCCA Alaska Regional

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OBJECTIVES

- What has happened with ethics in business today?
- Where does ethics fit in an organization?
- What are the benefits of an ethical culture?

WHO IS RESPONSIBLE FOR COMPLIANCE



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DEFINITION

ETHICS

Values relating to human conduct, with respect to the rightness and wrongness of certain actions and to the goodness and badness of the motives and ends of such actions.



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DEFINITION

Success

The attainment of wealth, position, honors and the like.



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COMPLIANCE WEEKLY NEWS



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ETHICS

- **Former mental health therapist must pay \$130,000 after pleading guilty to health care fraud**

On January 22, 2019, *Scottsbluff Star-Herald* reported, “A former mental health therapist has been sentenced to a year and a day in federal prison and ordered to pay restitution of more than \$130,000 after he pleaded guilty to health care fraud.”

- **Columbus doctor found guilty in fraud scheme**

On January 17, 2019, *WRBL.com* reported, “A south Florida federal jury found a Columbus podiatrist guilty this week for his role in a scheme to defraud governmental insurers, according to court documents.

“Dr. Alap Shah was convicted Monday in Miami guilty on the conspiring to defraud the federal government and two counts of accepting kickbacks involving a federal health care program.”

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ETHICS

- **Former exec enters plea agreement in \$4.6M kickback scheme**

On January 9, 2019, *Nashville Post* reported, “Former Tennessee health care exec Brenda Montgomery, who last April was charged for her participation in a \$4.6 million Medicare kickback scheme, has signed on to a plea agreement with the federal government.

“Montgomery, 70, pled guilty to eight of the 15 counts brought against her for a kickback scheme she orchestrated with former Brentwood-based Comprehensive Pain Specialists CEO John Davis.”

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ETHICS

- Detroit-based William Beaumont Hospital paid **\$84.5 million to resolve kickback** allegations levelled by four former employees in whistleblower lawsuits. Prosecutors alleged that, between 2004 and 2012, Beaumont hospitals in Royal Oak, Troy, and Grosse Pointe compensated eight physicians with free or substantially discounted office space and employees in exchange for patient referrals, violating the Anti-Kickback Statute and Stark Law.
- **Physician sentenced to 6 years in prison for operating ‘dangerous pain clinic,’ bilking insurance companies**

On February 6, 2019, *MassLive* reported, “A physician convicted of fraudulently billing Medicare and private insurance companies while operating a ‘dangerous pain management practice’ and dispensing large quantities of narcotics to addicted patients was sentenced to more than 6 years in prison and ordered to pay \$1.8 million in restitution.”

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WHY DO WE CARE

DOJ False Claims Act Recoveries FY 2018

- \$2.8 billion
- \$2.5 billion involved healthcare
- \$2.1 billion Qui Tam
- 75% Qui Tam
- Recovery \$7.00/\$1.00



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WHY DO WE CARE

HHS OIG Recoveries
FY 2018
\$2.91 Billion
764 criminal actions
2700 exclusions



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WHY DO WE CARE

Legal Value of Culture

United States Sentencing Guidelines
Section 8B2.1(a) of the revised guidelines
November 2004:

*A firm must "...promote an organizational
Culture that encourages ethical behavior..."*

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WHY DO WE CARE



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OIG COMPLIANCE GUIDANCE

Increasing the likelihood of preventing, identifying, and correcting unlawful and unethical behavior at an early stage;

The OIG recognizes that implementation of a compliance program may not entirely eliminate improper or unethical conduct from the operations of health care providers.

Although a clear statement of detailed and substantive policies and procedures—and the periodic evaluation of their effectiveness—is at the core of a compliance program, the OIG recommends that hospitals also develop a general organizational statement of ethical and compliance principles that will guide the entity's operations. One common expression of this statement of principles is a code of conduct.

The code of conduct for a hospital should articulate a commitment to compliance by management, employees, and contractors, and should summarize the broad ethical and legal principles under which the hospital must operate. The Code of Conduct should also include a requirement that professionals follow the ethical standards dictated by their respective professional organizations.

By enforcing disciplinary standards, hospitals help create an organizational culture that emphasizes ethical behavior.



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CURRENT STATE OF ETHICS

- 73% of employees in business have observed a high level of illegal/unethical conduct at work in the last 12 month (KPMG Organizational Integrity Survey)
- 65% employees don't report violations; 96% feared being accused of not being team players; 81% feared nothing would be done; 68% feared retaliation (Society of Human Resources Managers)

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CURRENT STATE OF ETHICS (CONT'D)

- 56% of MBA students acknowledged cheating, 54% engineering, 48% education, 45% law school (Professor Donald McCabe, Rutgers University)
- High school students: 51% cheated on an exam, 93% lied to parents, 78% lied to teachers, 37% would lie to get job, 38% took something from a store (Josephson Institute of Ethics)

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Ethics and Compliance

?Conflict?



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WHAT IS CULTURE

The set of shared attitudes, values, goals, and practices that characterizes an institution or organization

*Merriam-Webster Dictionary

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WHAT IS “ETHICAL” CULTURE?

“ ...it is the extent to which an organization regards its **values**. Strong ethical cultures make doing **what is right a priority**. Ethical culture is often **unwritten code** by which employees learn what they should think and do.” *

*Ethical Culture Building: A Modern Business Imperative , Research Report, ERC



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**“The quality of our expectations
determines the quality of our actions.”**

-- Andre Godin (1817 – 1888)
French industrialist & social experimenter

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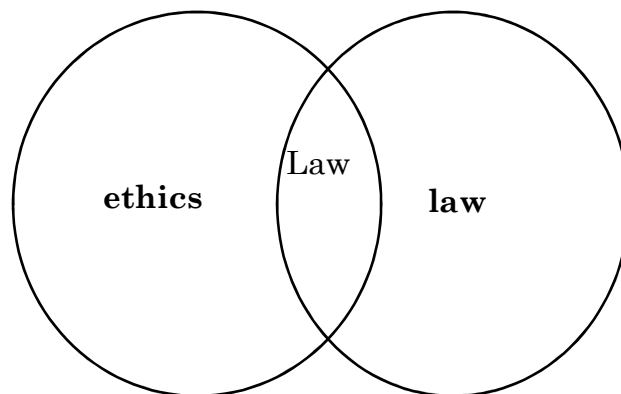
WHAT ETHICAL CULTURE LOOKS LIKE

Employees:

- encouraged to act on values
- values are clear, positive, understandable
- take ownership of the values
- trust because feel free to communicate, respond to situations, and share
- act according to values even when no one is looking



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WHAT DOES THIS HAVE TO DO WITH ETHICS?

“B/C ethics is the foundation for law”

– H.Woods Bowman, Ph.D.

Professor of public services mgmt. DePaul University

“A poor ethical culture breeds ethical breaches. Ethical breaches then often lead to legal violations. Too often accompanying both is financial collapse.”

– Marianne M. Jennings, J.D.

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BUSINESS BENEFITS OF CULTURE

- Reputation/public image
- More stable and consistent reaction to ever changing rules/laws
- Recruitment
- Less disruptive workplace
- Find problems more quickly and solve them

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“A business culture built on *excellence* will most frequently out perform a culture in which [financial] success is the singular objective.”

Peter Schultz
former CEO of BMW and Business Consultant

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BENEFITS OF COMMITTED WORKFORCE

- Feel responsibility to report
- See value in following policies and procedures
- Group intolerance of bad actors
- “bad actors” less likely to advance and do serious harm
- More likely to make good decisions in new situations

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CREATING AND MAINTAINING AN ETHICAL CULTURE

Leadership

- active supervision by the Board.
- senior management talk and act ethical, and provide resources for program,
- front line supervisors must act and message the values:

“A person’s **individual moral framework** is only the **third most important factor** in deciding what they’ll do. **The most important is what does their boss do.....second, they look at their peers...**” *Marshall Schminke, Managerial Ethics: Moral Management of People and Processes*

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CREATING AND MAINTAINING CULTURE (CONT.)

Written statement of values

- Code of Conduct...clear and understandable

Constant communication and training on values

- training in all forms,
- daily messaging
- discussions by front line managers,
- publication of failures and successes (Business Ethics Bulletins)
- orientation
- talk about in recruiting and hiring process

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CREATING AND MAINTAINING CULTURE

(CONT.)

- metrics for values in the evaluation process
- value requirements/statements in the procurement process with third parties
- hold all levels of employees responsible for maintaining culture by auditing, monitoring, discipline, rewards
- clear that every activity, even in crisis, must be done within the values of the company
- consistency in discipline

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CREATING AND MAINTAINING CULTURE

(CONT.)

Create expectation of reporting issues

- don't retaliate (clear policy on non-retaliation)
- publicize various ways to report, i.e. managers, HR, compliance and hotline
- front line managers to have discussions about value of reporting
- make improvements from failures

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ETHICAL CULTURE

- ❖ A change in culture!
- ❖ Leadership a must!
- ❖ A top down process!
- ❖ Compliance must participate!
- ❖ Non-Retaliation!
- ❖ Reward ethics!

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APPENDIX



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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

1. There is no such thing as “business ethics.” – just “do good!”.

* That’s fine for the easy issues but ethical dilemmas in the business context are complex and consist of wide gray areas. No matter how ethical your people are, they need help with these real life business conflicts

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

2. Our employees are good people so we don’t need to focus on ethics.

* Ethical dilemmas are highly complex; It’s not simply about the Golden Rule, honesty & courtesy; its about the wide “gray areas.”

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

3. Business ethics is a matter of good guys preaching to bad guys.

- * There are criminals & then there are good people who make mistakes. Those mistakes could have been prevented – not by preaching to the bad guys – but by helping the good guys recognize the ethical dilemma in the first place & empowering them to make the right choice between value(s) and conduct. By fostering a self-governing culture!

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

4. Business ethics is a philosophy for academics & theologians.

- * Ethics is a philosophy of right & wrong with practical application to a variety of situations (i.e., applied ethics). In the business context, ethics is real & required by the law. More importantly, it's the way to achieve enduring success in today's business environment.

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BUSINESS ETHICS MYTHS.

FROM (WORLDPRESS.COM)

5. Business ethics is the “new thing.”

- * History repeats itself. Business ethics was first written about by Cicero over 2000 years ago. More practically, business ethics has been the subject of recurring debate in response to corporate transgressions for years (i.e., regulatory life cycle).

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

6. But everyone else is doing it!

- * A mere attempt to rationalize the unethical behavior and it inherently admits the misconduct. Two wrongs don't make a right.

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

7. This is just a small thing and no one got hurt.
No harm no foul, right?

* Sorry, another rationalization. Beware of the “slippery slope” which leads to people disregarding the unethical nature of conduct. Small ethical lapses breed larger ones that eventually lead to criminal conduct (i.e., the broken windows theory).

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

8. Are you kidding? But he/she is a superstar in this organization!

* Ethics is the essence of leadership. All organizations need leaders with character to serve as role models and notwithstanding one’s status, all unethical conduct should be disciplined. To do otherwise, leads to cognitive dissonance in which others could rationalize the unethical conduct.

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

9. It is impossible to manage ethics anyway

* Ethics is the process of managing the relationship between moral values and conduct. Organization values are always managed whether by laws, rules & regulations, or organization culture, and all business processes can be managed

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

10. Business ethics is the same thing as social responsibility.

* Social responsibility is only one aspect of the overall discipline of business ethics. It deals with the identification of important business & social issues, & critiquing business. But business ethics is about ethics in the workplace & determining right or wrong conduct in our business dealings.

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BUSINESS ETHICS MYTHS

FROM (WORLDPRESS.COM)

11. There is “no controlling legal authority.” If it’s not illegal, it isn’t unethical, right?

* Compliance is not the same as ethics. Of course, the law is a minimum standard (must); ethics is higher standard (should). Unethical conduct often leads to illegal conduct. Consider the boiling frog parable.

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QUESTIONS



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