

**HCCA ORLANDO REGIONAL HEALTHCARE
COMPLIANCE CONFERENCE**

**Auditing and Monitoring and Internal
Investigations**

February 1, 2019

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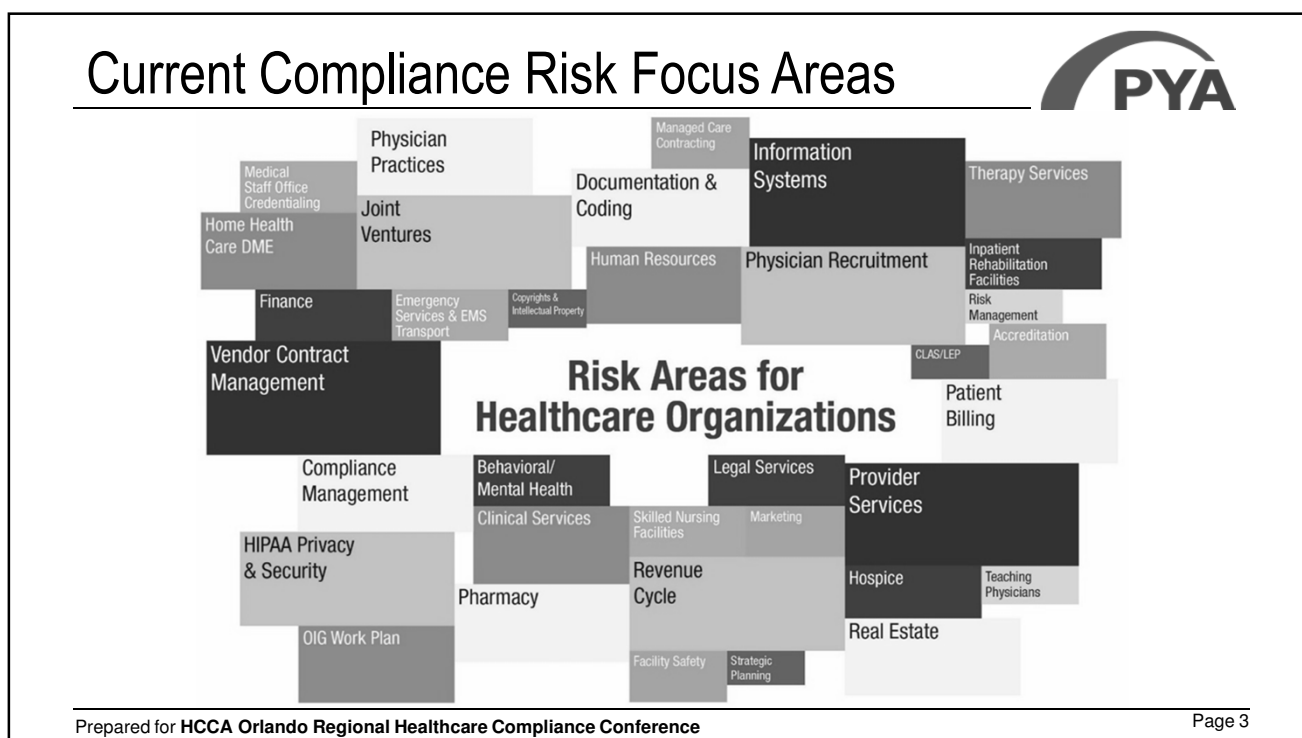
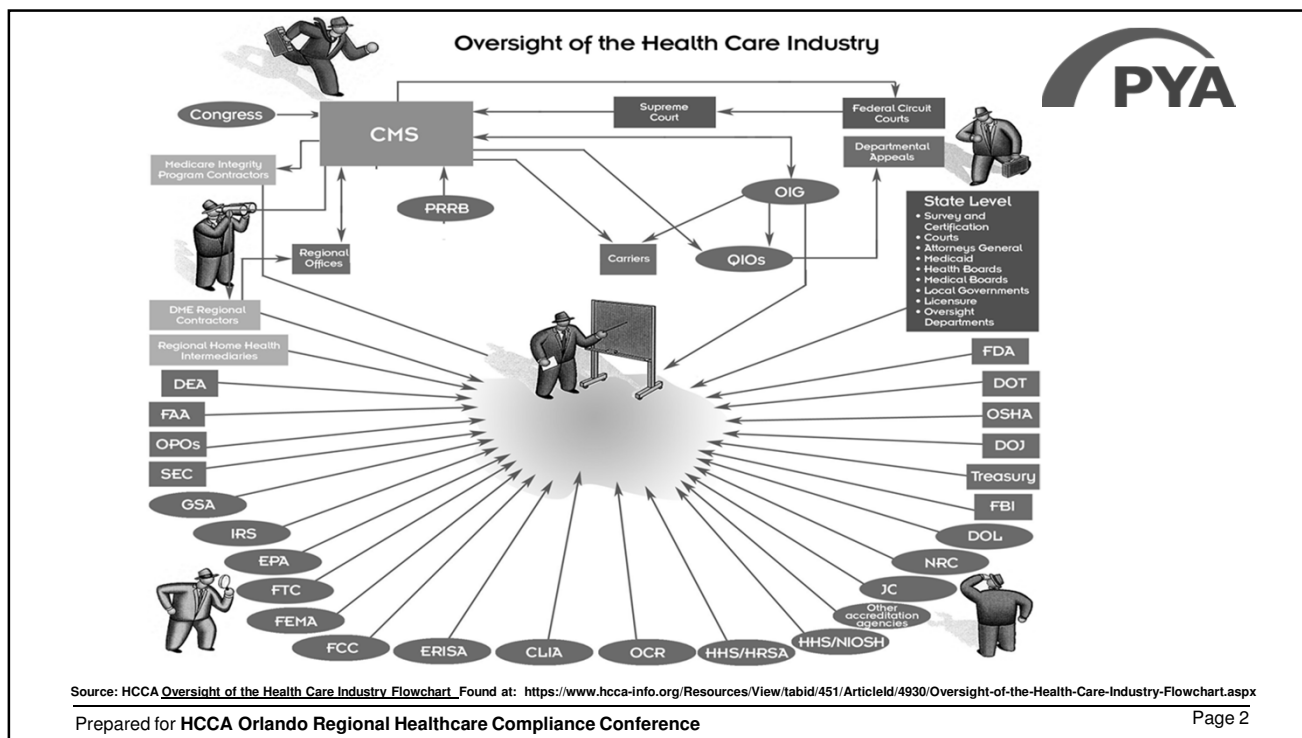


Course Objectives

- Identification of compliance high-risk areas
- Best practices in auditing and monitoring and reporting of correction plans
- Understanding the tipping point, conducting internal investigations, and organizational liability risk



Image Source: Creative Commons (2018)



Looking Back to the Future . . .



Compliance focus areas may have evolved over time, but the fundamental issues remain . . .

- Know the applicable rules and regulations (and keep up to date)
- Invest adequate resources into organizational compliance
 - *For every \$1 spent on compliance, \$5.21 can be saved (rework, sanctions, reputation, personnel, etc.)¹*
- Culture and conduct at the top matter
- Auditing and monitoring are crucial to detect issues before the oversight agencies find them
- *Educate, educate, educate*

1. Determining the Effectiveness & ROI of Your GRC Program: Bob Conlin, SCCE Regional Conference, 2012

Physician Financial Arrangements



- | Risks | Controls |
|--|--|
| <ul style="list-style-type: none">▪ Stark Law violations<ul style="list-style-type: none">▪ Referrals for DHS▪ Anti-Kickback Statute<ul style="list-style-type: none">▪ Pay, offer, solicit, or receive remuneration▪ Use of NPPs<ul style="list-style-type: none">▪ Supervision and productivity boosts▪ Shift of responsibility<ul style="list-style-type: none">▪ From hospital to physician | <ul style="list-style-type: none">▪ Fair market value and commercial reasonableness▪ No tie to current or expected referrals▪ Legal counsel review▪ Duties and responsibilities defined▪ Oversight<ul style="list-style-type: none">▪ Compensation committee |

Real Estate and Leasing



■ Risks

- Inconsistent and variable execution and management
- Stark Law and Anti-Kickback Statute requirements
- Time share/Space share
- Provider based clinic regulations

■ Controls

- Structured to meet exceptions and safe harbors
- Standardized, systematic processes
 - Standard lease policies and documents
 - Formal review and approval process
- FMV Opinion & Market Rent Study
- Walking the leased space and annual attestations
- Reconciliations of operating expenses

Cybersecurity



■ Risks

- Budget and resource limitations
- Legacy equipment in use
- Crime as a business – high value, ease of compromise
- Ransomware
- Lack of an adequate cybersecurity response team
- Inadequate cybersecurity insurance coverage
- Staff concerns (i.e., patch management, work-arounds)
- Employees are the weakest link

■ Controls

- Investment in qualified information security personnel with robust leadership
- Use of current, fully-supported, secure operating systems
- Secure design and implementation of connectivity solutions
- Identify and address potential vulnerability that can impact patient care and organizational operations
- Educate, educate, educate

HIPAA Security Risk Analysis & Meaningful Use



■ Risks

- Medical record integrity and impact on patient care
- Patients' right to privacy
- Inappropriate PHI access and disclosure
- Reportable breach
- Improper incentive payments

■ Controls

- Implementation of HIPAA privacy and security standards
- Policies and procedures (review OCR findings)
- Robust Monitoring and auditing, including Business Associate Inventory
- *Follow through on HIPAA Security Risk Analysis Action Plans!*

Vendor Management



■ Risks

- Conflicts of interest
- Excluded vendors
- Contractual non-compliance
- Management of Vendors as Business Associates

■ Controls

- Ethical standards and rule of engagement for all vendors
- Assure that no vendors are excluded entities
- Robust procurement process
 - Accountability
 - Contract language standardization
 - Invoice controls
 - Monitoring and auditing of high risk vendor relationships
 - Contract termination process
- Create a third party or vendor management checklist:
 - Reference checks
 - Financial solvency
 - Liability coverage
 - Regulatory compliance
 - Verification of delivery, service, and expertise

Post-Acute Care Services



■ Risks

- Improper billing and reimbursement
- Staffing – turnover, scope of practice
- Quality of care issues

■ Controls

- Assurance that patient choice is provided for the selection of post-acute care options
- Policies and procedures to address CMS requirements for patient admissions, care plans, transfers, and discharges
- Documentation, coding, and billing integrity are a primary focus
- Implement processes to audit and monitor bundled payments
- Robust quality reporting
- Patient safety, including neglect and abuse, is an organizational priority

Outsourced Services



■ Risks

- Regulatory requirements
 - FCA
 - AKS
- Business continuity
- Legal liability
- Privacy and security

■ Controls

- Vendor/Third-Party risk assessment process
- Outsourced services inventory
- Contract negotiation with favorable language
- Liability insurance requirements
- Audit vendor compliance
- Vendor due diligence

Other Compliance Risk Considerations...



Noted by PYA in recent Risk Assessments

- Compliance resources including data analytics
- Risk Assessment process – comprehensive, prioritization
- 501(c)(3) requirements for Hospitals
- Integrity of quality reporting
- Strategic planning
- EMTALA and EMS services
- 60-Day Overpayment Rule
- 1557 Nondiscrimination Notice and Language Assistance

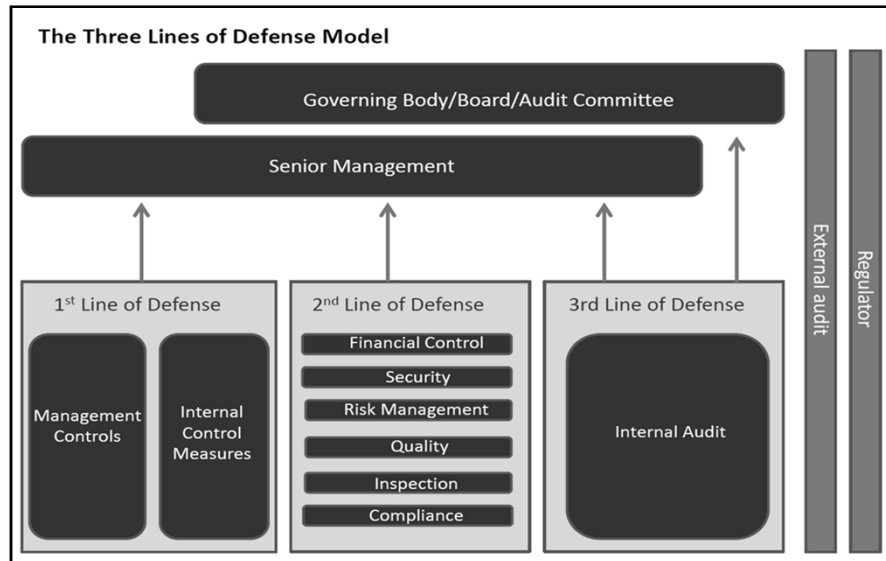
Emerging Issues...



On the horizon – worthy of notice

- | | |
|--|--|
| ▪ Opioid epidemic and controlled substances | ▪ Political activities – federal and state |
| ▪ Medical technology | ▪ Medical marijuana |
| ▪ Due diligence for mergers and acquisitions | ▪ Payment reform and price transparency |
| ▪ Workplace violence | ▪ Natural disasters |
| ▪ Human trafficking | ▪ Aging population |

Three Lines of Defense

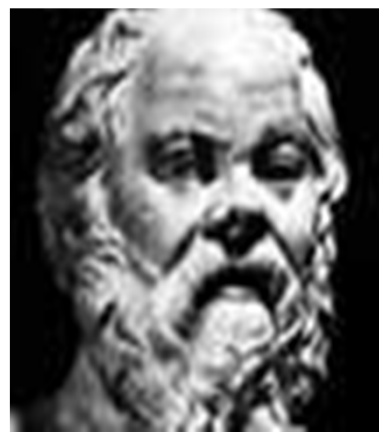


Source: Institute of Internal Auditors: The Three Lines of Defense in Effective Risk Management and Control

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**“All the problems in
the world can be solved if
we just stop & *think*.”**

-- Socrates (470 – 399 BC) Socrates



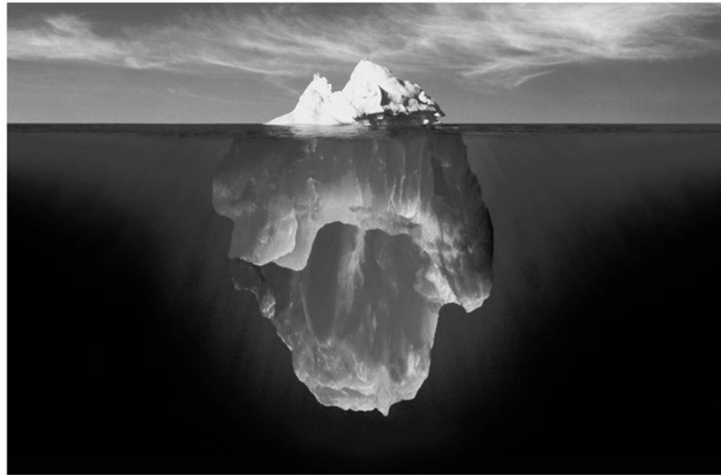
7 Basic Elements of an Effective Compliance Program:

1. Designating a compliance officer;
2. Developing written standards of conduct & policies & procedures;
3. Providing training & education;
4. Promoting open & effective lines of communication;
5. *Enforcing compliance standards through disciplinary guidelines;*
6. Auditing & monitoring for compliance; &
7. Responding appropriately to offenses.

**The goal of any internal investigation
is to make you (i.e., your organization)
smarter. To learn from experience and
apply it going forward.....**

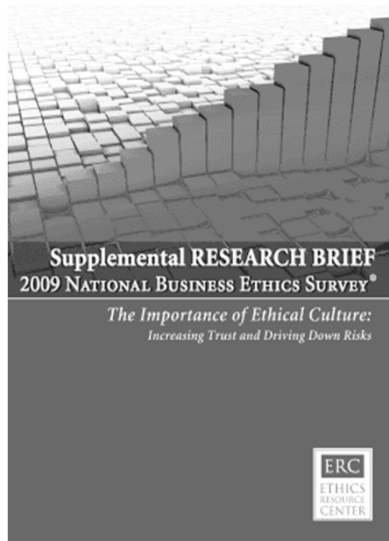
1: The Titanic

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The Role of Culture

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“Good people do bad things if they are put in an environment that doesn't value values, if pressured to believe that they don't have any choice but to get the job done—whatever it takes.”

— The Importance of Ethical Culture: Increasing Trust and Driving Down Risks, The Ethics Resource Center (2010)

To Think About . . .

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Why People Commit Fraud Famed criminologist Donald R. Cressey

Donald R. Cressey
(1919 – 1987)



Even the best systems of internal control cannot provide absolute safeguards against irregular activities.

The Titanic – Ethical Dissonance

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Ethical dissonance

is the tension triggered by the inconsistency between the aspiration to uphold a moral self-image and the temptation to benefit from unethical behavior. The failure to recognize this “Iceberg” can result in organizational failure.

2: Be A Visionary

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A Leadership Perspective

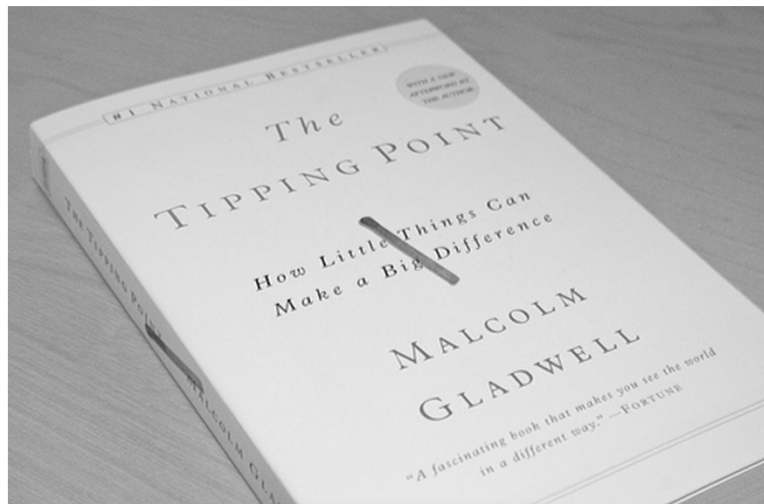
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**“We may be very busy,
we may be very efficient,
but we will also be truly *effective*
only when we begin, with the end in mind.”
-- Stephen R. Covey (1932-2012) -- Socrates**



3: Tipping Points

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Evaluating Intent – Badges of Fraud

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- Activity is inconsistent with any legitimate business purpose There is no legitimate motive for engaging in the activity
- Repetitive wrongful activity. Repeatedly engaging in the same or similar activity which is of an apparent illegal purpose
- Making conflicting statements
- Systematically organizing dissemination of misleading information
- Making admissions or a confession
- Obstruction of justice. Actively attempting to impede or hamper the investigation of the offense
- Making false statements in an effort to misrepresent or disguise the true purpose in order to deceive the victim

**“We see ourselves by our intentions.
We see others by their actions”
-- John Maxwell**

**So.....
Do you need to change your paradigm?**

4: Vigilance





6: Relationships

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7: Seek Advice

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The Power of Experienced Judgment

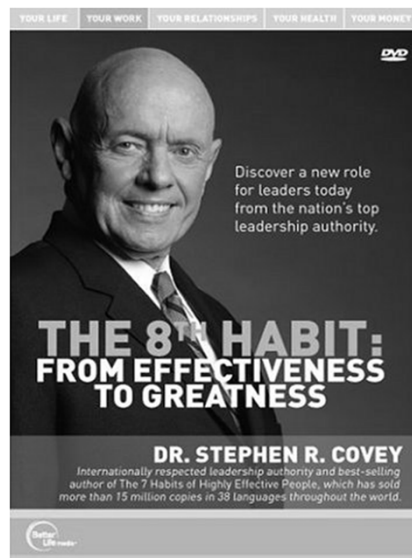
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**“Advice is one thing that is freely given
away, but watch that you only take
what is worth having.”**

– George S. Clason

8: People Matter

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“In the knowledge age, *people* will be the key factor in attaining and maintaining a competitive posture.”

— David M. Walker
Comptroller General of the United States (2001)

Summary of Key Points

1: *See the Iceberg Before It Sinks the Titanic.* Understand the role of culture in assessing organizational risk & that organizational character is a reflection of its people & culture.

2: *Begin with the End in Mind.* Understand the basic framework of any internal investigation & is capable of envisioning how it may be employed in any situation.

3: *The Tipping Point in Evaluating Intent.* Learn to evaluate evidence for indicia of fraud & escalating intent.

4: *Sweat the Small Stuff.* Understand that organizational identity is established over time through everyday details that eventually become habits, & your character.

Summary of Key Points Cont.

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5: The Scout Motto is Be Prepared. Understand the importance of always being in a state of readiness which requires educating & training personnel on how to handle contact from law enforcement.

6: Be A Relationship Person. Understand that all relationships grow when trust & cooperation grow, & is adept at navigating these relationships with a credible position.

7: The Richest Man in Babylon. Understand that experience enables you to consistently make the right call.

8: People Matter. Effectiveness is no longer sufficient in “The Knowledge Worker Age.” To thrive & excel in the knowledge age, we must move beyond effectiveness to greatness by finding your voice & inspiring others to find theirs.

Questions?

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