

HCCA 2020 Board & Audit Committee Compliance Conference

Compliance Effectiveness Review

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Introductions: Our Perspectives

- From a compliance auditor / provider / hospital organization:
 - Scott Remmich, VP, Chief Compliance Officer, Aspirus, Inc.
- From an auditor / consultant / health plan / payor:
 - James Rose, Managing Director, SunHawk Consulting
- From general counsel / outside counsel:
 - Heather Fields, Shareholder, Reinhart Boerner Van Deuren s.c.

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Presentation Overview

- What It Means to Have an Effective Program - Different Perspectives
- How Measured - Metrics versus Outcomes
- “How To” Suggestions for Board/Audit and Compliance Committee Members
- Special Situations That “Test” Compliance Effectiveness and Board Oversight

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Compliance Program Effectiveness - Different Perspectives

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Viewing Compliance Program Effectiveness From Perspective of....

- Operations
- Government Regulation and Enforcement
- Organizational Governance

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Compliance Program Effectiveness - Operations Perspective

- Risks - Identification and Prioritization
 - Are risks understood at all impacted operational levels (role-appropriate)?
 - Proactive identification of current or prospective risks or reactive “check the box” approach (e.g., OIG work plan)?
 - Is there clarity regarding organizational risk tolerance or culture of magical thinking (make it so)?
 - Consideration of new risks when new business lines pursued?

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Compliance Program Effectiveness - Operations Perspective (cont.)

- Controls to Manage Risks (e.g., policies and procedures, education and training and monitoring)
 - Designed to address greatest risks?
 - Actually implemented (not policy on a shelf or one slide of 100 in annual training)?
 - Understood by those responsible for implementing and overseeing?

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Compliance Program Effectiveness - Operations Perspective (cont.)

- Adequately resourced? Alignment with resource allocation and strategic objectives?
- Viewed as important and manageable or inefficient and difficult to apply? Does this apply top-down?
- Linkage to enterprise risk management?

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Compliance Program Effectiveness - Select Regulatory Enforcement Perspectives

- Federal Sentencing Guidelines
- Justice Manual FCPA Corporate Enforcement Policy (March 2018 and November 2019)
- Benczkowski Memorandum (October 2018)
- Policy on Evaluation of Corporate Compliance Programs (April 2019)
- Justice Manual, Cooperation Guidelines (May 2019)
- Justice Manual, Corporate Compliance Program Guidance (July 2019)

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How Does the DOJ Evaluate Effectiveness?

- Three Areas of Focus:
 - Design - Is the compliance program well-designed?
 - Implementation - Is it applied earnestly and in good faith?
 - Operation - Does it work in practice?

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DOJ and Program Effectiveness - Design

- Is there a risk assessment? Formal or informal?
- Do effectiveness metrics tie to the key risks?
- Are resources prioritized toward high-risk areas?
- Are policies, procedures and expectations well communicated?
- Are compliance failures responded to appropriately?
- Are investigations appropriately conducted, scoped and results addressed?

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DOJ and Program Effectiveness - Implemented

- Autonomy of compliance personnel (versus management obstruction)
- Adequate resources for compliance program
- Increased risk tolerance for pursuit of new business or revenues?
- Publication of discipline (and causes) and consistent treatment of similar instances of misconduct
- Incentives for compliance performance
- Is the Board and C-Suite engaged?

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DOJ and Program Effectiveness - Operations

- Are investigations focused on root causes and identifying accountability lapses among supervisory managers and senior executives?
- Is the volume, frequency and scope of audits appropriate?
- Gap analysis for compliance program?
- Organization-wide polling of all employees to determine impression of management's commitment to compliance?

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Compliance Program Effectiveness - Governance Perspective

- When presenting to Board or Audit/Compliance Committee, does management team:
 - Identify highest risks? How often are these reassessed?
 - Clearly articulate organization's risk tolerance?
 - Explain how these risks are being managed to the level of desired exposure (no such thing as zero risk)?
 - Describe process for evaluating effectiveness of controls?
- How is Board or Audit/Compliance Committee made aware of risks, changes to risk profile, control failures?

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Compliance Program Effectiveness - Governance Perspective (cont.)

- Do the Board and senior management discuss risk tolerance?
- Are the Board and senior management aligned?
- Does level of risk tolerance vary depending on strategic importance of business activity (e.g., high risk but high reward managed differently than high risk, lower rewards)?

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What is Risk Tolerance?

As a Board Member, Can You Infer the Difference?

Board Questions	Low Risk Tolerance	High Risk Tolerance
Do we know the rules / expectations of stakeholders?	Every regulation is centrally tracked in a GRC system. Someone is assigned to review each regulation annually.	Key regulations are documented by each process owner based on past reviews, regulator inquiries, or updates as owners become aware of needed changes.
Do we know if our policies are clear and understood?	Training occurs annually on overall expectations and material regulatory risks. Process owners attest annually.	Process owners review their processes based on their overall assessment of risk. Process owners accountable for their overall process results.
Do we adequately monitor and confirm adherence?	Metrics review monthly by compliance. Annual audit plan tests 1/3 to 1/2 of highest risk areas.	No dedicated independent audit/compliance review team. Process owner accountable for having appropriate quality assurance in place.

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How to Measure Effectiveness

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Metrics for Compliance Program Effectiveness

- “Measuring Compliance Program Effectiveness: A Resource Guide”
HCCA-OIG Compliance Effectiveness Roundtable Meeting (2017)
 - What to measure versus how to measure
 - Frequency of use of any measurement should be based on risk areas, size, resources, and industry segment
- Meaningful Reports
 - List of voluntary repayments versus report of how organization is trending in terms of number of annual voluntary repayments versus government audit repayments

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Compliance Risk Category Inventory

- Maintain an active categorization of areas of regulatory compliance that matter to your organization.
- Use as a brainstorming device to drive conversation about specific risks.

General Compliance Risks	Mortgage Compliance Risks	Retail Risks	Corporate Compliance Risks
Planning Risks: <ul style="list-style-type: none"> Compliance Leadership & Succession Planning Regulatory Forecasting <ul style="list-style-type: none"> State Regulators Federal Regulatory Non-US Regulatory Execution Risks: <ul style="list-style-type: none"> Compliance Staffing Compliance Organizational Design and Accountability Assignment Compliance Reporting Compliance Risk Assessment Fraud, Waste & Abuse Assessment Ethical Conduct 	Execution Risks: <ul style="list-style-type: none"> Anti-Money Laundering Equal Credit Opportunity Act Fair Credit Reporting Act Fair Debt Collection Practice Act Fair Housing Act Home Mortgage Disclosure Act Privacy of Consumer Financial Information Truth in Lending Act Real Estate Settlement Procedures Act (RESPA) Secure and Fair Enforcement for Mortgage Licensing Unfair, Deceptive, or Abusive Acts or Practices Telephone Consumers Protection Act Homeowner Protection Act Service Members Civil Relief Act Fair and Accurate Credit Transactions Act EFT Loan Originator Compensation Rule FTC Advertising Rules National Flood Insurance Program E-sign Act OFAC Compliance IRS 1098 requirements PCI – Debit/Credit Card Security Foreclosure requirements—state statutes Bankruptcy Code(?) GSE Annual Recert (Fannie, Freddie, Ginnie) Government Loan Annual Renewal (FHA, VA, RISK) Other investor guidelines (CHATTEL) Loan file retention policy CFPB <ul style="list-style-type: none"> Vendor management Customer Complaint Process 	Execution Risks: <ul style="list-style-type: none"> HUD (install/setting homes) <ul style="list-style-type: none"> State Requirements Licensing of Contractors Transportation COI Information Security / PCI Licenses <ul style="list-style-type: none"> Annual renewal State issue Salespeople license <ul style="list-style-type: none"> Lorie tracks CRG Renewals, etc. Closings audio recorded GAC loan disclosures 	Execution Risks: <ul style="list-style-type: none"> Securities Regulations & Filings <ul style="list-style-type: none"> 10K / 10Q Form 4 Section 16 filers Disclosures NASDAQ regulatory guidelines Investor Communication / Fair Disclosure Tax filings (federal and state) <ul style="list-style-type: none"> Income tax (fed / state) Sales tax (state) Heavy weight use tax (fed) Contractor 1099s Conflict Minerals (Form SD) Dodd-Frank reporting Fair pricing / Antitrust Census reporting Information Security Privacy Regulations <ul style="list-style-type: none"> HIPAA GDPR Contract Adherence Contract management Intellectual Property Litigation Management Government Procurement Document Retention Management Advertising Laws Human Resources <ul style="list-style-type: none"> DOL Requirements FLSA Minimum Wage Hiring Discrimination
Manufacturing Compliance Risks		Insurance Product Risks	
Execution Risks: <ul style="list-style-type: none"> HUD OSHA EPA State code compliance (modular) Recreational Vehicle Industry Association (RVIA – ANSI) Compliance Reporting of shipped homes to states Licensing <ul style="list-style-type: none"> Plant Retailers Salespeople Contractor licenses (e.g., installation) Validate Retailer Licenses 		Execution Risks: <ul style="list-style-type: none"> Texas Department of Insurance <ul style="list-style-type: none"> Statutory Reporting State Policy Changes Agent licensing (State) / State Licensing 	



Metrics to Consider - Outcomes vs Outputs

Business “Compliance” Metrics

- By Process Area
 - Accuracy
 - Quality
 - Cycle Time
 - Completeness
 - Satisfaction
 - External Regulatory / Client Audit Results

	Activity	Process	Outcome
Billing / Claims	# Claims	% of Charts / Claims Audited	Accuracy % - Claims
	# Chart Audits	Auditor Validation Score	Accuracy % - Billing
Travel, Expense, Entertainment	\$ Paid / Employee	% High Risk Employees Reviewed	# Concerns Raised
Nursing	# Nurses # Nurses Hired	Average Staffing Levels	% of Hours Understaffed



Metrics to Consider - Outcomes vs Outputs

Compliance Program Metrics

	Activity	Process	Outcome
Compliance Audits	# Audit	% of High-Risk Areas Reviewed	Audits Passed
Hotline Process	# Calls	Timeliness of Evaluation	Substantiated Calls
Training	# Staff Trained	Training Material Retention (test, quiz)	# Issues Related to Employee Knowledge

- Consider Metrics Across the Seven Elements
 - Written policies and procedures
 - Compliance governance
 - Effective training and education
 - Effective lines of communication
 - Process to respond to offenses
 - Auditing and monitoring
 - Publicized enforcement policies



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Compliance Today - September 2019

Article on “The Quality and Compliance Partnership” – Paul Jesep and Kristine Pelerin

- Discussion on the overlap of quality managers, risk managers and compliance officers.
- Noting how the different departments within an organization may be attempting to address the same issues without realizing the work of the other.
- Clarity on metrics helps align the strategy and resources, especially when the metrics embed compliance expectations within business metrics tracking.



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Incorporating Compliance Into the Business

Enterprise Risk Management

- Business leaders should be discussing risk holistically - considering strategic, financial, operational and compliance risks
- Compliance matters should have their distinct place within that discussion

Governance, Risk and Control Methodologies

- Controls and monitoring should give compliance risks the appropriate weighting
- When using GRC systems, compliance matters should be embedded in overall operations dashboards - not separate modules / systems



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Is There Alignment on Metrics to Monitor?

Governance Area	Financial Metrics	Operational Metrics	Satisfaction Metrics	Compliance Metrics
Audit	✓	✓	✓	✓
Compliance	✓	✓	✓	✓
Business Operations	✓		✓	?
Quality		✓	✓	?
Safety		✓		?
Risk Management	✓		✓	?
Executive Committee	✓		✓	?
Board	✓		✓	?

How is compliance monitoring embedded into all oversight groups?
 How is compliance serving its role as the second line of defense?



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Practical Strategies for Board/Audit and Compliance Committee Members

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Keep In Mind....

- The Board is expected to know what a sound compliance program looks like
- The Board is expected to know how to infer from management's reports and answers to questions - the true extent of the compliance program's capabilities
- The Board is expected to know the organization's risk tolerance and how that risk tolerance aligns with stakeholder expectations
- Organizations with issues generally have Board's that missed having a deep discussion around the respective risk area

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Important (Often Overlooked) Considerations

- Governance Structure
- Board Preparedness
- Meaningful Inquiry and Discussion
- Documentation

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Boards and Compliance Effectiveness - Governance Structure

- How does the Board discharge its oversight function?
 - Does meaningful oversight begin and end at a Board committee level?
 - How often does the full Board discuss compliance matters?
 - How much time is actually dedicated to the oversight function (e.g., consent agenda item, 15 minutes at annual meeting or meaningful meeting time dedicated at some regular interval) How is this documented? Does the Board ever meet in executive session to discuss compliance program?
 - Does the Board understand the actual process for being updated about serious compliance issue outside of the context of a board meeting? Is there an expectation this would happen?

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Boards and Compliance Effectiveness - Board Preparedness

- Have all Board members (or only audit/compliance committee members) received compliance education and training? General or specialized training?
- Does the full Board understand the organization's compliance governance oversight and the rationale for the current structure?
- Is there an independent compliance expert(ise) on the board (e.g., member or consultant)?
- Does the Board understand how the organization's program compares to that of similarly situated organizations? What are the differences between best practice and current organizational infrastructure?

Boards and Compliance Effectiveness - Documentation of Meaningful Inquiry

- Do governance documents describe:
 - Oversight role of the Board and Board Committees?
 - Ability of compliance officer to convene with Board officers/Board committee chair or either/both governing bodies?
- Are Committee charters consistent with governing documents and compliance program documents?
- Do Board and Board committee meeting minutes demonstrate/document that Board oversees compliance program?
- Are compliance materials viewed by Board maintained with other governance materials (e.g., minutes) or legal counsel if privileged?

Top Questions Board Members Should Ask

- What issues exist that we have not discussed?
- What is the biggest risk we believe we have well managed and why?
- If you had one more staff to monitor or audit an additional area or dive deeper into an area - what area would that be and why?
- How do you know your auditing and monitoring investment meets established criteria for conducting compliance efforts / audits / investigations?
 - What external peer review of your work is conducted?
 - What did the latest peer review report say about our organization?

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Special Situations That “Test” Compliance Effectiveness and Related Board Oversight

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Special Situations That “Test” Compliance Effectiveness and Board Oversight

- Mergers and Acquisitions
 - What compliance due diligence is performed? Scope?
 - Who performs it? Qualifications?
 - What is plan to address identified issues?
- Third Party Vendors (e.g., Revenue Cycle, Billing, information security, etc.)
 - Rationale for using?
 - What vetting process used? Does contract reflect this?
 - Monitoring and process for addressing red flags?

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Questions?

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