COMMUNICATING WITH YOUR AUDIT AND COMPLIANCE COMMITTEE FROM BOTH A COMPLIANCE OFFICER’S AND BOARD MEMBER’S PERSPECTIVE

Nicklaus Children’s Health System

- Free-standing Pediatric Care Facility – Providing only pediatric care from birth through adolescence
- Two Main Hospitals and 17 Ambulatory Centers in Florida with a Global Presence
- Over 510,000 visits annually
- Fourth busiest pediatric Emergency 95,000 + in USA
- Over 4,200 Employees in Health System with over 740 physicians in 40 pediatric sub-specialists
- Top Ranked among Children’s Hospitals in six specialties*

* The hospital has six subspecialty programs ranked among the best in the nation, according to U.S. News & World Report’s 2018-19 “America’s Best Children’s Hospitals” rankings.
Nicklaus Children’s Health System

Committed to Innovating and Advancing
- Quality and Service Delivery
- Pioneering Novel Technologies
- Developing Industry First Healthcare Applications
- Committed to Translational Research
- Global Telehealth Presence

Our health system is a “living laboratory”

COMMUNICATING WITH YOUR BOARD

- Board Obligations and Responsibilities
- What Should Be Communicated to the Audit & Compliance Committee / Board
  - Board Effectiveness
- How to Engage your Committee / Board
  - What Does Board “want to” Know
  - Find Your/Their Communication Style
- How to Be an Effective Board Member
- Report From the Trenches – Putting it in Action
To Have an Effective Compliance Plan

U.S. Sentencing Guidelines provide:

- The organization’s governing authority must be knowledgeable about the content and operations to the compliance program and exercise reasonable oversight.
- Individuals responsible for day to day responsibility must have direct access to the Board.
- Reports must be provided at least annually.

What is a Board Member’s Fiduciary Responsibility?

**Duty of Care:**

- Act in good faith.
- With that level of care that an ordinary prudent person would exercise in like circumstances.
- In a manner that they reasonably believe is in the best interest of the corporation.

*must make reasonable inquiry to management to obtain the information necessary to satisfy duty of care.*
Duty of Care

- DUTY OF CARE ≠ PROACTIVE VIGILENCE

- DUTY OF CARE = GENERAL SUPERVISION AND OVERSIGHT

Caremark Standard of Conduct

To attempt in good faith to assure that:

- A corporate information and reporting system exists; and
- Reporting system is adequate to assure the Board that appropriate information as to compliance with applicable laws will come to its attention in a timely manner as a matter of ordinary operations.
What Does Caremark Mean to a Board Member?

- A Director’s failure to reasonably oversee the implementation of a compliance program may put the organization at risk and could subject director to personal liability

Business Judgement Rule

- Courts utilize to determine whether a director’s duty of care has been met with respect to corporate decisions
- Director is not liable if decision is:
  - Made in good faith
  - Director is disinterested
  - Reasonably informed under the circumstances.
  - Rationally believes decision is in best interest of corporation
Non-Profit Boards

- Duty of obedience to the corporate purpose and mission
  - Obligation to further the purpose of the organization as set forth in articles/bylaws

What About the Board’s Role for the Oversight of the Care Provided by the Institution?

- Can arise in a Director’s:
  - Decision making function
  - Oversight function
ENGAGING THE BOARD

BOARD EFFECTIVENESS

- Knowledgeable with Adequate Composition, Expertise and Education
  - Board Composition
    - Community, Business, Fiscal, Legal, Providers
    - Non-Board Members and Use of Consultants/Experts
    - A critical element of effective compliance oversight is the process of asking the right questions
  - Independence
  - Formal orientation with competencies and specific compliance education


ENGAGING THE BOARD

BOARD EFFECTIVENESS

- Board Understands Role of Compliance and Its Responsibility To the Program & System/Hospital
- Reporting Relationship
  - Relationship of compliance officer vis-a-vie counsel, independence but collaborative
  - Access and Reporting to Board
    - Quarterly
      - Includes Others Beyond Compliance

ENGAGING THE BOARD

BOARD EFFECTIVENESS
- Adequate Access to Information
  - What Does Board “want to” Know
    - Dashboards, Scorecards, Graphs,
      Auditing/Monitoring, COI, Investigations, Reports

ENGAGING THE BOARD

BOARD EFFECTIVENESS
- Find Your/Their Communication Style
  - Presentation Matters
  - Goal is Strike Balance
    - Executive Summary
    - Reports/Memos
    - Appendix
### Quality, Audit & Compliance Committee (QA&CC)
#### Internal Audit (IA) - Status Update Q4

#### 2018 Internal Audit Activities and Plan Status:

<table>
<thead>
<tr>
<th>Internal Audit Projects</th>
<th>Planned Q</th>
<th>Status / Comments</th>
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<tbody>
<tr>
<td>FY18 Approved Audit Plan</td>
<td>Q3</td>
<td>Completed, report issued 09/20/2018.</td>
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<tr>
<td>Revenue Cycle Management</td>
<td>Q4</td>
<td>Completed, presented 11/12/2018.</td>
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<tr>
<td>Enterprise Risk Assessment</td>
<td>Q4</td>
<td>Completed, refer to Page 6.</td>
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<tr>
<td>Fraud Risk Assessment</td>
<td>Q4</td>
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<table>
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<tr>
<th>Management Requested Projects</th>
<th>Planned Q</th>
<th>Status / Comments</th>
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<tr>
<td>Foundation - Gift Counting and Credit Allocation</td>
<td>Q4</td>
<td>Completed, Foundation - Gift Counting and Credit Allocation issued 12/07/2018, refer to Appendix A.</td>
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<tr>
<td>Financial Closing and Reporting</td>
<td>Q4</td>
<td>Completed, Financial Reporting Process issued 01/18/2019, refer to Appendix B.</td>
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<td>- Financial Reporting Process</td>
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<tr>
<td>- Expense/Liability Capture</td>
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<tr>
<td>- Contractual Allowance</td>
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<tr>
<td>Supply Chain – Consultative</td>
<td>Q4</td>
<td>In Process, Supporting Lean team.</td>
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### ENGAGING THE BOARD

#### BOARD EFFECTIVENESS
- Communicate Routinely
  - Pre/post Meeting
  - Conduct Executive Sessions Routinely
    - Encourages Open Communication
    - Reduces Anxiety – Management
ENGAGING THE BOARD

BOARD EFFECTIVENESS

- If you can’t be with the one you love, Educate the one you are with....

What are the Right Questions?

- Does a reporting system exist, is it adequate and is it working?
- What benchmarks are being used as assessment tools to measure compliance program effectiveness?
- Are annual resolutions required?
- Is the scope and adequacy of your compliance program relative to the size and complexity of your organization?
- What plan is in place to keep the Board updated on the regulatory landscape?
Does a Reporting System Exist, is it Adequate and is it Working?

- The OIG stresses that having an effective reporting system is a key compliance element
- The Board should have a clear understanding of the reporting system
- The Compliance Officer should discuss reporting formats with the Board: Know what the Board wants and needs
  - Internal vs. External reporting systems
- Compliance Officers should be sure the information is provided to the Board in a timely manner

What Benchmarks are Being Used as Assessment Tools to Measure Compliance Program Effectiveness?

- Federal Sentencing Guidelines
  - Incentives for effectiveness
- OIG’s Voluntary Compliance Program Documents
  - Guides organizations in developing effective compliance programs
- Corporate Integrity Agreements (CIA)
  - Helps an organization in identifying potential risk areas
  - Review organizations that are similar
- Benchmarking against oneself
### Are Annual Resolutions Required by Your Board?

- Many CIAs require annual board resolutions
- Resolutions are signed by Board members and/or Board committees
- The resolution should refer to the oversight of the compliance program
- Best Practice: Have Board members attest to compliance training

### Is the Scope and Adequacy of Your Compliance Program Relative to the Size and Complexity of Your Organization?

- Compliance Programs are not a one size fits all
- Guidelines allow for variation, depending on the size and complexity of the organization
- Complexity of the organization will dictate the necessary structure of the compliance program
- Small organizations: Usually less complex, less formality, fewer resources and responsibilities carried out by available staff
- Boards of smaller organizations are usually involved to a greater degree
What Plan is in Place to Keep the Board Updated on the Regulatory Landscape?

- A formal plan should be developed
- Know who is going to be responsible for the updates
- Compliance Officers should attend board meetings
- Board members may need to take outside education to develop a better understanding of compliance, industry risk, regulatory requirements and the components of an effective compliance program
- Boards should consider appointing a compliance expert to the Board

REPORT FROM THE TRENCHES

- Putting it into Action with the Board
  - Complex, multifactorial and multi-month Investigation
    - Communication, Correction and Resolution
      - What went well
      - What we would do differently
Jodi Laurence, Esq
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Sr. Vice President, Chief Ethics and Compliance Officer
Nicklaus Children’s Health System