



## Compliance and the Board: Challenges and Best Practices

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**HEALTH CARE REGULATORY COMPLIANCE;  
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- JD, MHA
- Certifications: CHC
- More than 25 years of experience helping clients successfully manage complex healthcare compliance and regulatory concerns.
- Particular expertise assisting organizations with developing, implementing, maintaining, and assessing compliance programs, and in managing matters implicating the Stark Law and the federal Anti-Kickback Statute.

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## Objectives:

- Understand Challenges to Effective Board Engagement
- Explore Best Practice Communication with the Board
- Discuss Further Enhancing the Compliance-Board Connection

**“Our organization’s culture may not sufficiently encourage the timely identification and escalation of risk issues that have the potential to significantly affect our core operations and achievement of strategic objectives.”**

-- Executive Perspectives on Top Risks in 2019

<https://erm.ncsu.edu/az/erm/i/chan/library/2019-erm-execs-top-risks-report.pdf>

## Introduction

### **Background:**

- The U.S. Federal Sentencing Guidelines indicate the company's "governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight"
- Guidance documents from both the Department of Justice (DOJ) and the HHS Office of Inspector General (OIG) also discuss the importance of "tone at the top" and creating and fostering a culture of ethics and compliance with the law

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## Introduction

### **DOJ Expectation:**

- DOJ prosecutors are instructed to evaluate whether "the directors established an information and reporting system in the organization reasonably designed to provide management and directors with timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law"

Section 9-28.800 of the U.S. Attorneys' Manual

(<https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.800>)

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## Introduction

### **Why Compliance Professionals Struggle with Board Relationships:**

- Do not know the best way to engage the Board and help Directors understand their compliance oversight responsibility
- Are unsure of the balance between information overload and not enough information in reporting to Board
- Limited access to Board members
- Compliance may not be a priority in the organization

## Understanding Challenges to Effective Board Engagement



## Two-Sides of the Same Coin

### Board Member

- We need more information
- We don't know what we don't know
- Tell me more
- We only have so much time

### Compliance Officer

- I don't know what information the Board wants
- How do I educate the Board about pertinent high-risks?
- They don't seem interested or concerned
- I don't get much time with the Board



## Challenges to Effective Board Engagement

### **Access to the Board**

- No precedent of interaction
- Senior Leadership roadblock
- State Open Meetings Acts

### **Unengaged/Uneducated Board**

- Inconsistent interaction with or education about compliance
- Lack of understanding regarding compliance and oversight responsibility
- Insufficient awareness of compliance risks and benefits of compliance
- View of compliance as "check list"
- Lack of understanding of Tone at the Top/culture responsibility
- Potential conflict of commitment

## Challenges to Effective Board Engagement

### **Novice Compliance Officer**

- Lack of experience with engaged Board
- Timidity in role

### **Central Board with Oversight of Multiple Entities**

### **Prioritization of Time with Board**

- What is most important to report in limited amount of time?
- How deep or shallow should compliance education and compliance reporting be?

## Strategies for Effective Board Engagement

Time!

Trust and rapport as Board sees value of compliance and expertise of Compliance Officer

Invest in CEO and senior leaders, too

Make a plan for Board engagement



## Best Practice Communication with the Board



## Communicating with the Board

"A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization's compliance program..."

-- Office of Inspector General in 2015

## Communicating with the Board

### Questions Boards Should Ask of Compliance

- 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?
- Is the scope and adequacy of our Compliance Program relative to the size and complexity of our organization?
- What benchmarks are being used as assessment tools to measure Compliance Program effectiveness?
- Are annual compliance resolutions required by our Board?



## Communicating with the Board

### Board Access

- Do the compliance and relevant control functions have direct reporting lines to anyone on the Board of Directors and/or audit committee?
- Does the Compliance Officer have appropriate authority and direct access to the governing authority or an appropriate subgroup of the governing authority?
- Does the Compliance Officer have access to the Board without Senior Management present if needed?
- Are there executive sessions?
- Are there standing meetings with the Board Chairperson?

## Communicating with the Board

### Onboarding

- Formal program/process to orient new Board members to their compliance responsibilities and Compliance Program
- Intentional, documented, and in-person; should provide packet with relevant Compliance resources and program documents



## Communicating with the Board

### Education

- Include Board education in Compliance Program Education and Training Plan
- Periodic training
  - At least annual general training; other specific education as needed
  - Oversight responsibility
  - Compliance Risks
  - Current industry developments and recent enforcement
  - Compliance Program, including policies and procedures
  - Certification/attestation
- Effective depth of education
  - May evolve/deepen over time



## Communicating with the Board

### Reporting to the Board

- How often?
  - At least quarterly in-person reports
- Depth of reporting?
  - What does the Board want/expect?
- Content?
  - Oversight
  - Risk assessment and work plans
  - Code
  - Policies and Procedures
  - Reports to Compliance
  - Investigations
  - Audits
  - Corrective Action Plans
  - External Activity
  - Compliance Education and Training
  - Exclusion Screening
  - Incentives



## Communicating with the Board

### Reporting Content

- Oversight
  - Assessment and approval of compliance budget, staffing, resources based on identified risk
  - Assessment of Compliance Program effectiveness
  - Program improvement needs
  - Escalation and Accountability
- Risk Assessment and Work Plans
  - Risk assessment process and results
  - Work Plan based on Risk assessment
  - Regular report to Board on Work Plan projects/progress
  - Changes to Work Plan
  - Completion of Work Plan

## Communicating with the Board

### Reporting Content

- Code of Conduct
  - Board approval of Code, changes to Code
- Policies and Procedures
  - Policy approvals and changes
- Reports made to Compliance
  - Categorized and trended data on reports
    - Method of report (email, phone call, anonymous hotline, etc.)
    - Benchmark data, such as days open
    - Topic of report (i.e., billing, privacy, research, etc.)
    - Resolution of reported issues/evidence of follow up
- Investigations
  - Categorized and trended data on investigations
  - More details of significant investigations
  - Outcomes of investigations and resulting education

## Communicating with the Board

### Reporting Content

- Audits
  - Audit Plan evidencing focus on high-risk areas
  - Audits performed
  - Audit results and remediation/actions in response to results
  - Concerns with Corrective Action Plans
    - Validation/follow up audits
    - Untimely corrective action plan/operations response
- External activity
  - Government investigations
  - External audits (i.e., OIG, payors)
- Compliance training
  - Statistics- completion, reach of program, topics
- Culture survey
  - Results and action plan

## Communicating with the Board

### Reporting Content

- Exclusion screening
  - Process, data, and resolution of potential “hits”
- Discipline
  - Evidence of discipline for compliance violations
  - Trended/high level, vs. more details for significant violations
  - Consistency across like violations
- Incentives
  - Recognition/appreciation of those exhibiting compliance and ethical behaviors and actions
  - Incentives Plan; methods for incentivizing compliance

## Further Enhancing the Compliance-Board Connection



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### **Once relationship is established, steps to go to the next level of collaboration**

- Regular meetings with Board Chair and other Directors
  - Interactions in addition to Board meetings
  - Quarterly or monthly
- Board certifications
  - Regular feature of CIAs; considered a Best Practice outside CIAs
  - Does your Board know enough about your Compliance Program to attest it is effective?
- Evolving business strategy and approach
  - As the Board's compliance engagement increases, note the types of questions the Board has and perspectives Board members have on various issues and business decisions

## Further Enhancing the Compliance-Board Connection

### **Once relationship is established, steps to go to the next level of collaboration**

- Effectiveness Assessment
  - Intentional Program self-assessment
  - Engagement of outside compliance expert
- Additional compliance experiences for Board
  - Addition of a Director with healthcare compliance and/or CIA experience
  - Additional training, such as HCCA Board/Audit Committee training events

## Guidance / Best Practice Sources:

- [OIG Compliance Program Guidance Per Facility Type](#)
- [Recent Corporate Integrity Agreements](#)
- [OIG 2015 Practical Guidance Oversight HealthCare Boards](#)
- [2017 OIG—HCCA Measuring Compliance Program Effectiveness-Resource Guidance](#)
- [2019 Updated Department of Justice Evaluation of Corporate Compliance Programs](#)

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**QUESTIONS???**

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