Responding to Government Investigations and Enforcement
Managing the Crisis and Communicating with Key Constituencies

Richard W. Westling, Epstein Becker Green
Molly Cate, Jarrard Phillips Cate & Hancock
Healthcare Enforcement Compliance Institute
October 30, 2017

Meet Your Presenters

Molly Cate
Partner and Chief Innovation Officer
Jarrard Phillips Cate & Hancock
mcate@jarrardinc.com
@catempc

Richard W. Westling
Member
Epstein Becker Green
rwestling@ebglaw.com
@richardwestling

Why Crisis Management at a Healthcare Enforcement Compliance Conference?
Overview

- How to Recognize a Smoldering Enforcement Crisis and its Risks
- Being Prepared to Respond: Crisis Team and Crisis Management Plan
- Role of Communications in Response Plan
- Responding to the Crisis
- Communicating about the Response: Who, What and When?
- Case Study: Applying Crisis Management Strategies to a Real Enforcement Crisis

Signs of Possible Enforcement

- Compliance Complaint/Issue
- Subpoena/Civil Investigate Demand
- Search Warrant
- Agents Contact Current or Former Employees

Crisis Risks

- Compliance/Legal
- Financial
- Operational
- Reputational
The Team and the Plan

- Who should be on the Crisis Management Team?
- Who should lead the effort?
- Who should provide outside support?
- What goes in the Crisis Management Plan?

Responding to the Crisis

- Compliance Response
- Legal Response
- Internal Investigation
- Privilege Considerations
- Self-Disclosure

The Role of Communications

Why it matters and how to think beyond “no comment”
Today's Landscape: The Trust Crisis

Trust in institutions is at an all-time low.

2017 Edelman Trust Barometer showed the largest ever drop in trust across four institutions.

Leadership Trust Crisis

CEO credibility dropped 12 points to an all-time low of 37%.

Government leaders are the least credible at 29%.

Loss of Faith in the System

53% Believe the system is failing them.
32% Are uncertain.
15% Believe it’s working.
Five Steps to Success

How to structure a successful communications effort

#1 Overprepare

- Identify your vulnerabilities
- Build an interdisciplinary team
- Don’t wait to bring in communications
- Agree on approach and philosophy
- Plan creation: details
- Set up monitoring process and protocols ahead of time
#2 Think Like a Political Campaign

- Rank your constituents
- Identify opposers and supporters
- Know whom they trust and how they get information
- Identify the reputational risk for each
- Prioritize the release of information among them

#3 The Golden Rule

- Tell it all, tell it first, tell it again ... and again
- Put yourself in control
- What sticks: how you handle it vs. what you did
- Message management is the name of the game
  - Don't play defense, wait
  - Be "the source"
  - It's not over when it's over
  - Keep an ear to the ground

#4 The Government Is Your Friend

- Or at least pretend ...
- Develop your communications timeline and materials in partnership ... if possible
- Share an overview of your communications plan (not the details)
- Understand their broader agenda
- Know the boundaries
#5 Be Authentic ... Really

- To the public (and everyone but the government), tone trumps the details
- Message must strike a balance
  - Acknowledge, but get to the solution
  - Focus on the patient or mission of the organization
  - Highlight your commitment to legal, ethics, and compliance
- Be smart, but lean in and address how people feel
- Avoid legal ease and jargon
- Know the power of apology

Q&A

Richard Westling – rwestling@ebglaw.com
Molly Cate – mcate@jerrardinc.com