

# OIG: Practical Guidance for Health Care Governing Boards on Compliance Oversight

Debbie Troklus, CHC-F, CCEP-F, CHRC, CHPC, CCEP-I  
Managing Director, Aegis Compliance and Ethics Center  
[dtrokus@aegis-compliance.com](mailto:dtrokus@aegis-compliance.com)

▶ “A Critical Element of Effective oversight is the process of asking the right questions.”

## Board Expectations in Relation to the Compliance Program: 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 by our Board?
- ▶ Is the scope and adequacy of our compliance program relative to the size and complexity of our 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 our 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 our Compliance Program Relative to the Size and Complexity of our 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.

## The Structure: Roles and Relationships

- ▶ The Compliance Function
- ▶ The Legal Function
- ▶ The Internal Audit Function
- ▶ The Human Resource Function
- ▶ The Quality Improvement Function
  
- ▶ Define the interrelationships in charters and other organizational documents
- ▶ Cooperation and collaboration
- ▶ Boards should evaluate the compliance program structure

## The Compliance Function

- ▶ Is an operational function
- ▶ Must be independent
- ▶ Prevent, detect and deter non-compliance
- ▶ Assist in compliance policy development
- ▶ Develop incentives to promote compliance
- ▶ Develop compliance work plans
- ▶ Develop effectiveness measures
- ▶ Work with management to develop corrective action plans and then ongoing monitoring
- ▶ Develop reports for management and board
- ▶ Conduct investigations
- ▶ Assure sanction checks are conducted
- ▶ Assure all seven elements are in place and working

## The Legal Function

- ▶ Advises the organization on the legal and regulatory risks of its business strategies
- ▶ Provides advice and counsel to management and the Board
- ▶ Defends the organization in legal proceedings
- ▶ Initiates legal proceedings against other parties
- ▶ Collaborates with the compliance officer
- ▶ Evokes attorney-client privilege
- ▶ Is considered a management function
- ▶ Conflicts arise when the legal function is/or oversees the compliance function

## The Internal Audit Function

- ▶ Provides an objective evaluation of the existing risk and internal controls
- ▶ Ensures monitoring functions are working as intended
- ▶ Identify where management monitoring and/or additional oversight is needed
- ▶ Helps management enhance internal controls, reduce risk and promote efficient use of resources.
- ▶ Internal audit can fulfill the auditing requirements of the Guidelines if they have the skill set.
- ▶ Internal audits involvement does not exempt compliance from being engaged in the process and the outcomes.
- ▶ An internal audit representative should be on the Oversight Committee.

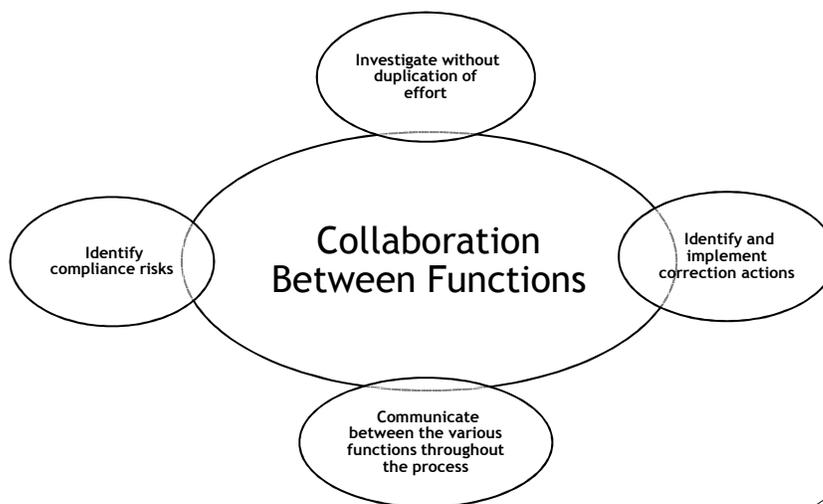
## The HR Function

- ▶ Manages recruiting and hiring
- ▶ Conducts employee screening
- ▶ Conducts employee sanction checks, compliance should monitor the process
- ▶ Coordinates employee benefits
- ▶ Can be involved in the education and training of employees
- ▶ If HR develops compliance education and training, compliance should be involved in the design and assignment
- ▶ Can be part of the compliance investigative team
- ▶ Partner with compliance and management regarding disciplinary actions
- ▶ Many hotlines calls are HR related, compliance should monitor until resolution

## The Quality Improvement Function

- ▶ Promotes consistent, safe and high quality practices
- ▶ Improves efficiency and health outcomes by measuring and reporting on quality outcomes
- ▶ Recommends necessary changes to clinical processes to management and Board
- ▶ Helps the organization minimize patient harm
- ▶ Is a partner with compliance and risk
- ▶ Can be a part of the investigative team

- ▶ “OIG believes an organization’s Compliance Officer should neither be counsel for the provider, nor be subordinate in function or position to counsel or the legal department, in any matter.”



## Reporting to the Board

- ▶ Management reports should be independent from compliance
- ▶ Compliance reports
  - ▶ Objective scorecards
  - ▶ Internal and external investigations
  - ▶ Serious issues raised during audits
  - ▶ Hotline call activity
  - ▶ Allegations of material fraud
  - ▶ Sr. management misconduct

## Know What the Board Wants

- ▶ Discuss with the Board the format and frequency for reporting
  - ▶ Dashboards
  - ▶ Balance too much and too little information
  - ▶ Timely reporting of suspected violations
  - ▶ A snapshot of where the organization is in regards to compliance
- ▶ Regular executive sessions
  - ▶ Open dialogue
  - ▶ Avoids suspicion

## Boards Role in Identifying and Auditing Potential Risk Areas

- ▶ Boards Responsibility
  - ▶ Ensure that management and the Board have strong processes for identifying risk
    - ▶ Internal
    - ▶ External
  - ▶ Ensure that management consistently reviews and audits risk areas, as well as develops, implements, and monitors corrective action plans
    - ▶ Recent regulatory trends
    - ▶ New regulations
    - ▶ Compare data against peers
  - ▶ Understand how their organization is reviewing physician arrangements and what level of risk is acceptable in the arrangements
  - ▶ Be prepared to answer tough questions from stakeholders

## Encouraging Accountability and Compliance

- ▶ Compliance is an enterprise-wide responsibility
- ▶ Employees should have defined incentive goals and objectives against which performance may be measured and incentivized
- ▶ Board should ask management about its efforts to develop policies and identifying and returning overpayments
- ▶ Proactive in self-disclosing to the government
- ▶ Assure there is good communication channels across the organization

## Conclusion

- ▶ The Board should do the following
  - ▶ Make an effort to increase its knowledge of risks, how the organization handles the identified risks and the flow of reporting to Sr. Management
  - ▶ Encourage a level of accountability from everyone
  - ▶ Assure that the organization complies with relevant laws