



December 2019

Conundrums and Barriers to Compliance Program Effectiveness

Kenneth Zeko, JD, CHC
SVP, Compliance and Risk Services
Crowe Healthcare Risk Consulting, LLC

Smart decisions. Lasting value.™

1

Conundrums and Barriers to Compliance Program Effectiveness

Overview

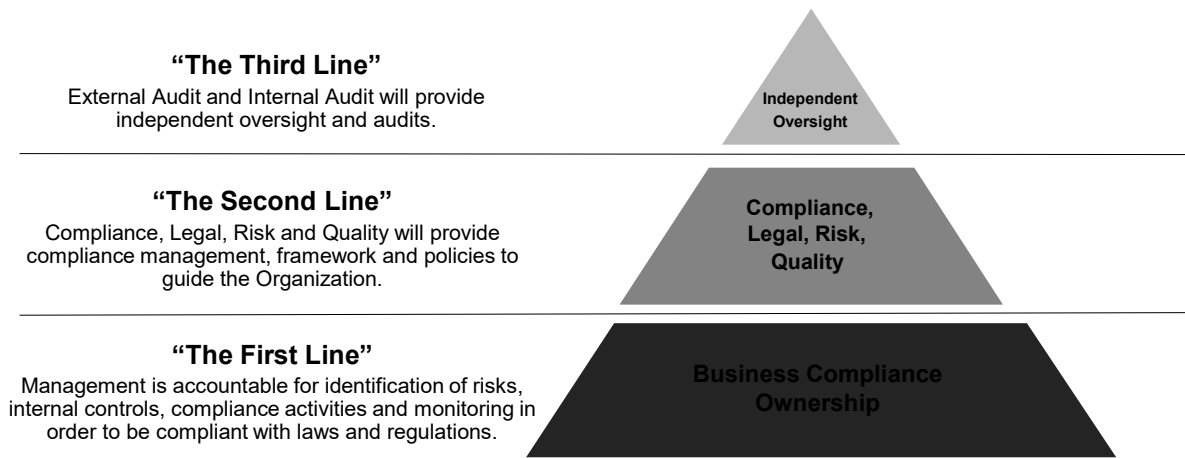
- 20 Years Recap
- The Operational/Compliance Conundrum and How to Break the Cycle
- Inherent Barriers to Effectiveness
- Key Performance Indicators
- 90/10 Perception



2

20 Years Recap

Three Lines of Defense



Three Lines of Defense

- Exhausted parent with no help!
- Lack of understanding at operational level of what Compliance is and the three lines
- Failure to imbed three lines defense model into the organization

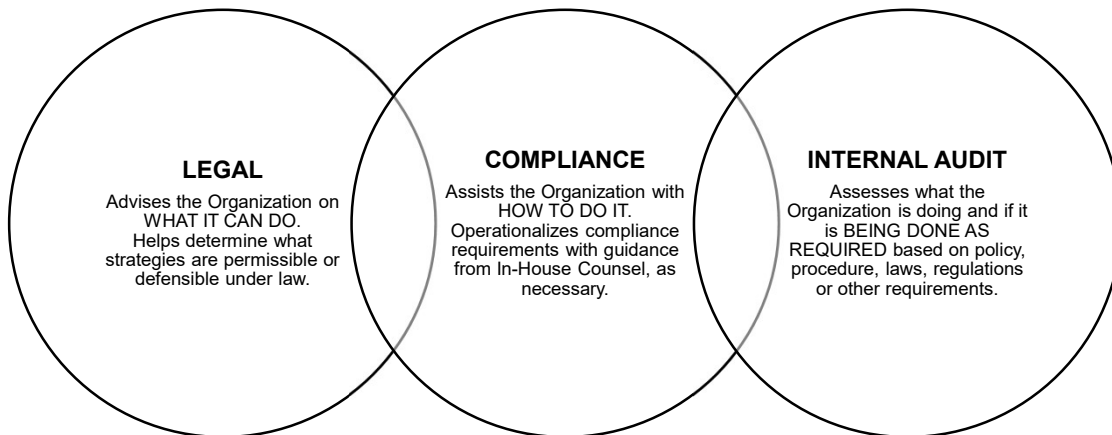


5

5

Three Legged Stool of Legal, Compliance, and Internal Audit

Leading practice organizations can point to their three departments of Internal Audit, Compliance, and Legal using the metaphor of a three-legged stool that sits well balanced and firm as it supports the Organization. In order to optimize operational effectiveness in a way that is compliant and creates minimal risk, it is imperative that there is an ongoing collaborative working relationship among these three critical functions.



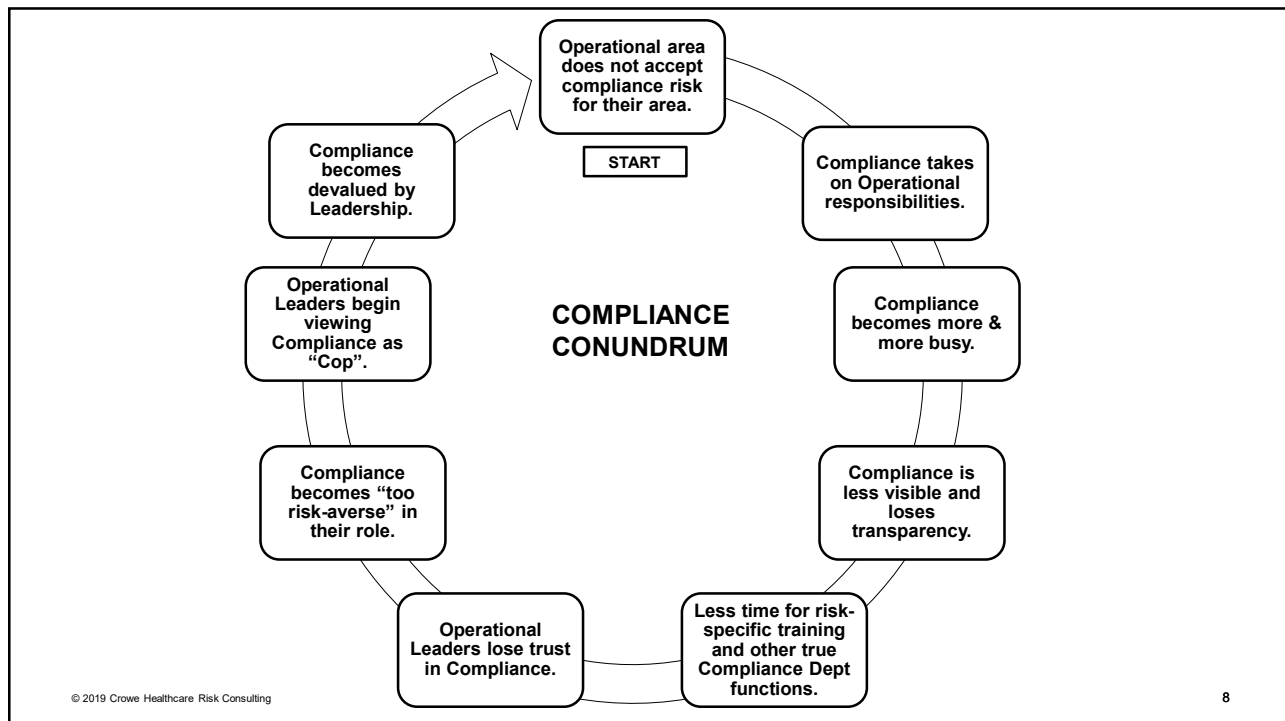
6

6

The Operational/Compliance Conundrum and How to Break the Cycle

7

7



8

Inherent Barriers to Effectiveness

9

9

Inherent Barriers to Effectiveness

Compliance as the “Cop”

- Compliance should serve as the Strategic Advisor/Partner
- Maintain visibility
- Build relationships
- Understand the business of the organization

Compliance Shaming

- Covert/Insidious language by leadership
- Compliance is “too risk averse;” Compliance is “too conservative;” the Compliance Officer “lacks polish;” etc.
- Devalues, undermines, diminishes confidence in Compliance and erodes the Culture of Trust

Reporting Structure & Inherent Conflicts of Interest

- Lack of access and conflicts between Compliance/Risk/Internal Audit/CFO/General Counsel

© 2019 Crowe Healthcare Risk Consulting

10

10

Inherent Barriers to Effectiveness

Appearance of General Counsel steering compliance decisions

- From the outside looking in, does it appear that Compliance is independent?
- What do your documents say?
- What do your Committees indicate?

Lack of Operational Compliance Committee

- Inability to embed Three Lines of Defense
- Inability to embed 7 Elements into Operational Areas
- Conduit to Accountability

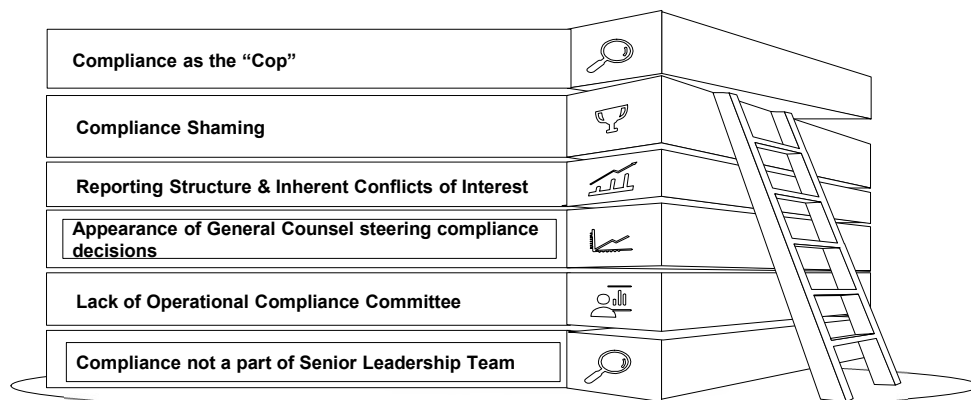
Compliance not a part of Senior Leadership Team

- Does the Compliance Officer participate in ELT/SLT meetings?
- Is the Compliance Officer on the company's leadership page of their webpage?
- Do employees perceive Compliance Officer as a member of ELT/SLT?

11

Inherent Barriers to Effectiveness

One or two barriers might not diminish effectiveness, but the combined impact, over time, results in an ineffective Compliance Department and negatively affects the Organization's culture.



12



Key Performance Indicators

13

13

Key Performance Indicators

7 ELEMENTS FOR COMPLIANCE PROGRAM EFFECTIVENESS

Policies/Procedures/Code of Conduct:

- Percentage of new employees who complete Code of Conduct acknowledgments – Goal = 100%

Oversight:

- Percentage of Board Compliance Committee meetings where a quorum was achieved – Goal = 100%

Education/Training:

- Percentage completion of annual compliance training – Goal = 100%

Communication/Hotline:

- Percentage of reports resolved within policy timeframes – Goal = 100%

14

14

Key Performance Indicators

7 ELEMENTS FOR COMPLIANCE PROGRAM EFFECTIVENESS (continued)

Audit/Monitoring:

- Percentage of compliance audits/reviews on workplan that are completed
- Number of excluded providers identified – Goal = 0

Response Process/Corrective Action:

- Number of substantial (i.e. 100K+) overpayments and dollars refunded to government payors

Enforcement/Disciplinary Actions:

- Number of compliance matters with disciplinary actions – i.e. # of terminations, # written warnings, # coaching/counseling

15

15

Key Performance Indicators

RISK BASED (TOP RISK AREAS):

Billing/Coding compliance metrics (per recent risk assessment)

- The number of records reviewed across the organization (either by Compliance, IA, or operations) and the error rates

Provider credentialing (per recent risk assessment)

- Reporting on a sample of physicians credentialed

Physician Arrangements metrics

- The number of physician payment, lease, or contract audits completed. The number of time sheets reviewed. Comparison of Accounts Payable amounts to contracted amounts

16

16

Key Performance Indicators

CULTURALLY IMPACTFUL METRICS

- The number of Compliance Roadshow sessions completed
- The number of times the CEO overtly mentions the Compliance Officer by name and the Compliance Program
- The number of meetings between the Compliance Officer and Board Members
- The number of meetings between the Compliance Officer and CEO
- The number of surveys conducted which assess the employees knowledge of Compliance, the Compliance Officer, the culture of the organization, etc.
- The number of walkthroughs conducted by the Compliance Officer and/or their staff
- Whether or not the organization has conducted an independent compliance program assessment?
If not, whether one has been budgeted?

17

17

Key Performance Indicators

CULTURALLY IMPACTFUL METRICS (continued)

- The number of individual calls/questions to members of the Compliance Department
- The number of operational department (risk specific) training sessions regarding specific compliance issues
 - For example, Stark/Anti-kickback training for departments with Medical Directors; EMTALA for ED; HIPAA for HIM; False Claims Act for HIM, Billing, Quality, Revenue Cycle; Restraints for Nursing; Stark/Anti-kickback for Post-Acute, Purchasing, Materials Management, Marketing
- The number of operational Compliance Plan documents in existence
- The number of departmental monitoring assessments being performed
- To what extent the organization conducts Compliance Week activities
- The number of operational meetings the Compliance Officer and/or their staff attends
- How many speaking engagements or articles the Compliance Officer conducts/creates

18

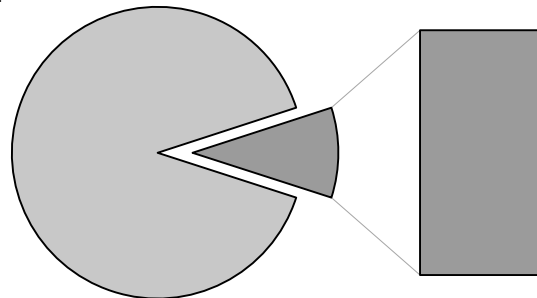
18

90/10 Perception

90/10 Perception

- Appearance that the Compliance Department has free reign
- Compliance appears to be busy working on Code of Conduct, HIPAA, Conflict of Interest and Hotline calls
- Lack of transparency into key risk areas
- Most often, Compliance Departments shirk responsibility regarding physician arrangements

90/10 Perception





Thank You.

Kenneth Zeko, JD, CHC
Senior Vice President
Compliance and Risk Services
Crowe Healthcare Risk Consulting, LLC

Phone: 214-458-3457
E-mail: Kenneth.Zeko@crowehrc.com

In accordance with applicable professional standards, some firm services may not be available to attest clients.
This material is for informational purposes only and should not be construed as financial or legal advice. Please seek guidance specific to your organization from qualified advisers in your jurisdiction.
© 2019 Crowe LLP, an independent member of Crowe Horwath International crowe.com/disclosure

21