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Lessons Learned from a Whistleblower

How to Strengthen Your Compliance Program, Address the Concerns of Whistleblowers Before They Become Qui Tam Relators, and Use Your Compliance Program to Preemptively Identify and Address Issues as They Arise

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Introduction

Debra Maul
Retired, Former VP of Sales, Dominion Diagnostics

Barb Senters, CCEP
Chief Compliance & Ethics Officer, Sonic Healthcare USA

Andrea L. Treese Berlin
Senior Counsel, U.S. Department of Health and Human Services, Office of the Inspector General, Office of Counsel to the Inspector General

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A Whistleblower's Perspective…

"Whistle-blowing, is not an act of disloyalty, but the ultimate manifestation of employee loyalty to the organization … allegiance to the organization's mission, its goals, its value statement, and its code of conduct."

Retaliation against Whistle-Blowers: No Good Deed Goes Unpunished
October 2012

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Themes of the story…

- **The Compliance Program**
- Outside Legal Opinion (Verbal)
- Retaliation by Middle Manager
- Communication with the Whistleblower during Investigations
- Human Resources Issues

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Whistleblower Statistics

60% Received No Response

85% Blew Whistle TWICE Internally

39% <2yrs with Company

Source: "Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health and Social Care"

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Whistleblower Reporting

How Incident Was Reported	Percent Utilizing Reporting Method
Supervisor	**82%**
Higher Management	52%
Human Resources	32%
Hotline/Help Line	16%
Ethics Officer	15%
Outside person (not governmental or regulatory authority)	13%
Legal	11%
Governmental or Regulatory Authority	9%

Overall, 20% of reporters ever chose to tell someone outside the company.

Responses total more than 100% because respondents selected all that applied.
National Business Ethics Survey 2013. www.ethics.org
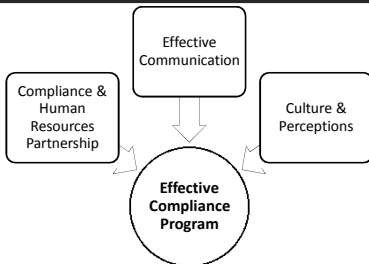
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Themes of the story...

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Preventing a Qui Tam Lawsuit

Effective Communication

Compliance & Human Resources Partnership

Culture & Perceptions

Effective Compliance Program

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Key Components of a Compliance Program

1. Written policies and procedures
2. Compliance professionals   Seven Fundamental Elements
3. Effective training
4. Effective communication
5. Enforcement of standards
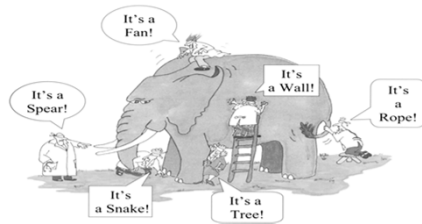6. Internal monitoring
7. Prompt response

Issues

- Claims
- Arrangements
- Marketing

Perception
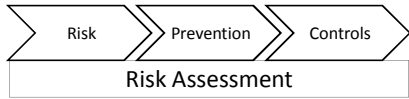## The Blind Men and the Elephant

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Proactively Address Perceptions with your Compliance Program

- Are all Seven Elements in place?
- Do employees know the controls in place to address the risks that pertain to their job?
  – Inform them of the specific risks and how the company works to prevent & deter them.
  – Engage them as the experts on their job to enhance the Compliance Program

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Proactively Address Perceptions with your Compliance Program

- Approach Education as though you are training every employee to be a Compliance Officer. Explain "Why".
- Risk Assessment- Increase employee engagement by including the department in the development.

Risk → Prevention → Controls

Risk Assessment

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OIG Self-Disclosure Information

OIG Self-Disclosure Protocol

On-Line Submission to OIG

Self-Disclosure
Online Submission

OIG Self-Disclosure Protocol

- Make sure the submission is complete.

- Consult OIG's website at: oig.hhs.gov.

CHECKLIST

Benefits of Self-Disclosure to OIG

- Cooperative Process.

- Likely pay a lower multiplier on single damages.

- Usually no integrity obligations.

U.S. Sentencing Guidelines (Chapter 8)

§8B2.1.   Effective Compliance and Ethics Program
(a)   To have an effective compliance and ethics program, for purposes of subsection (f) of §8C2.5 (Culpability Score) and subsection (b)(1) of §8D1.4 (Recommended Conditions of Probation - Organizations), an organization shall—

(1) exercise due diligence to prevent and detect criminal conduct; and
(2) otherwise promote an **organizational culture** that encourages ethical conduct and a commitment to compliance with the law.

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What is Organizational Culture?

A Set of shared values, written and unwritten rules that guide employee behavior.

It affects the way people and groups interact with each other, with clients, and with stakeholders. In addition, organizational culture may affect how much employees identify with an organization thus impacting performance
and morale.

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Organizational Culture

What influences culture?

- **Artifacts**- Visible components of culture
  - Rituals and Ceremonies: New Hire/Annual Training, awards, Policies & Procedures
  - Symbols & Slogans-summarize intrinsic behavior.
    - Example: "No excuses, just results" or "Patients First"

- **Values** - the kind of behavior the organization wants to promote and reward vs. what behavior is actually promoted and rewarded.

- **Stories** - Narratives based on true events. Stories become company heroes. Good or bad. Employees relate to the current organization due to events that happened in the past and carries on the legacy.

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Compliance & HR Partnership

Organizational Culture Indicators You Need to Know:
- Employee Satisfaction Surveys
- Disgruntled departments, employees, and leaders-Why?
- Exit Interviews

Human Resources Partnership:
- Include/Inform of Compliance Investigation
- Know HR protocol
- Inform of potential Retaliation scenarios
- Exit Interviews
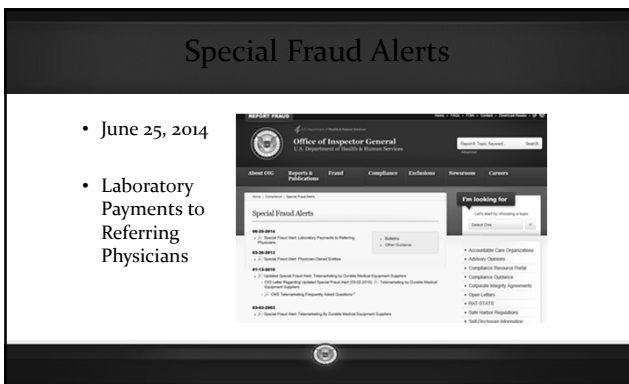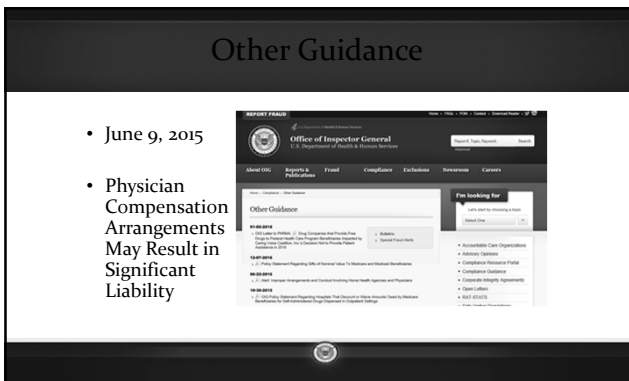- New Hire Training
- Culture Strategy

BFF ♥ 4ever

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OIG.HHS.GOV

Compliance Resources Portal

Advisory Opinions

Special Fraud Alerts

- June 25, 2014

- Laboratory Payments to Referring Physicians

Other Guidance

- June 9, 2015

- Physician Compensation Arrangements May Result in Significant Liability

In Conclusion

- ✓ Make sure you have a strong compliance program
- ✓ Establish/strengthen internal auditing – and self-disclose identified issues as appropriate
- ✓ Address all concerns without prejudging merit
- ✓ Work on the "tone at the middle" - most employees report issues to their supervisor before reporting outside the company
- ✓ Assess and influence culture - create a culture of compliance
- ✓ Utilize OIG resources

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