

# Ethics and Compliance: Do you need both in order to operate an Effective Compliance Program? Yes!

Courtney E. Thiele  
Director, Bioethics Graduate Programs  
Instructor, Division of Bioethics  
The Ohio State University  
College of Medicine  
Columbus, Ohio

Mark R. Chilson  
EVP & General Counsel  
CareSource  
Dayton, Ohio

Jeffrey E. McFadden  
Partner  
Stradley Ronon Stevens  
& Young, LLP  
Washington, DC



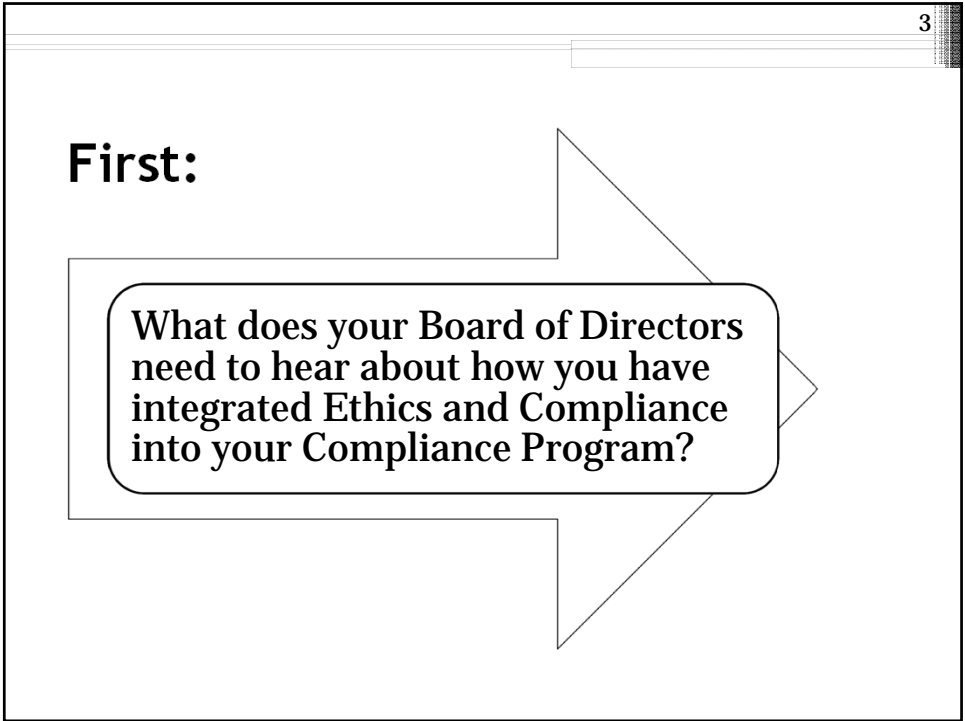
## What will we cover today?

1. What does your Board of Directors need to hear about how you have integrated Ethics and Compliance into your Effective Compliance Program?
2. Why do Ethics and Compliance go hand in hand to strengthen your Compliance Program and fundamentally root Employees' Trust in your Organization?
3. How will your Compliance Program benefit from talking about Ethics on a regular basis when Compliance is also always front and center in your Organization?

3

**First:**

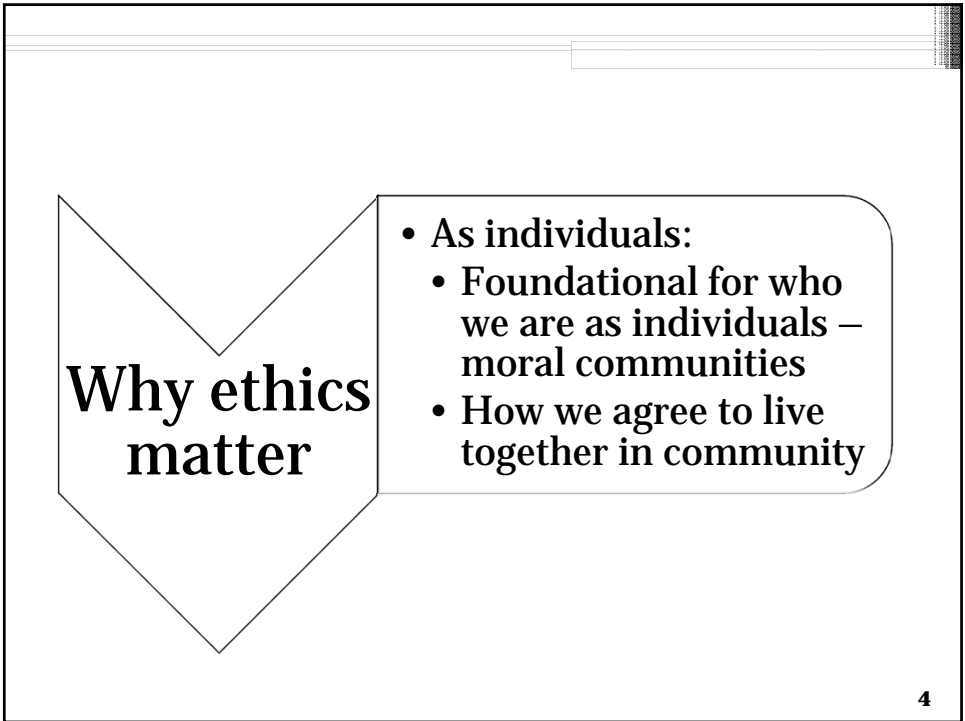
What does your Board of Directors need to hear about how you have integrated Ethics and Compliance into your Compliance Program?



Why ethics matter

- As individuals:
- Foundational for who we are as individuals – moral communities
- How we agree to live together in community

4



As MCOs: At the core of healthcare (“do no harm” – this is the operational level of ethics as a *modus vivendi* – ethics/values we agree to as a way of living in community. Having an organization that is ethically-minded should direct towards the mission the organization is founded upon. In healthcare, some of these “core” ethics include focusing on:

- Healing (patients)
- Stewardship (patients, members, communities, your organization)
- Trust (patients, members, employees, board, regulators, public)

5

As an organization we must establish our compliance program with core principles which:

- ✓ Will never be compromised.
- ✓ Will never be sacrificed.
- ✓ Will always be followed.
- ✓ Will always be openly discussed.
- ✓ Will be readily identified as coming from the Compliance Department.

6

## Practically, this looks like:

- Having integrity (looking to one's individual character)
- Taking responsibility for your own actions, but also being sensitive to the impact of your actions on those around you and your organization
- Being mission-oriented – remember the goals of your organization and to whom the mission is focused on serving
- Being transparent with your organization's compliance
- Being honest with all that you encounter (members, regulators, board, legislature, public)
- Being the ethical leader in the room at every meeting and during every conversation – especially with the board

*Business Ethics in Healthcare: Beyond Compliance*, Leonard J. Weber, Bloomington: Indiana University Press: 2001.

7

Healthcare as a Service-based organization v. profit-based organization? Navigating this relationship calls for prudence

Focusing on the mission will help set the tone and direct how decisions are made

Think of who are you are responsible to: owners (profit focused) or patients and community (service focused)

Healthcare as a service, and as such comes with responsibilities beyond a "typical" for-profit business (even if the healthcare service provider is a for-profit entity)

Recognizing the reality that finances play – both in terms of cost and profit, but consider in the context of the mission of the organization

*Business Ethics in Healthcare: Beyond Compliance*, Leonard J. Weber, Bloomington: Indiana University Press: 2001.

8

## Your Job as Compliance Professionals

- 1  
Follow the Law
- 2  
Follow the Regulations
- 3  
Follow the Contract
- 4  
Follow Policies & Procedures
- 5  
Follow ...

**And Always Be Ethical!**

9

Core Principle  
**DO NO HARM!**

**Ethics in Action**

10

Adopt Core Principles of your organization's Compliance Program

Do no harm.

Talk about this within organization  
– Especially when the Compliance Officer goes to Board Meeting.

**Compliance Officer tells the Board:**

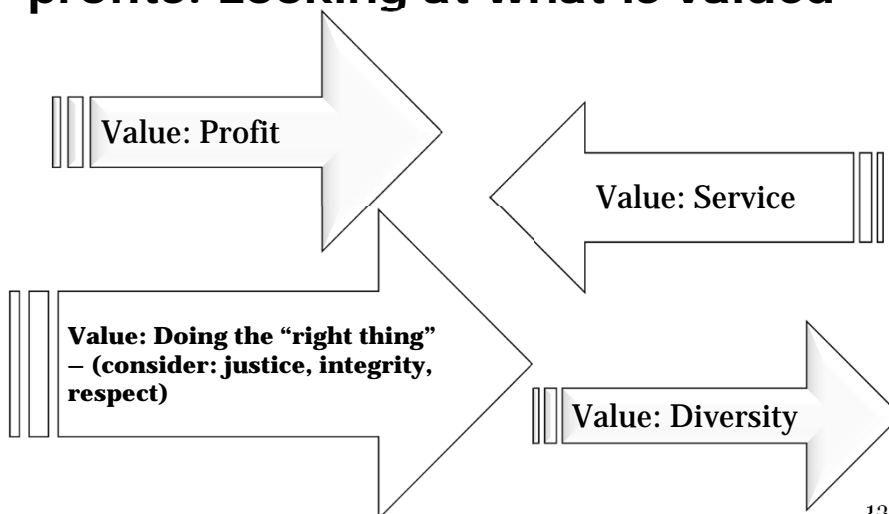
- We are an honest organization.
- We are a transparent organization.
- We act with integrity every day.
- We (the entire organization, including the Board) are responsible for compliance.

11

Personal ethical values become Organization's ethical values.

12

## Tension between compliance and profits: Looking at what is valued



## How will your Compliance Program benefit from talking about Ethics on a regular basis when Compliance is discussed?

**Change in culture**  
 – Managed care as  
 a fiduciary  
 relationship with  
 patients/members

- Transparency
- Honesty
- Stewardship
- Prudence

See, "Business Ethics and Health Care: The Re-Emerging Institution-Patient Relationship," *John F. Journal of Medicine and Philosophy*, Vol. 24, No. 5, pp. 535–550 (1999).

14

## John Dean – Ethics in Action



15

## Honesty and Responsibility in Action



16



## United Airlines Flight 232

Ethics Begins a Long Time  
Before an Emergency Arises



17

18

### Look for Personal Values in People

“In looking for people to hire,  
you look for three qualities:  
integrity, intelligence, and  
energy.



And if they don't have the first,  
the other two will kill you.”

— *Warren Buffett*

## THE ETHICAL CHALLENGE: FREE MARKET FORCES, PRESSURE POINTS, AND TRENDS

**Transparency - Investor and Regulatory Demand for Full Disclosure**



*"Let's never forget that the public's desire for transparency has to be balanced by our need for concealment."*

**STRADLEY  
RONON**

19

## THE ETHICAL CHALLENGE: FREE MARKET FORCES, PRESSURE POINTS, AND TRENDS

**Independence – Investor and Regulatory Demand for Independence Between Management and Its Overseers and Gatekeepers (e.g., Independent Directors, Counsel and Auditors)**



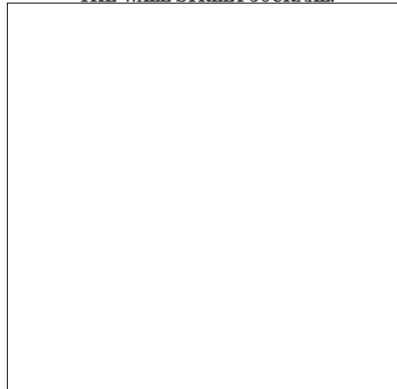
**STRADLEY  
RONON**

20

**THE ETHICAL CHALLENGE:  
FREE MARKET FORCES, PRESSURE POINTS, AND  
TRENDS**

**Control – The Struggle for Control of the Company Among  
Its Management, Its Board, and Its Owners**

THE WALL STREET JOURNAL



STRADLEY  
RONON

21

**THE ETHICAL CHALLENGE:  
FREE MARKET FORCES, PRESSURE POINTS, AND  
TRENDS**

**World Citizenship – An Increasing Emphasis on Social  
Responsibility (e.g., Green Initiatives, Fair Labor  
Practices, Foreign Corrupt Practices)**

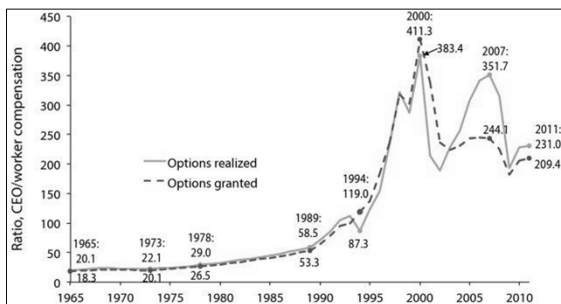


STRADLEY  
RONON

22

**THE ETHICAL CHALLENGE:  
FREE MARKET FORCES, PRESSURE POINTS, AND  
TRENDS**

**Equity – Public and Regulatory Focus on the Gap  
Between Executive Compensation and Median Income**



**STRADLEY  
RONON**

**THE ETHICAL CHALLENGE:  
FREE MARKET FORCES, PRESSURE POINTS, AND  
TRENDS**

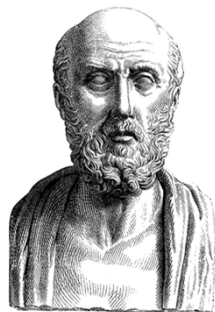
**Diversity- At all levels of the organizational  
structure as well as in third-party relationships**



'We need to focus on diversity.  
Your goal is to hire people who all look  
different but think just like me.'

**STRADLEY  
RONON**

## LAW v. ETHICS IN THE MCO SETTING



Hippocrates

**LAW: "DO NO HARM"**

**TRANSLATION: "DON'T BREACH THE STANDARD OF CARE."**

**ETHICS: "DO GOOD"**

**TRANSLATION: "PROVIDE CARE"**

STRADLEY  
RONON

25

## SOME CAUTIONARY TALES



Martin Shkreli



Evan Greebel

STRADLEY  
RONON

26

## SHKRELI and GREEBEL

- Classic case of “robbing Peter (Retrophin) to pay Paul (MSMB Capital and MSMB Healthcare).”
- Greebel was Retrophin’s outside counsel and a partner at Katten Muchin.
- Found guilty by a federal jury in New York of conspiracy to commit wire fraud and securities fraud.



27

## ENRON



Andrew Fastow



28

**ENRON: A MASSIVE CONFLICT OF INTEREST AND A  
TOTAL LACK OF TRANSPARENCY**

- **Fastow, who was Enron's CFO, formed two limited partnerships that were counterparties to extremely complex structured financings.**
- **Enron itself was on the other side of the structures.**
- **The resulting, egregious conflict of interest was presented to Enron's Board of Directors.**
- **The Enron Board waived the conflict!**

STRADLEY  
RONON

29

**ENRON: A MASSIVE CONFLICT OF INTEREST AND A  
TOTAL LACK OF TRANSPARENCY**

- **In October 2001, the structured financings began to unravel because they were premised on a constantly rising Enron stock price.**
- **The financings had previously been unknown to Enron's investors because Enron's inside and outside accountants had signed off on "off-balance-sheet accounting."**
- **When bond rating agencies lowered Enron's bond ratings in the face of the revelations, all of Enron's debt covenants were triggered, and Enron collapsed.**
- **Fastow spent six years in prison for accounting fraud and related charges.**

STRADLEY  
RONON

30

## Practical Advice/Takeaways: What YOU can do to set an ethical tone:

Integrity  
in work

Honesty  
in work

Respect in  
interactions with  
one another

Recognize  
role as a  
steward

Recognize that challenges will arise  
sometimes when there are  
competing values

31

## Practical Advice/Takeaways: What YOU can do to set an ethical tone:

Operating a with a clear goal: ethics valued,  
not just as a “have to” but a transformational  
approach to work, interactions with one  
another and the patients/members you serve  
– even if you don’t see them

Practically, this can take a systematic approach:

- Where procedures about how to handle ethically challenging situations are defined,
- Ethics is discussed and valued (eg ethics workshops/ continuing education)
- Modeling ethics from management and enforcing ethical standards that are in place

32



