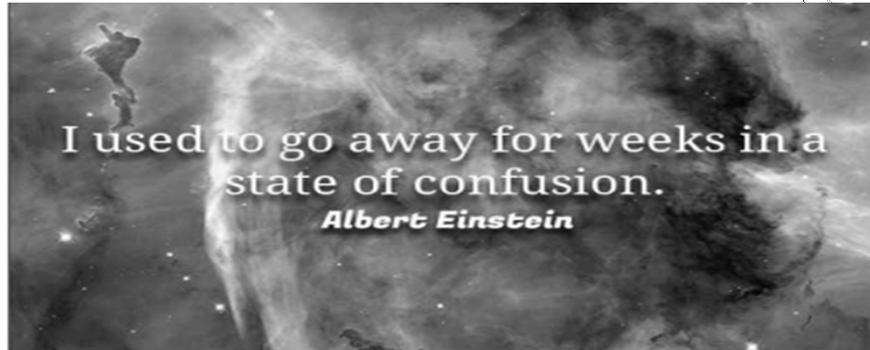


BOARD AND MANAGEMENT OVERSIGHT OF COMPLIANCE

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Not the Best Result?



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Why the Board needs to be engaged?

- ▶ Reflecting the Board's commitment
- ▶ Importance of the Board's involvement
- ▶ Obligations and responsibilities of the governing body
- ▶ What the Board needs to know and how to provide that knowledge



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Reflecting the Board's commitment



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Tone at the Top

- ▶ This is nothing new
 - ▶ An important basis of a strong compliance program is the support of senior leadership
 - ▶ If they don't understand the issues it will be difficult for them to support it
 - ▶ DOJ has indicated they will ask about and explore evidence around the commitment
- ▶ Some compliance issues can be highly technical
 - ▶ The presentations to the board must be in layperson's terms
 - ▶ A clear understanding of the key factors that put the organization at risk are very important



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Documentation of the Board's involvement

- ▶ The minutes of the BOD meeting or compliance committee meeting should reflect the discussion of compliance issues
 - ▶ The balance between documenting the discussion and not giving away important sensitive or proprietary information must be kept in mind - especially in organizations subject to open records laws
 - ▶ The minutes should reflect the agreed upon strategy and the Board's involvement in selecting that strategy.



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Training for the Board members

- ▶ The Board does not need to be filled with compliance experts.
 - ▶ The questions to ask
 - ▶ Does the Board understand the issues?
 - ▶ Could the Board articulate the issues in a meaningful fashion to an outside party?
 - ▶ Does the Board need a compliance expert as a member?
 - ▶ Do they engage expertise if needed for specific issues?
 - ▶ The use of analogies that board members can relate to everyday life are a helpful way to get them to relate
- ▶ Training for the Board might be different than training for others
 - ▶ Be ready to explain why
 - ▶ Identify any areas that the Board needs to be more versed in than the average staff member



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Explaining the compliance program to the Board

- ▶ Providing audit results
 - ▶ Continuing theme is to minimize the technical jargon
 - ▶ Provide concise easy to understand graphics
 - ▶ Provide trends over time
 - ▶ Explain why there are increased or decreases
 - ▶ Don't bury the lead
 - ▶ If there is a process, issue, system or function that is of more concern than another make sure that is a focus
 - ▶ Identify the top three to five points you want to assure the Board's hears



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Why is Board involvement so important?



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Strategic planning

- ▶ Compliance implications can have a significant impact on the strategic planning of the organization
 - ▶ Implementation of a
 - ▶ new electronic health record
 - ▶ Health information exchange
 - ▶ Financial system
 - ▶ Telemedicine service
 - ▶ Service line
 - ▶ Transitioning care to rely more heavily on non-physician practitioners



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Help the Board understand what are top concerns

- ▶ For example cybersecurity threats are a top concern
 - ▶ Key threats in healthcare
 - ▶ Hacking
 - ▶ Ransomware
 - ▶ Espionage
 - ▶ Cybersecurity threats are big business
 - ▶ Estimated that in 2016 it was a \$600 billion dollar business
 - ▶ Criminals are selling technology to other criminals
 - ▶ You don't have to be a computer expert any more to be a cybercriminal



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Obligations and Responsibilities of the Governing Body



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Obligations of the governing body

- ▶ The Federal Sentencing guidelines specify that the involvement of the governing body is key to an effective compliance program.
- ▶ Federal law identifies the obligations of senior leadership and the governing body in a number of cases
- ▶ Case law demonstrates the expectation of the fiduciary duty for the governing body and senior leadership.
- ▶ New theories of liability may make personal liability of the Board members and the senior leadership more of a reality



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BOARD RESPONSIBILITIES

- ▶ 1) Monitoring the corporation's performance in light of its operating, financial, and other significant corporate plans, strategies, and objectives, and approving major changes in plans and strategies;
- ▶ 2) Selecting the CEO, setting goals for the CEO and other senior executives, reviewing their compensation, and making changes when appropriate;
- ▶ 3) Developing, approving, and implementing succession plans for the CEO and top senior executives;
- ▶ 4) Understanding the corporation's risk profile and reviewing and overseeing the corporation's management of risks;



BOARD RESPONSIBILITIES (Cont.)

- ▶ 5) Understanding the corporation's financial statements and other financial disclosures and monitoring the adequacy of its financial and other internal controls, as well as its disclosure controls and procedures;
- ▶ 6) Evaluating and approving major transactions such as mergers, acquisitions, significant expenditures, and the disposition of major assets; and
- ▶ 7) Establishing and monitoring effective systems for receiving and reporting information about the corporation's compliance with its legal and ethical obligations.



OIG Guidance to Boards

- ▶ Ensure that management is aware of the Guidelines, compliance program guidance, and relevant CIAs
- ▶ Ensure that Board members are periodically educated on the organization's highest risks
- ▶ Develop a formal plan to stay abreast of changing regulatory landscape and operating environment
- ▶ Add to Board, or periodically consult with, experienced regulatory, compliance, or legal professional
- ▶ Receive compliance & risk related information in a format sufficient to satisfy the interests or concerns of members and to fit their capacity to review that information



OIG Guidance to Boards

- ▶ Consider conducting regular “executive sessions” (i.e., excluding senior management) with leadership from the compliance, legal, internal audit, and quality functions to encourage more open communication
- ▶ Risk areas include referral relationships and arrangements, billing problems (e.g., upcoding, submitting claims for services not rendered and/or medically unnecessary services), privacy breaches, and quality-related events
- ▶ When failures or problems in similar organizations are publicized, Board members should ask their own management teams whether there are controls and processes in place to reduce the risk of, and to identify, similar misconduct or issues within organizations
- ▶ Monitor new areas of risk: increasing emphasis on quality, industry consolidation, and changes in insurance coverage and reimbursement



OIG Guidance to Boards

- ▶ Boards of entities that have financial relationships with referral sources or recipients should ask how their organizations are reviewing these arrangements for compliance with the physician self-referral (Stark) and antikickback laws
- ▶ Board would be well served by asking management about its efforts to develop policies for identifying and returning overpayments (60 day repayment rule)



SAMPLE BOARD CERTIFICATION

- ▶ "The Board of Directors has made a reasonable inquiry into the operations of Center's Compliance Program including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, Center has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA."



SAMPLE MANAGEMENT CERTIFICATION

- ▶ "I have been trained on and understand the compliance requirements and responsibilities as they relate to [department], an area under my supervision. My job responsibilities include ensuring compliance with regard to the [department] with all applicable Federal health care program requirements, obligations of the CIA, and Center's policies, and I have taken steps to promote such compliance. To the best of my knowledge, except as otherwise described herein, the [department] is in compliance with all applicable Federal health care program requirements and the obligations of the CIA. I understand that this certification is being provided to and relied upon by the United States."



INDIVIDUAL DIRECTOR'S RESPONSIBILITIES

- ▶ **UNDERSTANDING THE CORPORATION AND ITS INDUSTRY:**
- ▶ 1) The corporation's business plan;
- ▶ 2) The key drivers underlying the corporation's profitability and cash flow-how the corporation makes money both as a whole and also in its significant business segments;
- ▶ 3) The corporation's operational and financial plans, strategies, and objectives and how they further the goal of enhancing shareholder value;
- ▶ 4) The corporation's economic, financial, regulatory, and competitive risks, as well as risks to the corporation's physical assets, intellectual property, personnel, and reputation;
- ▶ 5) The corporation's financial condition and the results of its operations and those of its significant business segments for recent periods; and
- ▶ 6) The corporation's performance compared with that of its competitors.



Regulatory Laws of Fraud in Health Care

- ▶ False Claims Act
- ▶ Stark Law
- ▶ Anti-Kickback Law
- ▶ HIPAA
- ▶ Balance Budget Act
- ▶ Civil Monetary Penalty Law
- ▶ Health Care Fraud
- ▶ Sarbanes Oxley Act of 2002



CORPORATE RESPONSIBILITY AND HEALTH CARE QUALITY

According to the Institute of Medicine, health care should be:

- ▶ **Safe:** avoiding injuries to patients from the care that is intended to help them;
- ▶ **Effective:** providing services based on scientific knowledges to all who could benefit and refraining from providing services to those not likely to benefit (avoiding underuse and overuse, respectively);
- ▶ **Patient-Centered:** providing care that is respectful of and responsive to individual patient preferences, needs and values and ensuring that patient values guide all clinical decisions;
- ▶ **Timely:** reduction waits and sometime harmful delays for both those who received and those who give care;
- ▶ **Efficient:** avoiding waste, including waste of equipment, supplies, ideas and energy; and
- ▶ **Equitable:** providing care that does not vary in quality because of personal characteristics such as gender, ethnicity,, geographic location, and socio-economic status.



CORPORATE RESPONSIBILITY AND HEALTH CARE QUALITY (Cont.)

Boards oversight patients safety and quality issues by:

- ▶ Understanding the emergence of quality of care issues, challenges and opportunities;
- ▶ Oversight the development of specific quality of care measurements and reporting requirements, including asking the executive staff for periodic education; and
- ▶ Requesting periodic updates from the executive staff on organizational quality of care initiatives and how the organization intends to address legal issues associated with those initiatives.



What the Board needs to know and how to provide that knowledge



Financial and Reputational Risk

- ▶ The monetary payback for errors can be quite significant
 - ▶ Think about not only the actual payback but the costs in
 - ▶ Time to address the investigation- internal and external
 - ▶ Time to fix the issue
 - ▶ Attorney and other expert fees.
- ▶ The organization's reputation when the news hits
 - ▶ Data breach
 - ▶ Deferred prosecution agreement
 - ▶ Improper receipt of Medicare funds



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Be the Guide Who Makes The Knowledge Useful

When a man's knowledge is not in order, the more of it he has the greater will be his confusion. - **Herbert Spencer**



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What the Board needs to know and how to provide that knowledge

- ▶ Not an Compliance Office issue only
 - ▶ Legal, HR, Risk, Quality, Operational Departments
- ▶ The overall risk management program is critical
 - ▶ Assuring they understand and help prioritize the risk



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What the Board needs to know and how to provide that knowledge

- ▶ Inform Board of any actual compliance incidents
 - ▶ You don't want a board member being blind-sided by inquiries
- ▶ Inform Board of any active investigations, complaints or audits
- ▶ The Board and C-Suite don't need to know how to code an interventional radiology service or configure a barracuda appliance



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If everyone is looking at you for the answers you want to have the answers.



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What the Board needs to know and how to provide that knowledge

- ▶ Overview of the compliance program
- ▶ Briefly outline the legal requirements and reference how the compliance program addresses each
- ▶ Summarize the resources committed to compliance and identify needed resources tied to risk mitigation
- ▶ Provide Metrics



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Other Components of Risk Management

- ▶ Enable the Board to meet its duty of oversight by:
 - ▶ Helping the Board become better acquainted with the Company compliance posture and risk landscape
 - ▶ Enabling the Board to model the effectiveness of the compliance program and internal/external controls
 - ▶ Enabling the Board to understand the resource needs
- Document the discussions and the Board meetings adequately to reflect that these issues are regularly addressed
- Help the Board understand what they do not know (do they need a Board member with certain experience?)
- Management incentives based on compliance risk management



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What the Board needs to know and how to provide that knowledge (continued)

- ▶ The Board is busy/time is limited
- ▶ Seek to incorporate compliance updates as part of the regular Board Update
 - ▶ Become a trusted advisor
 - ▶ Don't limit interactions with Board members to formal meetings only
 - ▶ Identify Board members who are allies



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A cartoon illustration of a meeting. A man on the right is speaking, with a speech bubble containing the text: "To put it simply, our policy just isn't complicated enough." The cartoon is signed "KING" in the top left and "CARTOONSTOCK.COM" in the bottom right.



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What the Board needs to know and how to provide that knowledge (continued)

- Tie the Compliance Program to overall strategies of the organization
 - Engrained as key component
 - Flexibility with who presents
 - Speak their language
 - Avoid technical jargon



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Questions?



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