

# Board Audit Committee Compliance Conference

September 24–25, 2018

COMPLIANCE WORK PLAN AND THE BOARD: A COMPLIANCE COMMITTEE TOOLKIT  
GERRY ROY, LISA GRESSEL, JEANINE JIGANTI

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# Appropriate and Inappropriate Questions Boards Should Be Asking

GERRY ROY VP, CHIEF COMPLIANCE & PRIVACY OFFICER  
PHOENIX CHILDREN'S HOSPITAL

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# The Regulators Are Your Guide

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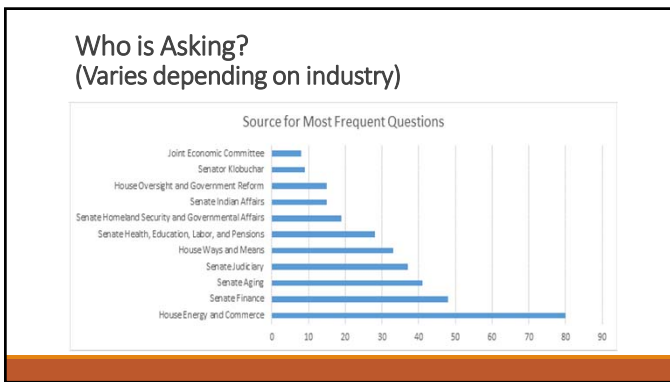
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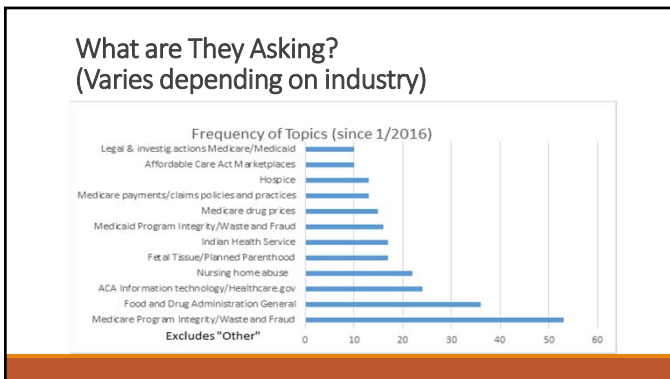
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### U.S. Department of Justice (Consistent for all industries)



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### U.S. Department of Justice Evaluation of Corporate Compliance Programs (February 2017)

- What compliance expertise has been available on the Board of Directors?
  
- How often does the Chief Compliance Officer meet with the board?
  
- What specific actions have senior leaders and other stakeholders taken to demonstrate their commitment to compliance?

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### Measuring Compliance Program Effectiveness: A Resource Guide

ISSUE DATE: MARCH 21, 2017

*HCCA-OIG Compliance Effectiveness Roundtable  
Roundtable Meeting: January 17, 2017 | Washington, DC*



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Element 2: Compliance Program Administration	
What to Measure	How to Measure
Board of Directors:	
2.1 Active Board of Directors	<ul style="list-style-type: none"> <li>Review minutes of meetings where Compliance Officer reports in-person to the Audit and Compliance Committee of the Board of Directors on a quarterly basis.</li> <li>Conduct inventory of reports given to board and applicable committees.</li> </ul>
2.2 Board understanding and oversight of their responsibilities	<ul style="list-style-type: none"> <li>Review of training and responsibilities as reflected in meeting minutes and other documents (training materials, newsletters, etc.). Do minutes reflect board's understanding?</li> <li>Review/audit board education – how often is it conducted? Conduct interviews to assess board understanding.</li> </ul>
2.3 Appropriate escalation to oversight body	<ul style="list-style-type: none"> <li>Review minutes/checklist in compliance officer files</li> </ul>
2.4 Commitment from top	<ul style="list-style-type: none"> <li>Review compliance program resources (budget, staff).</li> <li>Review documentation to ensure staff, board and management are actively involved in the program.</li> <li>Conduct interviews of board, management and staff.</li> </ul>
2.5 Process for escalation and accountability	Process review (document review, interviews, etc.). Is there timely reporting and resolution of matters?

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Element 4: Communication, Education, and Training on Compliance Issues	
What to Measure	How to Measure
Board:	
4.32 The organization has established specific compliance competencies for members of the Board Composition and appropriate governing committees.	Perform a document review to ensure sufficient compliance competencies exist within the Board and appropriate governing committee membership.
4.33 The organization has established a formal program to orient new board members and senior leaders to the compliance program and their obligations and responsibilities.	<ul style="list-style-type: none"> <li>Conduct document review to determine if the organization has formalized a compliance orientation program for new executives and new Board members.</li> <li>Conduct an audit to ensure orientation is provided as required by the orientation policy.</li> <li>Review names, dates and materials used to orient new members of the Board of Directors and senior leaders to the compliance program over the past 2 years.</li> </ul>
4.34 The organization's training plan provides for specific education that will be provided to the Board and senior executives. The plan includes the topics that will be covered, the frequency of training, includes current industry developments and resources, and provides education on their responsibilities for compliance.	Review training materials provided to the Board and senior executives and conduct personal interviews to ensure training is provided pursuant to the plan and the level of understanding of the material presented.

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**OIG and HCCA:  
Measuring Compliance Program Effectiveness  
(March 2017)**

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- What is the board's understanding of the compliance program and their role?
- Are there established compliance competencies for the board?
- What is the "commitment from the top?"

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### Questions to Consider...

- What are the Congressional committees of jurisdiction in our industry and what is the current state of oversight?
  
- What do recent and scheduled hearings forecast in terms of future areas of focus, audit and enforcement?
  
- Are there state and local entities that will follow the Federal emphasis?

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### Questions to Consider...

- Are you meeting with us enough?
  
- Do you have adequate resources?
  
- What are your training goals for the board this year?
  
- What is the engagement level of our senior executive leadership with the Compliance Department?

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## Compliance Work Plan

LISA GRESSEL  
 GENERAL COUNSEL & CHIEF COMPLIANCE OFFICER, P.F. CHANG'S

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### 7 Elements of an Effective Program

- The Government clearly defines 7 elements of an *effective* program in the Federal Sentencing Guidelines
- Certain industries have additional guidelines (healthcare)
- How does your company measure up to those guidelines?

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### 7 Elements of Effective Program

- Standards: Code/Policies
- Oversight by Board/Mgmt; Appointment of COO
- Communication & Training
- Risk Assessment/Auditing/Monitoring
- Reporting/Hotline
- Enforcement through discipline/incentives
- Respond Appropriately/Investigation/Remediation

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Language in Column 1  
Directly from FSG

Current State: Element 1  
Standards

Include column on next steps:  
due dates, action items, POC

Code/ Policies & Procedures	What we have	Recommendations
Code of Conduct	Out of date Code issued in 2000	<ul style="list-style-type: none"> <li>▪ Re-write Code</li> <li>▪ Roll out as part of Compliance Week 2013</li> </ul>
<p><b>Policies and procedures (PBP) sufficient to prevent and detect criminal conduct</b></p>	<p><b>SAMPLE ONLY</b></p> <ul style="list-style-type: none"> <li>▪ Enterprise-wide PBPs, but missing certain key compliance related PBPs based on best practices (e.g., anti-corruption)</li> <li>▪ Most current PBPs focused on store operations</li> <li>▪ PBP library exists, but not easily searchable and difficult for employees to determine which PBPs apply to them</li> <li>▪ Manual employee handbook contains PBPs that are not consistent with PBP library on company intranet</li> </ul>	<ul style="list-style-type: none"> <li>▪ Issue best practices PBPs</li> <li>▪ Revamp current PBP library to meet best practices</li> <li>▪ Delete text of PBPs in employee handbook - incorporate by reference with PBP number and hyper link</li> </ul>

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Language in Column 1  
Directly from FSG

Current State: Element 2  
Oversight by Board and senior management

Include column on next steps;  
due dates; action items; POC

Oversight by board and senior management	What we have	Recommendations
Board must be knowledgeable about the content and operation of the program and exercise reasonable oversight as to both its implementation and its effectiveness	<ul style="list-style-type: none"><li>Board oversight of Program has begun</li><li>Proposed Program and structure on slide 14</li><li>Proposed Committee Charter</li></ul>	<ul style="list-style-type: none"><li>Annual review of Program effectiveness with full Board</li><li>Quarterly review of Program metrics with Audit Committee</li></ul>
Senior management must be responsible for the program	<ul style="list-style-type: none"><li>Board and the audit workshop completed</li><li>Senior Leaders committed</li></ul>	<ul style="list-style-type: none"><li>Active management of Program by senior leaders</li></ul>
A specific manager (Chief Officer) must be assigned overall responsibility for the program, with access to the board and sufficient resources to implement the program	<ul style="list-style-type: none"><li>General Counsel serves as Chief Compliance Officer</li></ul>	<ul style="list-style-type: none"><li>Hire Chief Compliance Officer who reports directly to head of Audit Committee, dotted line reporting to CEO</li><li>Staff Compliance office as necessary</li></ul>

**SAMPLE ONLY**

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Language in Column 1  
Directly from FSG

Current State: Element 3  
Communication and Training

Include column on next steps;  
due dates; action items; POC

Communication & Training	What we have	Recommendations
Widespread communication to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law		<ul style="list-style-type: none"><li>Opportunity for more widespread, intentional communication such as in Town Halls, leadership meetings, strategy sessions, Speak!</li><li>Develop robust communication plan</li></ul>
Conduct effective training of the Code and applicable policies and procedures to all associates	<ul style="list-style-type: none"><li>Full time training department</li><li>Training on Code and certain compliance policies and procedures</li></ul>	<ul style="list-style-type: none"><li>Recommend additional compliance training courses based on best practices once new compliance policies issued</li><li>Opportunity to consolidate with existing training rather than just adding new courses</li><li>Define required training topics and schedule by job code</li></ul>

**SAMPLE ONLY**

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Language in Column 1  
Directly from FSG

Current State: Element 4  
Risk Assessment, Monitoring, Auditing

Include column on next steps;  
due dates; action items; POC

Risk Assessment, Monitoring, Auditing	What we have	Recommendations
Risk Assessment to identify compliance risk areas	Limited risk assessment identified certain compliance risks	<ul style="list-style-type: none"><li>Identify compliance risk area owners and assess risk level based on standards of new Compliance Program</li></ul>
Monitoring of those risks by the risk area owner	Monitoring by business of certain compliance risk areas	<ul style="list-style-type: none"><li>Expand monitoring once compliance risks are fully assessed and new compliance policies are issued</li></ul>
Auditing of those risk areas by internal or external audit	Internal audits primarily focused on operational or financial issues; limited audits of specified compliance issues	<ul style="list-style-type: none"><li>Expand internal audits of compliance risk areas once compliance risks are fully assessed and new compliance policies are issued</li><li>May need to include auditor in Compliance Department for compliance audits only</li></ul>

**SAMPLE ONLY**

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Language in Column 1 Directly from FSG

Current State: Element 5 Reporting

Reporting	What we have	Recommendations
The organization shall take reasonable steps to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation	Ethics hotline administered by third party who specializes in ethics hotlines  Whistleblower Policy  Scorecards that give a manager "Red" if the hotline calls in the department exceed industry average	<ul style="list-style-type: none"> <li>Change the scorecard immediately</li> <li>Widely distribute poster size hotline posters</li> <li>Encourage employees to use the hotline</li> <li>Strengthen the Whistleblower policy</li> <li>Communicate</li> </ul>

Include column on next steps; due dates; action items; POC

**SAMPLE ONLY**

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Language in Column 1 Directly from FSG

Current State: Element 6 Consistent Enforcement Through Discipline & Incentives

Consistent Enforcement through discipline & incentives	What we have	Recommendations
Consistent discipline for violations of compliance policies and procedures throughout all levels of the enterprise	Discipline, up to and including terminations, clearly used at all levels	<ul style="list-style-type: none"> <li>Monthly reviews with Compliance and HR of discipline issued for compliance related complaints, regardless of whether made to the hotline, HR, Loss Prevention, or verbally to business leaders or Legal</li> <li>Issue disciplinary guidelines to ensure discipline is consistent at all levels</li> </ul>
Incentives for clear ethical behavior	Performance evaluations include a section on Ethical Behavior	<ul style="list-style-type: none"> <li>Add a new annual award to incentive employees who demonstrate exceptional ethical behavior</li> <li>Ensure current managements award recipients are ethical employees</li> </ul>

Include column on next steps; due dates; action items; POC

**SAMPLE ONLY**

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Language in Column 1 Directly from FSG

Current State: Element 7 Investigation Respond Appropriately to Misconduct and Implement Corrective Actions

Respond appropriately to misconduct and take steps to prevent a recurrence	What we have	Recommendations
Fully investigate all complaints - level of investigation may vary depending upon complaint, but all claims are investigated	Investigations are done by HR, Loss Prevention, and Legal	<ul style="list-style-type: none"> <li>Compliance to conduct monthly reviews with HR and Loss Prevention of all compliance related complaints to demonstrate they are fully investigated</li> <li>Compliance determine appropriate investigator</li> <li>Issue new Investigative Guidelines and Training for Investigators</li> </ul>
If complaint is substantiated, identify root cause and implement appropriate corrective action	Corrective actions are identified	<ul style="list-style-type: none"> <li>Monthly reviews also ensure corrective actions were appropriate and actually implemented</li> </ul>

Include column on next steps; due dates; action items; POC

**SAMPLE ONLY**

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## Other Oversight Considerations

- Should Management Establish a Compliance Committee?
- Oversight by Board – entire Board, Audit Committee or some other committee?
  - If oversight done by committee, should entire Board have annual review of program?
- Should Board Approve Charter for Compliance Committee?
  - Must Board approve termination of CCO?

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## Sample Dashboard

JEANINE JIGANTI  
CCO (RETIRED), DAVITA

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### Board Compliance Committee (BCC) Dashboard

	Commitment	Comments
<b>#1 Oversight and Accountability</b>		
Enterprise CCO	Jane Smith Enterprise CCO	Done
Bd Compliance Cmte	Meetings • # of meetings held this year • Attendance by member	On track
Resources/ Staffing	Budget • Total budget year over year Staffing • Total FTE • Open FTE **Ask CCO if sufficient resources	Provided in BCC pkg
Management Compliance Committee	Meets quarterly with Exec team • # of meetings held this year • Attendance by member	• Missed Q2 - work w/ exec admins to reschedule • Reflect in individual review attendance record

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### BCC Dashboard (2 of 5)

#### #2 Ethical Culture and Values

Hotline	<ul style="list-style-type: none"> <li>• <b>Metrics</b> <ul style="list-style-type: none"> <li>• # of calls into hotline</li> <li>• # of compliance related calls</li> <li>• # substantiated/unsubstantiated compliance calls</li> <li>• # of compliance investigations initiated from matters brought outside of hotline</li> <li>• Top 3 compliance topics</li> <li>• Top 3 substantiated compliance topics</li> <li>• Investigation timing: open to closed</li> </ul> </li> <li>• <b>Benchmarking</b> <ul style="list-style-type: none"> <li>• Provide benchmarking metrics</li> </ul> </li> <li>• <b>Audit</b> of hotline posters in all facilities</li> <li>• Other communications of hotline                             <ul style="list-style-type: none"> <li>• Annual meeting</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Metrics, benchmarking provided in BCC pkg</li> <li>• Audit on track for Q3</li> <li>• Communication                             <ul style="list-style-type: none"> <li>• Posted on intranet</li> <li>• At annual meeting in conference material</li> </ul> </li> </ul>
Tone from Top	<ul style="list-style-type: none"> <li>• CEO at annual meeting talks ~ compliance</li> <li>• HR to add compliance performance goal for all executive team members</li> </ul>	<ul style="list-style-type: none"> <li>• Q3</li> <li>• HR to add goal in performance review</li> </ul>

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### BCC Dashboard (3 of 5)

#### #3 Policies and Procedures

Code of Conduct	Update in Q3	On track
Business Specific P&Ps	<ul style="list-style-type: none"> <li>• New business P&amp;Ps to be developed and rolled out Q1</li> <li>• Two business lines updated in Q2 and Q3</li> </ul>	<ul style="list-style-type: none"> <li>• Delayed, new deadline Q3</li> <li>• On track</li> </ul>

#### #4 Internal Monitoring and Auditing

Yearly Audit Schedule	<ul style="list-style-type: none"> <li>• Approved by BCC in first meeting of year</li> <li>• <b>Metrics:</b> <ul style="list-style-type: none"> <li>• # of audits/year</li> <li>• # timely completed/ # to be late/ # not yet completed</li> <li>• # by rating category (unsatisfactory/needs improvement/acceptable/good)</li> </ul> </li> <li>• Remedial actions                             <ul style="list-style-type: none"> <li>• timely closed</li> <li>• delayed/length of delay</li> </ul> </li> <li>• 2019 Audit Schedule prepared Q4</li> </ul>	<ul style="list-style-type: none"> <li>• Done</li> <li>• # of audits completed behind schedule because of attrition on audit team</li> <li>• On track</li> </ul>
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### BCC Dashboard (4 of 5)

#### #5 Training and Education

Annual Training/ Certification	<ul style="list-style-type: none"> <li>• Annual training Q1 roll out</li> <li>• Annual Training Metrics                             <ul style="list-style-type: none"> <li>• # timely completion</li> <li>• # completed late</li> <li>• # not yet completed</li> <li>• # received disciplinary action for non-timely completion</li> </ul> </li> <li>• Annual Certification Metrics                             <ul style="list-style-type: none"> <li>• # timely completion</li> <li>• # completed late</li> <li>• # need additional follow up</li> <li>• # of investigations initiated</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Complete</li> <li>• Communication plan developed</li> </ul>
Targeted Training	<ul style="list-style-type: none"> <li>• Develop training as identified by investigations, updated P&amp;Ps, new legal developments, etc</li> <li>• Metrics                             <ul style="list-style-type: none"> <li>• # of targeted training topics developed</li> <li>• # of total employees trained</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Two business specific trainings developed and delivered</li> </ul>
Board Training	<ul style="list-style-type: none"> <li>• Board training Q1 roll out</li> <li>• # timely trained</li> </ul>	<ul style="list-style-type: none"> <li>• All board members completed training</li> </ul>

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**BCC Dashboard (5 of 5)**

#6 Incentives and Deterrents		
Financial Incentive review	<ul style="list-style-type: none"> <li>Create new policy for Compliance/Legal sign off for sales financial incentives Q1</li> </ul>	<ul style="list-style-type: none"> <li>Done</li> </ul>
Annual Review Compliance Metric	<ul style="list-style-type: none"> <li>Develop role specific evaluation for compliance metric in annual review</li> </ul>	<ul style="list-style-type: none"> <li>Role evaluations developed to be rolled out in Q4</li> </ul>
#7 Enforcement and Disciplinary Standards		
Consistent Standards	<ul style="list-style-type: none"> <li>Work with HR to develop consistent disciplinary standards for Q2 roll out</li> <li>Metrics               <ul style="list-style-type: none"> <li># of total substantiated compliance investigations</li> <li># of substantiated compliance investigations discipline imposed</li> <li># of discipline by type (warning, written warning, training, termination)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Delayed because of lack of alignment</li> <li>Will create interim reporting metrics by Q4</li> </ul>
Evaluate Investigation Trends	<ul style="list-style-type: none"> <li>Create quarterly review program to evaluate hotline investigations and develop appropriate targeted remediation plan</li> </ul>	<ul style="list-style-type: none"> <li>Committee created and two meetings held</li> </ul>

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**LESSONS LEARNED ON REPORTING TO BOARD OF DIRECTORS**

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**QUESTIONS?**

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