

# Effective Compliance: What is the Board's Role?

Debbie Troklus, CHC-F, CCEP-F, CHRC, CHPC, CCEP-I  
Managing Director, Aegis Compliance and Ethics Center  
dtrokus@aegis-compliance.com

## Presentation Objectives

At the end of this session, the participant will be able to:

- List the primary responsibilities of a board of directors related to compliance programs
- List criteria for the board of directors to establish a review structure for its compliance oversight
- Understand the collaborative effort it takes to have an effective compliance program
- Assist in the development of questions for the governing body to ask the senior management team relative to compliance program activities

- ▶ A critical element of effective oversight is the process of asking the right questions.

### Principle common to an effective global E&C program:

- ▶ **Top-Level Commitment**
- ▶ The tone at the top from the highest level of management is the most critical component of an effective E&C Program. Top-level commitment means “walking the walk” and not just “talking the talk.” Legal compliance is not limited to one individual or one group of individuals within a company. It extends to Boards of Directors, audit committees and others in senior positions within the company or its governing Boards or committees.

<http://corporatecomplianceinsights.com/ethics-and-compliance-programs-in-a-global-and-brazilian-context-the-6-principles-of-compliance/>

## Board Expectations in Relation to the Compliance Program: What are the Right Questions?

- ▶ Does a reporting system exist, is it adequate and is it working?
- ▶ What benchmarks are being used as assessment tools to measure compliance program effectiveness?
- ▶ Are annual resolutions required by our Board?
- ▶ Is the scope and adequacy of our compliance program relative to the size and complexity of our organization?
- ▶ What plan is in place to keep the Board updated on the regulatory landscape?

## Does a Reporting System Exist, is it Adequate and is it Working?

- ▶ An effective reporting system is a key compliance element.
- ▶ The Board should have a clear understanding of the reporting system.
- ▶ The Compliance Officer should discuss reporting formats with the Board: Know what the Board wants and needs.
  - ▶ Internal vs. External reporting systems
- ▶ Compliance Officers should be sure the information is provided to the Board in a timely manner.

## What Benchmarks are Being Used as Assessment Tools to Measure Compliance Program Effectiveness?

- ▶ Benchmarking against organizations similar to yours
- ▶ Benchmarking against oneself
  - ▶ Timeliness in addressing reports of non-compliance
  - ▶ Questions and reports after compliance education
  - ▶ Employee surveys
- ▶ Prepare annual reports
- ▶ Prepare scorecards

## Are Annual Resolutions Required by the Board?

- ▶ Many organizations require annual board resolutions.
- ▶ Resolutions are signed by Board members and/or Board committees.
- ▶ The resolution should refer to the oversight of the compliance program.
- ▶ Best Practice: Have Board members attest to compliance training.

## Is the Scope and Adequacy of the Compliance Program Relative to the Size and Complexity of the Organization?

- ▶ Compliance Programs are not a one size fits all.
- ▶ Guidelines allow for variation, depending on the size and complexity of the organization.
- ▶ Complexity of the organization will dictate the necessary structure of the compliance program.
- ▶ Small organizations: Usually less complex, less formality, fewer resources and responsibilities carried out by available staff.
- ▶ Boards of smaller organizations are usually involved to a greater degree.

## What Plan is in Place to Keep the Board Updated on the Regulatory Landscape?

- ▶ A formal plan should be developed.
- ▶ Know who is going to be responsible for the updates.
- ▶ Compliance Officers should attend board meetings.
- ▶ Board members may need to take outside education to develop a better understanding of compliance, industry risk, regulatory requirements and the components of an effective compliance program.
- ▶ Boards should consider appointing a compliance expert to the Board.

## Board Questions to Evaluate a Compliance Program

- ▶ To management: Is there anyone interfering with your ability to implement any of the elements of an effective compliance program?
- ▶ To CO: Is there anyone interfering with your ability to prevent, find, or fix this organization's legal, policy, or ethical issues?
- ▶ To CO: Do you have any responsibilities outside of compliance and ethics that could cause you to have a conflict?
- ▶ To Employees: Do you report to anyone who has any responsibilities that could cause conflicts of interest for the compliance program?
- ▶ To CO: Is anyone with a conflict of interest guiding or directing the compliance and ethics program?

11

## Board Questions to Evaluate Compliance Program (cont'd.)

- ▶ To Management and/or CO: Are there any issues that have been reported to you that are not being addressed?
- ▶ To CO: Has any issue been outstanding beyond a reasonable amount of time?
- ▶ To CO: Have we ever had an outside evaluation of our compliance and ethics program?
- ▶ To CO: Are we staying abreast of current trends in enforcement and effective compliance program management?
- ▶ To Management: Are we anticipating any potential new legal risks in the near future?
- ▶ To CO: Are there any substantive compliance issues currently under investigation?

12

## Board Questions to Evaluate a Compliance Program (cont'd.)

Ask the Compliance Officer:

- ▶ What issues are the enforcement community currently reviewing/investigating in our industry and where do we stand on those issues?
- ▶ How do you evaluate our organization's ethical culture?
- ▶ Is there anything that leadership can do to help further develop, maintain, or support the compliance and ethics programs?
- ▶ Is there any further compliance and ethics education that you think leadership should attend?
- ▶ Do we need more compliance and ethics expertise on our governing board?

13

## Board Questions to Evaluate a Compliance Program (cont'd.)

- ▶ To CO: Do you have a good working relationship and independent access to internal and external legal counsel, consultants, and auditors?
- ▶ To CO: Are you getting cooperation on compliance training and what type of feedback are you getting from the training?
- ▶ To Everyone: What are you most concerned about?
- ▶ To CO: Do you feel that everyone in this organization feels comfortable reporting potential issues and do they have a reasonable opportunity/mechanism to share their concerns about a policy, legal, or ethical infraction with you?

14

## How is the Compliance Program Addressing Significant Risks?

- ▶ One of the primary goals of the compliance program is to help ensure that we get it right the first time.
- ▶ New business ventures are evaluated for potential risk.
- ▶ Timely response is made to newly developed rules and regulations.

15

## The Structure: Roles and Relationships

- ▶ The Compliance Function
- ▶ The Legal Function
- ▶ The Internal Audit Function
- ▶ The Human Resource Function
  
- ▶ Define the interrelationships in charters and other organizational documents
- ▶ Cooperation and collaboration
- ▶ Boards should evaluate the compliance program structure



## The Compliance Function

- ▶ Is an operational function
- ▶ Must be independent
- ▶ Prevent, detect and deter non-compliance
- ▶ Assist in compliance policy development
- ▶ Develop incentives to promote compliance
- ▶ Develop compliance work plans
- ▶ Develop effectiveness measures
- ▶ Work with management to develop corrective action plans and then ongoing monitoring
- ▶ Develop reports for management and board
- ▶ Conduct investigations
- ▶ Assure appropriate background checks are conducted
- ▶ Assure all seven elements are in place and working

## The Legal Function

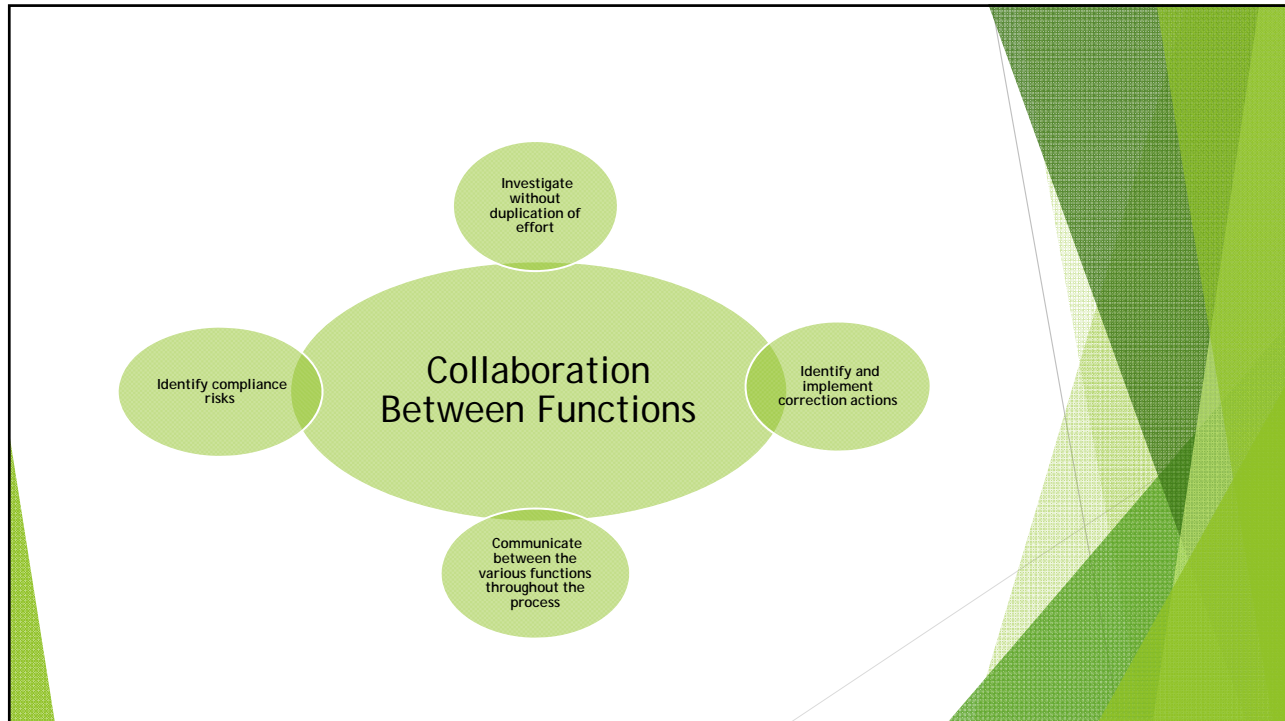
- ▶ Advises the organization on the legal and regulatory risks of its business strategies
- ▶ Provides advice and counsel to management and the Board
- ▶ Defends the organization in legal proceedings
- ▶ Initiates legal proceedings against other parties
- ▶ Collaborates with the compliance officer
- ▶ Evokes attorney-client privilege
- ▶ Is considered a management function
- ▶ Conflicts arise when the legal function is/or oversees the compliance function

## The Internal Audit Function

- ▶ Provides an objective evaluation of the existing risk and internal controls
- ▶ Ensures monitoring functions are working as intended
- ▶ Identify where management monitoring and/or additional oversight is needed
- ▶ Helps management enhance internal controls, reduce risk and promote efficient use of resources.
- ▶ Internal audit can fulfill the auditing requirements of the Guidelines if they have the skill set.
- ▶ Internal audits involvement does not exempt compliance from being engaged in the process and the outcomes.
- ▶ An internal audit representative should be on the Oversight Committee.

## The HR Function

- ▶ Manages recruiting and hiring
- ▶ Conducts employee screening
- ▶ Conducts employee sanction checks, compliance should monitor the process
- ▶ Coordinates employee benefits
- ▶ Can be involved in the education and training of employees
- ▶ If HR develops compliance education and training, compliance should be involved in the design and assignment
- ▶ Can be part of the compliance investigative team
- ▶ Partner with compliance and management regarding disciplinary actions
- ▶ Many hotlines calls are HR related, compliance should monitor until resolution



## Reporting to the Board

- ▶ Management reports should be independent from compliance
- ▶ Compliance reports
  - ▶ Objective scorecards
  - ▶ Internal and external investigations
  - ▶ Serious issues raised during audits
  - ▶ Hotline call activity
  - ▶ Allegations of material fraud
  - ▶ Sr. management misconduct

## Know What the Board Wants

- ▶ Discuss with the Board the format and frequency for reporting
  - ▶ Dashboards
  - ▶ Balance too much and too little information
  - ▶ Timely reporting of suspected violations
  - ▶ A snapshot of where the organization is in regards to compliance
- ▶ Regular executive sessions
  - ▶ Open dialogue
  - ▶ Avoids suspicion

## Boards Role in Identifying and Auditing Potential Risk Areas

- ▶ Boards Responsibility
  - ▶ Ensure that management and the Board have strong processes for identifying risk
    - ▶ Internal
    - ▶ External
  - ▶ Ensure that management consistently reviews and audits risk areas, as well as develops, implements, and monitors corrective action plans
    - ▶ Recent regulatory trends
    - ▶ New regulations
    - ▶ Compare data against peers
  - ▶ Understand how their organization is reviewing physician arrangements and what level of risk is acceptable in the arrangements
  - ▶ Be prepared to answer tough questions from stakeholders

## Encouraging Accountability and Compliance

- ▶ Compliance is an enterprise-wide responsibility
- ▶ Employees should have defined incentive goals and objectives against which performance may be measured and incentivized
- ▶ Board should ask management about its efforts to develop policies and procedures
- ▶ Proactive in self-disclosing any wrongdoing
- ▶ Assure there is good communication channels across the organization

## Next Steps

- ▶ The governing body and leadership can engage in an effective dialogue with the compliance professional with some version of the suggested Board questions
- ▶ Once your organization develops this best practice, the leadership question list can further evolve into a more effective tool for maintaining an effective relationship with leadership in the future

## Conclusion

- ▶ The Board should do the following
  - ▶ Make an effort to increase its knowledge of risks, how the organization handles the identified risks and the flow of reporting to Sr. Management
  - ▶ Encourage a level of accountability from everyone
  - ▶ Assure that the organization complies with relevant laws