The Strategic Importance of an Effective Compliance Program:

Utilizing the Compliance Program to Enhance Departmental Performance

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Compliance in the News

Feds Hit Pfizer with a $2.3 Billion Fine

GlaxoSmithKline whistleblower awarded $96m payout
“...Cheryl Eckard’s payment is thought to be the biggest ever handed to a US whistleblower.”

Patient Data Landed Online After a Series of Missteps
Importance of Compliance & Ethics Programs

“Never in the history of corporate or criminal law has it been more important for organizations to establish and maintain effective compliance and ethics programs. Criminal fines continue to increase and the government’s expectations for compliance and ethics programs are correspondingly increasing both in the United States and around the world.

It can fairly be said that compliance and ethics programs are no longer optional for most companies—they have become an essential part of managing a successful organization.”

Rebecca Walker, Esq.
Leading Compliance Practitioner
Federal Sentencing Guidelines

Elements of an Effective Compliance Program:

• Establish standards of conduct and internal controls to detect and prevent all violations of law, not just criminal violations.

• Emphasize through the “tone-at-the top” the importance of “an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

• The organization’s leadership and the board of directors must be knowledgeable about the compliance program and must exercise reasonable oversight.

• Commit adequate resources to the program and delegate appropriate authority to those responsible for its execution.
Federal Sentencing Guidelines

Elements of an Effective Compliance Program:

• Establish “a system in which employees may report or seek guidance regarding potential or actual violations of law without fear of retaliation, including a mechanism to allow for anonymous reporting.”

• Conduct “ongoing risk assessment and take appropriate steps to reduce the risk of violations of law.”

• Create an effective training program.

• Engage in periodic evaluations of the effectiveness of the system.

• Do not delegate compliance authority to those with a “history of engaging in violations of law.”
Ethics as a Factor in Corporate Value

• Recent studies show that up to 75 percent of the value of an organization is based upon its intangible assets. As a result, a company’s brand reputation, including how ethical that company is perceived to be, has rightfully become critical for leading executives and directors.

Investors to vote against Murdochs at News Corp
October 14, 2011

• Studies show that ethical companies command higher prices for goods and services and attract more prospective employees.
World’s Most Ethical Companies
If indexed together, have routinely and significantly outpaced the S&P 500 each year since the recognition’s 2007 inception.

On average, they outperformed the S&P 500 by 7.3 percent annually.

Have already surpassed the S&P 500 year to date.
The Employment Proposition

• Prospective employees gravitate toward ethical organizations

• Stanford Business School study showed that MBA graduates value a potential employer’s ethics as a key consideration in job selection

• “A reputation for ethical conduct and caring policies towards employees ranked high as well—75 percent as high as intellectual challenge and 95 percent as important as the financial package”

• Retention rates are higher at ethical organizations where employees take pride in the integrity of their organization
Higher Education, Higher Expectations

The very nature of an institution of higher learning requires a strong foundation built on integrity, ethics, and compliance with the law.

In an economic environment in which the return on investment in a university education is being seriously questioned in some quarters, it is imperative that institutions of higher education not only perform effectively from a business perspective, but that they present an image of impeccable integrity.
In addition to actions such as fines or imprisonment for noncompliance with applicable laws and regulations, consequences to the University at-large may include the following:

1) an increase in federal audits,
2) significant penalties,
3) a reduction or loss of research funding,
4) shutdown of projects,
5) additional oversight and monitoring by the government,
6) a compromise of professional integrity, and
7) risk to the University’s reputation
Higher Education, Higher Expectations

An effective Compliance and Ethics Program can enable an organization to out-perform its peers.

- More attractive to potential students
- Increased alumni involvement and donor support
- Enhanced opportunities for grants, sponsored projects and research
- Greater willingness of peers to enter into inter-institutional partnerships and agreements
- Reduced risk of targeting by plaintiffs’ lawyers
- Encourage early warning and containment of whistleblower reporting (internal / external)
- Support regulators’ positive view resulting in reduced likelihood and severity of action
“Five years hence, Case Western Reserve University will enroll students of measurably higher quality and attract significantly larger research investments. Our constituents will report markedly improved levels of satisfaction with all manner of campus support and services. Our alumni will participate more actively in the life of the University.”

Barbara R. Snyder
President, Case Western Reserve University
“Forward Thinking” Strategic Plan for 2008-13
Ethical Behavior as a Core Value at CWRU

Ethical Behavior is well-integrated into business planning and processes at CWRU

Core Values
Integrity and Transparency
• Ethical Behavior

It is also an integral part of business processes and planning:

Strategic Goals
Community
• Better Engage Alumni
• Strengthen relationships with stakeholders at the state, federal, and international level

Integrity and Transparency
• Strengthen the climate of equity, transparency, and accountability.

Strategic Academic Alliances
• Social Justice and Ethics
Current Trends

• Department of Education, Office of Civil Rights, Title IX
• The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
• Department of Education Program Integrity Rules
• False Claims Act / Whistleblower Actions
• NCAA
• Foreign Corrupt Practices Act
• Export Control
• Social Networking
Compliance in the News

Academia

Yale Is The Subject of Title IX Inquiry
March 31, 2011

Civil Rights Office Announces Settlement Agreement on Discrimination Investigation at Notre Dame
July 1, 2011

Admissions scandal brings down University of Illinois president
September 23, 2009

Princeton Litigation With Donor Costs Tens of Millions
2008
Compliance in the News

Academia

Senate Committee Looking at UMDNJ
February 5, 2006

Former University of Tennessee Professor John Reece Roth
Sentenced to 48 Months in Prison for Illegally Exporting
Military Research Technical Data
July 1, 2009

Report Faults Binghamton’s Leaders in Scandal
February 11, 2010

Law Schools on the Defensive Over Job-Placement Data
Monday, October 17, 2011
Compliance is Everyone’s Job

• Compliance is everyone’s job at every level
• Tone at the Top (and middle) is crucial
• A survey by the Corporate Executive Board of more than 600,000 employees in 140 companies demonstrates that organizations with weak ethical cultures experience far more misconduct than those with strong ethical cultures.
• In an ethical culture, employees feel comfortable speaking up and voicing their concerns, and they trust their colleagues will do the same.
• To make this happen leadership has to set a tone that inspires trust in their own ethics and in their willingness to hear and respond to concerns. This will help counter employees’ fear of retaliation for reporting misconduct.
Tone at the Top

Leadership sets the Tone at the Top

• Atmosphere of ethics, integrity, and legal compliance
• Personal commitment and visible willingness to let values drive decisions
• Values reflected in strategic decisions and dealings with constituents and third parties
• Articulated expectation that others will do the same
• Ethical values and compliance are everyone's job not just compliance personnel
Tone at the Top

Managers are responsible for setting the tone at the top:

• Communicate directly and honestly with employees
• Create an environment where employees feels comfortable reporting misconduct
• Emphasize a commitment to compliance is more important than a commitment to results; the means is equally as important as the end
• Employees must feel they are part of a team that values them and encourages them to be ethical.
• They must be convinced that senior management is committed to compliance
• The compliance and ethics program should be reflective of the university’s fundamental values and the senior leadership’s meaningful commitment
• Employees must be persuaded that the university’s commitment to its ethical culture is sincere
• Being a good role model; employees will follow the examples of their bosses
Tools of the Trade

• Compliance Hotline
• Centralized policies
• Code of Conduct
• Website
• Learning Management System
• Risk Assessment and Management Process
Compliance Program as Contributor to Organizational Performance

The Compliance Program enhances communication throughout the organization:

• Breaks down barriers and connects silos
• This occurs not only within the “Compliance Community,” but as information on compliance requirements and emerging issues and trends are spread within the university, facilitating communication and interaction in meeting compliance objectives
• Best practices are developed and shared
• Benchmarking and interaction with peer institutions creates an influx of new ideas and approaches as well as cooperative relationships
• Communications with senior management and the Board are expanded and awareness of compliance issues is enhanced so that they can be addressed and monitored.
• The result (ideally) is fewer instances of non-compliance as well as lessened severity
Building a Compliance Community

- Outreach to key stakeholders and compliance contacts
- Reinforce commitment through executive communications (Tone at the Top)
- Coordinate compliance efforts across the University
- Enhanced status for compliance professionals
- Sharing of new developments and best practices
- Provide senior leadership and the Board of Trustees with a comprehensive view of the University’s compliance activities
- Embed compliance into existing business processes
- Assess compliance efforts and University-wide performance
Risk Assessment as a Management Tool

Risk assessment is a proven management tool for evaluating potential threats, implementing mitigation plans, and tracking results.

It contributes to the development of an effective control environment. To the extent that emerging risks are also identified, the university will be better organized to address them when and if they arise.

This enhanced readiness allows the university to stay on track in performing its mission and not to be distracted by unanticipated developments.

A well-developed compliance risk assessment can help transition an organization from a reactive rules-based approach to compliance and ethics to a more strategic values-based one.
## Compliance Risk

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<thead>
<tr>
<th>Type of Risk</th>
<th>Description</th>
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<tbody>
<tr>
<td>Strategic</td>
<td>High-level goals aligned with and supporting the University’s mission</td>
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<tr>
<td>Financial</td>
<td>Financial management of the University including applicable controls and monitoring</td>
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<tr>
<td>Operational</td>
<td>Effective and efficient use of the University’s resources</td>
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<tr>
<td>Compliance</td>
<td>The University’s compliance with all applicable laws and regulations</td>
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<tr>
<td>Reputational</td>
<td>Avoid damage to an organization through loss of its reputation or standing</td>
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Risk Management

Compliance risks often comprise a significant percentage of enterprise risks.

High Priority Risks:

- High Likelihood of Occurrence
- Significant Potential Impact
High Priority Risks: Heat Map
“An aggressive and successful program does not merely ensure that the organization meets all regulatory requirements, but also embeds values-based business conduct into their culture, thus creating an ethical work environment that leads to more productive and profitable organizations.”

Diana Lutz

“Build a Values-Based Ethics and Compliance Program”

Compliance and Ethics Magazine, February 2009
Conclusion

When integrated into University Operations, the Compliance and Ethics Program adds value and enhances performance.

It offers a very real opportunity to provide Transformational Leadership and Results.