

Compliance - TODAY

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How the first 20 years of HCCA will influence the next 20 years

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by Marla Berkow, CHC

Tending the compliance garden: Maintaining an ethical organizational culture

- » Compliance acts as a “gardener” to maintain an ethical culture.
- » Have an accessible point of contact for business area matters.
- » Ensure early detection and prompt correction of violations.
- » The program is preventive in nature with adequate reporting channels.
- » Compliance facilitates two-way communication.

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*Raise your words, not your voice.
It is rain that grows flowers, not thunder.*
— Rumi

A few months after graduating from Hamline University School of Law’s Healthcare Compliance Certificate Program and passing my Certified in Healthcare Compliance (CHC) certification exam, I was recruited by a small, non-profit behavioral healthcare organization. I would be managing their compliance program, without any direct reports; it is a one-person department. I was assured by the executive management that the role is largely educational, and that their greatest need is not for enforcement actions, but for ongoing training and education due to staff turnover. I researched the organization thoroughly during my interview process, and although they appeared to be without any government violations or actions, I was skeptical.

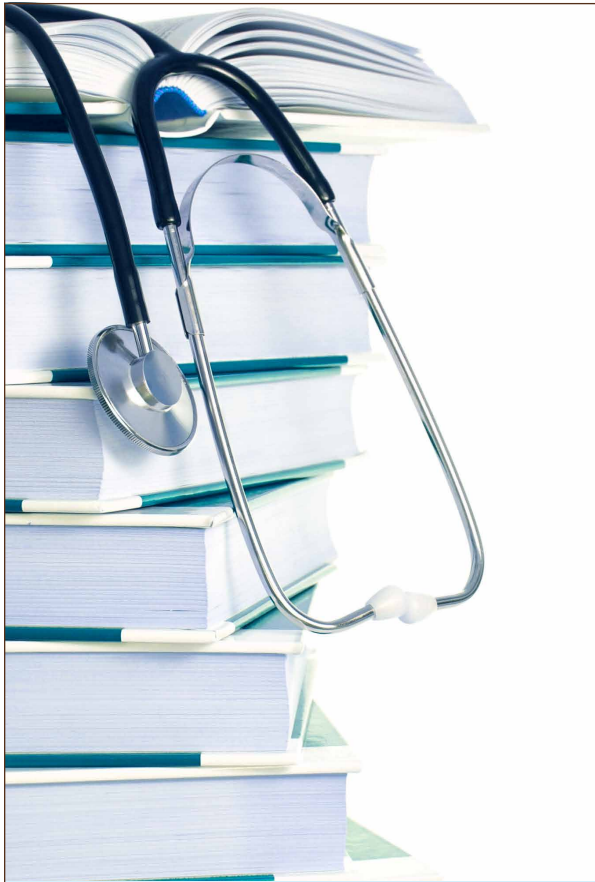


Berkow

Now, after being in the role of Gateway Foundation’s Compliance and Privacy Officer for nearly a year, I can say that it is true. The reason for this program’s emphasis on maintenance of organizational culture, and not corrective actions and accountability, is largely because the program began many years ago, completely voluntarily. It also has a strong foundation that has become imbedded in the organizational infrastructure, highlighting the preventive value of what has been referred to as “the seven essential elements of an effective compliance program.”¹

As Compliance Officer, I must articulate and rely on the Federal Sentencing Guideline requirements to “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law,”² not as a penalty, but for maintaining the organizational culture. These established guidelines for an effective compliance program work for maintenance as well as in response to criminal activity, to prevent further violations of the law.

Yet, there are differences in approach when your organization is in maintenance mode and not corrective action mode. If your organization, like mine, has an established compliance



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program that was started as a completely voluntary exercise, it is a different situation, requiring a much softer hand in implementation. Prevention and detection rely on adequate oversight, and the person designated as responsible (namely, the compliance officer) must manage the program to this end cooperatively. My role is similar to a gardener who has a flourishing garden—I weed the garden regularly, walk around, and talk to the flowers. I am attentive, patient, and I assume accountability for the overall health of what is my jurisdiction.

As the person responsible for the compliance program, I engage with high-level executives and board members, but I also have identified key people in each division to coordinate with. A designated point of contact for the compliance officer to regularly interact with ensures mutual accessibility and establishes open lines of communication at the business-area level. Anyone can access the compliance officer directly, but a dedicated point of contact at the business-area level should be identified. Review your organization’s structure and size to determine whether a liaison program is feasible, or whether a designated management contact or the compliance officer is the appropriate contact for employees to come to directly with their issues. Two-way communication at the business-area level helps to ensure issues are reported early enough to be handled preventatively and allows the compliance officer to specifically relay subtle-yet-important nuances of the program, such as non-retaliation and proper documentation.

Cultivating two-way communication with business-area contacts, with regular communications to the entire organization, along with a program that is in line with Federal Sentencing Guidelines, helps the compliance officer tend the Compliance garden effectively and maintain an ethical culture. ☐

1. U.S. Sentencing Commission: Federal Sentencing Guidelines, Chapter 8. Available at <http://bit.ly/guidelines-manual>
2. *Ibid.*, §8B2.1(a)(2)