

## Compliance Today – July 2019

### Learning compliance and risk through the movies

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Upon hearing the following questions and comments, many healthcare compliance and risk professionals feel like they are reliving every day, like in the 1993 comedy movie Groundhog Day with Bill Murray and Andie MacDowell:

“Can you get this back to me by close of business today? It’s kind of important.”

(But you know your colleague had two weeks to prepare.)

“I did not know that was a requirement...”

(Yet your colleague did not reach out to your department in advance.)

“Industry standard/best practices say otherwise.”

(But your colleague does not bring any materials or references to support this statement.)

“That’s not our responsibility!”

(However, compliance and risk is everyone’s responsibility in the organization.)

And, of course, “It wasn’t my fault.”

(To which we often reply, “The goal here is not to place fault, but to learn from the experience and address the issue so it does not happen again.”)

Many of us hear these phrases so often, we are tempted to jot them on a piece of paper to play a cynical version of Whose Line is it Anyway? The catch is, when these phrases enter the healthcare organization or environment with a certain intensity and uncomfortable frequency, you just might be seeing the initial warnings signs of an impending catastrophe, like in the 2013 sci-fi movie Sharknado.

Apart from being the movie selected on a dull Sunday afternoon, from a compliance and risk perspective, a “sharknado” is a series of difficult predicaments that coagulates into one complex, high-risk crisis that requires an immediate hands-on resolution. Before reaching for that proverbial chainsaw and rushing out into battle, it is essential to remember that sharknados require a high degree of preparation before taking drastic compliance or risk action. Thorough preparation is an excellent tool to avert such high-risk disasters, because it inevitably forces an organization to operate in a more proactive mind-set as opposed to a reactive one. Ideally, compliance and risk professionals’ preparation should include:

- Understanding applicable regulations, laws, and requirements;

- Assessing standard practice in the community;
- Coordinating the appropriate resources; and
- Applying the ethical principles.

In consideration of comprehensive preparation, or the deus ex machina to any catastrophe, we will examine the five quintessential predicaments that commonly consolidate to form this mega crisis, before illustrating a combination of them in common scenarios. It is our goal to examine each of these high-risk quandaries in action, so compliance and risk professionals can consider their own plans for preparation in order to effectively avoid and resolve these situations as they arise. Unfortunately, in the world of compliance and risk, resolving high-stake dilemmas is not a matter of if, rather it is a matter of when.

## **The plot**

### **Understanding business partners' and patients' needs**

When an issue or an item requiring the organization's attention appears, it is common for the affected departments to do their best to gather the facts and research possible outcomes relevant to their expertise/background before presenting their recommendation to the stakeholders involved with resolving the issue. However, this process becomes somewhat stressful, and relationships between department leaders may become strained due to conflicting perspectives and the different business needs of all the affected departments. This element of a crisis can result in individuals feeling that their business needs are less valued than others, which could lead to a chilling effect on collaboration with other department leadership in the future. Additionally, contemplating how the posed issue will affect customers' needs is an inherent component of resolution for any business—or, with respect to the healthcare arena, the effect on patients and their families. Failure to consider patients can lead to an organization straying from its mission or fundamental purpose for operation.

In order to avoid this element of a sharknado, it is key for one to manage their opposing opinions respectfully, and remain empathetic toward others and their business needs. Also, it is crucial that one remembers to be constructive and respectful when presenting an opposing view, because failing to do so could prompt others to interpret the view as a harsh personal criticism. Although opposing opinions in determining the best solution for a particular issue often lead to conflict, this conflict does not have to carry a negative connotation with it. Discussing opposing opinions in great detail, in addition to the reasoning behind these ideas, can lead to the organization reducing risk by focusing on all relevant factors and outcomes necessary for consideration in resolving the issue at hand. With respect to considering the needs of patients, patient surveys and having compliance or risk professionals make the rounds are good ways to evaluate patient needs. It is absolutely vital that any issue that potentially affects patients be considered and addressed in accordance with the organization's mission and the patients' bill of rights; one thing a healthcare organization should never lose sight of is its mission to provide patient care in the most ethical manner.

### **Open communication**

When passing a mirror in an empty room, many of us cannot help but perform our best Robert De Niro impression while reciting his famous line from the 1976 psychological thriller *Taxi Driver*, "You talkin' to me?" Even though this monologue is iconic and practicing conversation can be an effective tool to easing apprehensions against public speaking, it is important to keep in mind that these famous words were so passionately spoken to a piece of reflective glass, not another person. Open collaboration and dialogue between different departments within an organization leads to quick and efficient detection of potential risks, as well as

individual empowerment to share concerns and opinions. When one operates in a silo, not only does the organization face potentially duplicative efforts that may lead to waste of precious corporate resources such as time, it faces the risk of major issues being ignored or pushed aside. Although this element of a sharknado has an inherent negative affect on an organization's flow of communication, it also can lead to a breakdown in employees' confidence in leadership.

It might seem logical to some that putting an effort toward encouraging routine dialogue would remedy this sharknado element, but communication that contains mutuality and intention is needed beyond mere routine conversation. When there is a lack of mutuality in communication between leadership, it is much more difficult to resolve a pressing issue, because there ultimately is a lack of trust that the other party is not working toward a common goal. Acknowledging another's apprehensions and goals in relation to any given issue, or displaying true empathy, allows one to establish mutuality with other parties involved. This works for business partners and for patients. Moreover, combining mutuality with intention shows others that the exchange of ideas is meaningful and legitimate. Although this is easier said than done, because many are so devoted to their own departmental goals and succeeding, we must always remember that we all work for the same team and ultimately want our organizations to succeed.

## **Education on conflicting regulations or requirements**

One of the most frustrating dilemmas many compliance and risk professionals encounter is the inconsistency between laws governing our organization's day-to-day activities. It often seems impossible to measure an organization's exposure to risk when many of the regulations are not clear, or worse, are inconsistent with other regulations affecting operations. It is even harder to communicate those differences to patients, let alone business partners. This particular element of a sharknado can lead to serious legal risks when not considered appropriately.

Other than staying current on all applicable regulations and those that potentially affect our organizations, it is essential that all relevant regulations on the same subject be evaluated individually for the most stringent elements before compiling these aspects of each regulation into a set of policies that can coexist. In addition to focusing on the similarities, it is equally important to note the exceptions to each regulation and conflicts between them. Furthermore, if a true inconsistency in regulation is discovered, it is crucial that a determination be made as to whether a state regulation is superseded by a federal regulation or only seems to be conflicting because it is more stringent. This determination will generally involve consultation with legal counsel, but it would certainly behoove organizations to document where the regulations appear to conflict and the compliance procedure the organization has chosen to follow.

## **Resource restrictions and abilities**

Although this element is one of the most subjective when one is on the outside of a situation, it certainly affects everyone at some point in an organization. Even with the basic tools needed to operate, departments generally still encounter reasons to request additional resources. Although mostly legitimate, department leaders find themselves in a bind when trying to balance between necessity for tools desired to achieve success and budgetary restrictions. This sharknado element becomes a risk when a misunderstanding over what tools/resources are really necessary rather than just preferred arises.

To function efficiently and effectively, an organization must examine whether its expenses are guided by an organizational purpose. Using purpose to evaluate finances, time, and other resources allows leadership teams to use integrated business planning to activate the broader mission of their organization. A focus on purpose is also effective when communicating resource restrictions to your patients.

## The influence of ethics

Ethical considerations are generally at the heart of many healthcare leaders' decisions, but this is a common point of contention for others involved in the resolution of the issue at hand, because even something as simple as doing the right thing can be seen differently from other perspectives.

Although they are often joined at the hip, many consider compliance and ethics as synonymous, but this is not a constant truth. Compliance, risk, and ethics can coexist and work together, but you must understand that one is more objective than the other.

All these areas support adherence to applicable regulations, laws, and requirements; standard practice in the community; coordination of appropriate resources; and application of ethical principles. However, each area focuses on these principles through a different lens. In general, compliance focuses on effective operation within established legal requirements, and risk focuses on prevention and mitigation.

The ethical principles of autonomy, beneficence, nonmaleficence, fidelity/veracity, and justice/fairness focus more directly on patients than compliance or risk; the ethical principles are directly related to organizational culture and support compliance and risk. The best way to avoid a healthcare organization disaster is to conduct a step-by-step analysis of business partner needs, communication, regulations, resources, and ethics.

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