

## Compliance Today – January 2018

### Compliance investigations: When culture is the issue

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By Susan Walberg

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As a compliance professional, conducting investigations is an essential part of the job. We are tasked with preventing and detecting wrongdoing, whether it's violations of laws, regulations, or internal policies and procedures. Sometimes, however, we come to the end of our investigation and find that there was no actual "violation" committed, but there is a discernable culture problem in the organization.

So what is the appropriate role of the compliance professional when investigations reveal significant culture problems? This is a difficult question, because many leaders only want to know if a law has been broken or some other violation has occurred that jeopardizes the organization. That is, after all, why they have a compliance program and compliance professionals: to keep those things from happening.

#### Early warning signs

Culture can, however, be the precursor to compliance problems, and an organization should tend to those warning signs in order to prevent escalation. The compliance professional should be paying close attention to the types of complaints that provide clues to a potential organizational culture problem. A pattern of complaints coming out of one particular department, even if the complaints don't all specifically relate to the same issue, can be one obvious warning sign. Widespread employee visits to Compliance and Human Resources (HR) with vague concerns or questions are also red flags that should be looked at in more detail. Compliance may not even hear of these issues initially, because often employees will first go to HR and complain about unfair treatment, retaliation, or a hostile work environment. HR will investigate the issue and may find no actual "violation," so the case is closed.

Another avenue for reporting in hospitals and large organizations is an event tracking system. Problems with patient care or other "events" are frequently reported through those channels and may not be on the compliance professional's radar. Issues of physician behavior or disruptions caused by employees during patient care may be tracked and managed without the awareness of the Compliance department.

Frequently, however, these concerns (even if properly investigated according to organizational process), don't result in any action that resolves the issue for employees. Why? Because these cases are often related to a systemic culture problem, so the specific issue relayed as a complaint doesn't rise to the level of a violation of law or policy. The department that reviews the complaint will generally respond to the employee, but will tell them that there was no violation and perhaps offer the employee some suggestions on how to accept the situation or manage their own reactions.

That's when Compliance often gets that hotline call or drop-in visit, with the agitated employee closing the door and crying because they are so frustrated or fearful for their job. At this point, Compliance has a duty to

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investigate a complaint, assuming that an actual complaint is made. Conducting the investigation itself may be challenging if the concern was already raised with another department, such as HR, Quality, Medical Staff, or Nursing. They may advise that this has already been reviewed and there was no problem identified, and they may further advise that the employee is a complainer. Compliance should remind all departments that the Compliance department serves as a safety-net function, so there is an obligation to review all complaints. This is not done to second-guess other departments, but rather to provide proper checks and balances within the organization. This type of reminder is often necessary, because other areas understandably don't feel good about their work or operations being reviewed.

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