



What Does Your Board Need to Know About Compliance?

Montana Hospital Association
Compliance & Risk Management Conference

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Agenda

- Introductions
- Audience Survey
- Board Responsibility, Defined
- Regulatory Guidance
- Yate Memo | Personal Liability
- Compliance Program Oversight
- Compliance Risk Identification and Mitigation
- Compliance Training for the Board
- Examples of Reporting
- Questions

Speaker Introduction



Shannon Sumner

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Shannon manages PYA's Compliance Advisory Services and serves as the Firm's Compliance Officer.

A CPA certified in healthcare compliance, she has more than two decades' experience in healthcare internal auditing and compliance programs. She advises large health systems and legal counsel in strengthening their compliance programs, and aids in areas of Anti-Kickback Statute and Stark Law compliance. Shannon also assists health systems regarding compliance with Corporate Integrity Agreements (CIAs) and Non-Prosecution Agreements (NPAs), conducts health system merger/acquisition/divestiture due diligence activities, and advises health system governing boards on their roles and responsibilities for effective compliance oversight.

At the direction of the Department of Justice, Shannon has served as the healthcare compliance and internal audit subject-matter expert for the largest federal compliance co-monitorship of a health system in U.S. history.

Speaker Introduction



Susan Thomas

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Susan has spent nearly three decades working in a variety of managerial and clinical capacities including compliance management, clinical department leadership, provider practice administration, internal audit, quality outcomes, and healthcare advocacy.

A former corporate compliance officer and clinical department director, she has a demonstrated record of success in program development and expansion as well as the ability to form mutually beneficial relationships.

Susan is a hands-on manager and decisive team leader with highly developed negotiation skills and experience cultivating strategic healthcare business partnerships, recruiting and directing teams, developing performance improvement measures, and creating effective training programs.

Speaker Introduction



Traci Waugh

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Traci has been immersed in the healthcare industry with an assortment of responsibilities. She started her career as the director of medical records and eagerly took on additional roles including utilization review, risk management, medical staff services, discharge planning, quality improvement, contracting, privacy, and compliance. Traci's enthusiasm as not subsided; she is always willing to help her peers and serve as a resource.

Along with her initial certification as Registered Health Information Administrator (RHIA), she obtained her Certification in Healthcare Privacy and Security (CHPS) and Certification in Healthcare Compliance (CHC).

Currently as the Director of Outreach Services and Compliance, Traci assists partner critical access hospitals with their compliance programs and provides customized compliance education to staff and board or directors. In addition, she serves as a liaison for other contracted services provided by Kalispell Regional Healthcare.



Clients in ALL
50
STATES



O V E R
1200
Healthcare
valuation opinions
rendered annually

TOP 15 LARGEST
AUDITOR
of AHA's Top U.S. Multi-Hospital Systems
- Ames Research Group

4,932
Number of healthcare projects
during 2018



Kalispell Regional Healthcare

354 TOTAL BEDS

- KRMC: 192
- KRMC Adult Acute Care: 122
- Pathways Treatment Center: 40
- Montana Children's: 30
- Brendan House: 110
- The HealthCenter: 27
- North Valley Hospital: 25

CORE SERVICES

- Cancer Care
- Cardiovascular and Pulmonary Care
- Neuroscience and Spine Care
- Orthopedics
- Surgical Care
- Pediatric Specialty Care
- Behavioral Health



- 197 EMPLOYED PHYSICIANS
- 117 ADVANCED PRACTICE PROVIDERS
- 879 EMPLOYEES
- 47 CLINICS
- ~66 SPECIALTIES

- ~500 MEDICAL STAFF MEMBERS
- ADMITTS ~12,000 PEOPLE ANNUALLY
- SEES ~33,000 ER PATIENTS ANNUALLY

- PERFORMS ~18,000 SURGERIES ANNUALLY
- DELIVERS ~1,200 BABIES ANNUALLY

- ~4,000 EMPLOYEES
- SERVES ~600K POPULATION
- SERVES ~40K SQUARE MILES
- SERVES 13 COUNTIES



LEADS MONTANA IN PATIENT CARE

— U.S. News and World Report

1007ELT020420

Audience Survey



- Do you have access to the Board to discuss Compliance Program issues?
- If so:
 - How often?
 - How much time?
 - What topics do you cover?
 - What questions do the Board members ask about Compliance?
- If not, we hope this session will provide you with some convincing information!

Board Responsibility, Defined



- Delaware Chancery Court case, also known as the Caremark International case:
 - “...a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and . . . failure to do so under some circumstances may . . . render a director liable for losses caused by non-compliance with applicable legal standards.”¹
- U.S. Federal Sentencing Guidelines:
 - To receive credit for having an effective compliance program, and reduce the fines, a Board of Directors must be “knowledgeable about the content and operation of the compliance and ethics program,” and must “exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.”²

1) <https://law.justia.com/cases/delaware/court-of-chancery/1996/13670-3.html>

2) <https://www.ussc.gov/guidelines/2018-guidelines-manual/annotated-2018-chapter-8#NaN>

Regulatory Guidance



- Practical Guidance for Health Care Governing Boards on Compliance Oversight, aka The Lighthouse Report
 - “A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization’s compliance program, as well as the performance of those who develop and execute that program, and to make compliance a responsibility for all levels of management.”
- A Toolkit for Health Care Boards – OIG-HHS
 - Main Objectives for Boards: Promote the quality of care and ensure an effective compliance program is in place
- DOJ Evaluation of Corporate Compliance Programs (2020 Update)
 - “The company’s top leaders – the board of directors and executives – set the tone for the rest of the company.”
 - “Have the board of directors ... held executive or private sessions with the compliance and control function?”

Yates Memo

- On September 9, 2015, Deputy AG Sally Yates of the DOJ released to the public an internal DOJ Memorandum – the “Yates Memo” – addressing individual accountability for corporate wrongdoing.
- The primary message is that the government will hold individuals accountable who are responsible for corporate misconduct.
- The government wants to hold key decision-makers responsible.
- There have been some notable individual liability settlements, including:
 - The NAHC Settlement -- False Claims Act for unnecessary rehabilitation services
 - NAHC agreed to pay \$28.5 million, its chairman of the board agreed to pay \$1 million, and its senior vice president agreed to pay \$500,000
 - The Former Tuomey CEO Settlement for Stark Law violations
 - DOJ reached a \$1 million settlement with Tuomey’s former CEO, Ralph J. Cox III



Yates Memo



The U.S. Department of Justice periodically issues memos that give guidance on how it prosecutes corporate crime. Its latest memo, issued in September 2015, focuses on how prosecutors should treat employees and executives that are involved in corporate cases. **Here are the 6 things you need to know about it.**

1  → 



Companies will have to turn over information on involved individuals in order to get cooperation credit.

4  → 

Line prosecutors need written approval from a senior DOJ attorney before offering protection to individuals.

2  = 



All investigations—both criminal and civil—will start with a focus on individual actors within the company.

5  → 

Individual actions have to be resolved (or have a resolution plan) before corporate actions can be resolved.

3  + 

Criminal and civil attorneys will work in lockstep on corporate cases, sharing information freely.

6  ≠ 

Civil actions will be pursued against culpable individuals, even if they can't pay a substantial fine.



BROADCAT

thebroadcat.com

Source: The Broadcat, *The Yates Memo, Simplified*. Used with permission and available from www.thebroadcat.com

Compliance Program Oversight



- Health care organizations operate in a highly regulated environment.
- Board responsibility:
 - A Board must act in good faith in the exercise of its oversight responsibility for its organization.
 - ✓ Ensure that a corporate information and reporting system exists.
 - ✓ Make certain that the reporting system is adequate to assure that appropriate information related to compliance with applicable laws is given appropriate attention in a timely and logical manner.

Some Tough Questions the Board Should Ask



- Do we have a comprehensive code of conduct, and policies, procedures, and internal controls surrounding compliance?
- Does our compliance program satisfy legal and regulatory requirements? How do we keep the program current in response to changing requirements and circumstances?
- Who is responsible for monitoring and enforcing compliance with the program? Do they have adequate resources and unfettered access to senior management and the board? to compliance?
- Do we have a centralized hotline and compliance concern reporting systems with multiple channels for the workforce, visitors, medical staff, and vendors to raise concerns?
- Are we doing enough to publicize our compliance program to the workforce so that they are aware of it and of the resources available to them?

Some Tough Questions the Board Should Ask



- How do we monitor the effectiveness of our compliance program?
- How do we ascertain that the program is effectively enforced consistently across our business?
- Is management demonstrating an appropriate “tone at the top” where compliance is concerned?
- Do we conduct regular risk assessments to help ensure that our compliance efforts are appropriately prioritized and focused?
- How are we driving compliance with suppliers and vendors in our extended enterprise environment?

Risk Identification and Mitigation



- Risk oversight is one of the board's most critical roles and how a board executes this oversight responsibility can have profound impacts on the organization
- The purpose of the compliance risk assessment is to examine the specific regulatory risk areas applicable to the organization.
- Determine your organization's risks by completing a compliance risk assessment
- Prioritize the risks to be evaluated and what resources are necessary for mitigation.



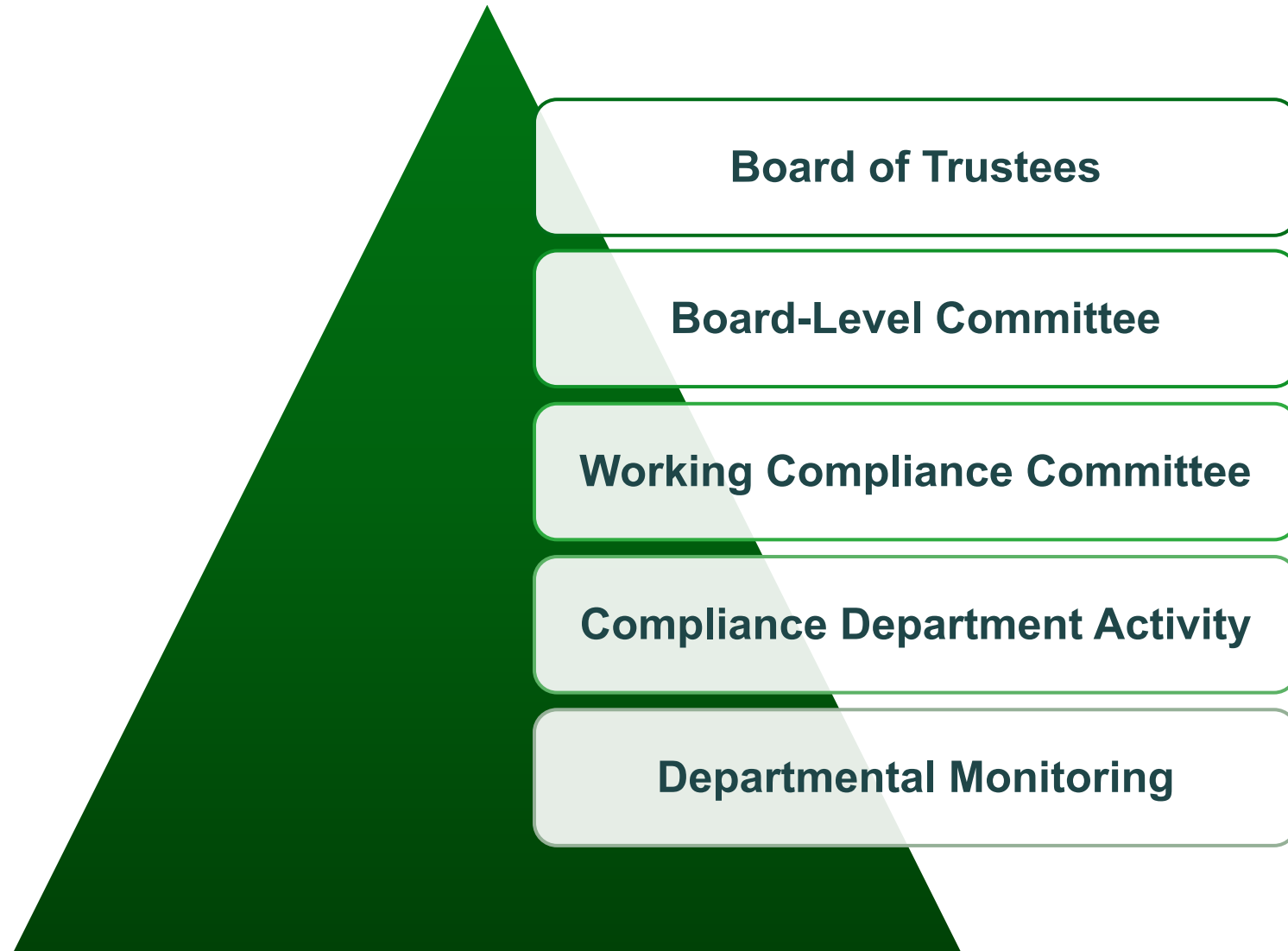
Compliance Training for the Board



- According to studies of workplace culture, the stock price growth of the 100 firms with the most ethical cultures outperformed stock market and peer indices by almost 300 percent.³
- However, Boards are typically not well-informed on ethics and compliance.
- A regular compliance training program is critical – not an annual appearance before the board, but a quarterly appearance for training and education purposes.
- The healthcare risk environment is rapidly changing, and the Board must be aware of organizational risks and mitigation strategies

3) <https://www.greatplacetowork.com/resources/blog/8-ways-great-company-culture-drives-business-success>

Compliance Reporting Hierarchy



Board of Trustees

Board-Level Committee

Working Compliance Committee

Compliance Department Activity

Departmental Monitoring

Board-Level Committee Reporting



- Board-Level Committee
 - Audit and Compliance Committee
 - Finance Committee
- Regular meetings
 - Preferred – Monthly
 - Minimum – Quarterly
- Familiarity with the processes and internal controls management has put in place in order to evaluate the effectiveness of the compliance program.
- Understand specific policies and procedures in place to identify and mitigate regulatory-related risks.
- Discuss specific organizational risks and corrective action plans for responding to such risks.
- Monitor any actual violations, including management's response.



- Compliance Audits
 - Financial relationships with physicians
 - Vendor management
 - HIPAA privacy
 - NPP chart audits
 - Shadow claims
 - Cash controls
 - Controls for contractual adjustments
 - Charge capture
 - Others
- Compliance Program Monitoring
 - Compliance work plan status
 - Access of employee and VIP PHI
 - Conflict of Interest disclosures
 - Exclusion checks
 - Follow-up actions to issues of non-compliance

Reporting to the Full Board



Frequency

- **Optimal:** Quarterly
- **Minimum:** Annually



Ideas for Effective Board Interaction

Report on meaningful metrics

Turn Board reports into training sessions

Propose a series of trainings and have others help with the presentations

Partner with other Board committees

Switch up the training methods

Invite Board members to participate in staff compliance training and to report back to the full Board

Reporting to the Full Board



BEST Hospital Compliance Management 201X Annual Report



Report on Compliance & Audit Activities

201X Executive Summary

Like all healthcare provider organizations, Best Hospital is undergoing a significant amount of change initiated from both internal and external sources. Some of the changes include:

- Budgetary impacts of state and federal healthcare funding adjustments
- Organizational and operational efficiency initiatives
- Ongoing regulatory changes including healthcare reform, medical necessity, patient privacy and information security
- Outward focus of healthcare provision in-

cluding employed practitioners, wellness, increased collaboration with community partners

- The shift of payment focus on quality and value rather than fee for service
- Expanding use of emerging technology and data sharing

While many of these changes indicate opportunities for exciting strategic developments for BEST, they also expose our organization to risk—operational, financial, regulatory and reputational. The role of Compliance Management is to proactively work with Leadership to navigate these risks and provide assurance that poli-

cies, auditing, monitoring and internal controls are in place for strategic success. This report highlights the outcomes of key activities performed by Compliance Management in 201X to assist Leadership identify and address important issues facing our organization and drive efficiencies to make the best use of our resources. In addition, this report will demonstrate the accountability of the Compliance Management Program with information regarding our program metrics.



201 X BEST Compliance By the Numbers

- Dollars protected from payer recoupment
- Revenue Generated for Observation Services
- High Risk Contracts Reviewed
- BEST Associates who completed HIPAA Training
- Incident To errors identified
- Providers Educated on Appropriate Coding
- Number of Work Plan Items Completed
- Number of PHI Breach Incidents reported
- Certifications achieved by Compliance Management (# of)

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Patient Privacy, Confidentiality and Information Security

The Healthcare Insurance Portability and Accountability Act of 1996 (HIPAA) has been a defining feature of the healthcare landscape for 20 years. Key pieces of HIPAA are the Privacy and Security Rules which mandate how BEST and our Business Associates must safeguard patient protected healthcare information (PHI). Compliance Management works closely with the Information Security Team

to assure necessary procedures are in place for HIPAA compliance.

BEST has investigated, reported and mitigated the following privacy and security incidents:



Performance Metrics

Our 201X Performance Dashboard included metrics for the five anchors of the BEST Strategic Plan. We monitored over 20 measures—demonstrating our department's commitment to strategic success of the organization.

Anchor/Metric	Value	Desired Trend	Target %
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Growth & Innovation:

- Observation Charge Capture Revenue
- Average Charge Per Outpatient

Quality and Safety:

- Number of Priority Work Plan Items Reviewed:
- 'Incident-To' Errors Identified:

Service:

- Focus Group Survey Aggregate Results:
- Physician Agreements Reconciled:
- Number of Contracts Reviewed:
- Number of BAAs Reviewed:
- Number of Contracts 'Touched':

People:

- Number of PHI Incidents Reported/Detected:
- % of BEST Associates Completed HIPAA Training

Physicians:

- Number of Physicians Educated on Coding:
- ED Charts Not Coded:
- Physician Coding Accuracy:
- Reported ED Work RVU:

Finance:

- Dollars Lost Due to Incomplete Stop Times:
- Dollars Protected from Recoupment:
- Overturned Audited Claims:
- Appeals Written In-House:



Looking Towards the Future

BEST Compliance Management carries out an organizational compliance risk assessment annually. The information gathered from this exercise, along with other industry sources, is used to formulate the Compliance Work Plan.

The Work Plan, along with Key Performance Indicators for Compliance Management, as well as the BEST Strategic Initiatives direct and maintain an effective and meaningful compliance plan. BEST Compliance Management Department has developed the following targets for 201X:





Questions?





Thank you!



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