

Alliance for Health Care Integrity

A Health Care Industry Initiative to
Integrate Compliance, Ethics, and Corporate Responsibility

November 1, 2001

Board of Directors (to date)

Mark Aulisio, PhD
*Center for Biomedical Ethics
Case Western Reserve University*

Louis Feuerstein
Ernst & Young LLP

Andy Thurman, JD
West Penn Allegheny Health System

Patricia Werhane, PhD
*The Darden School of Business
University of Virginia*

Founding Members (selected)

Myra Christopher
Midwest Bioethics Center

Tim C. Mazur, MBA
Ethical Advisory Services

Brian Schrag, PhD
*Association for Practical
and Professional Ethics*

Paul Schyve, MD
*Joint Commission on
Accreditation of Healthcare Organizations*

David C. Smith, PhD
Council for Ethics in Economics

Matthew Wynia, MD, MPH
*Institute for Ethics
American Medical Association*

Affiliations listed for identification purposes

Executive Director

Robert Olson, PhD, MPH

U.S. Sentencing Commission
One Columbus Circle, NE, Suite 2-500, South Lobby
Washington DC 20002-8002
ATTN: Public Affairs

SUBJECT: Federal Register Notice 9/19/01: BAC2210-40/2211-01

We're delighted that the Sentencing Commission is taking this 10th anniversary of the publication of the *Guidelines Manual* to address their impact on industry and consider possible improvements to them. As we suggested in our February 21, 2001 letter to the Sentencing Commission (please see enclosed letter), although their impact has been significant, there is still room to improve them—and enhance their impact—by broadening compliance-based systems to include integrity-driven ones.

It seems us that the ad hoc advisory group alluded to in the notice is the perfect vehicle to open a dialogue on these important issues. We would recommend the following organizational guidelines for this group:

- **Scope.** The advisory group should be charged with addressing industry-wide issues, such as the efficiency and effectiveness of existing compliance-based and/or ethics-based systems in preventing violations of statute and regulation; best practices in organizing, implementing, and evaluating such systems within individual corporations and across the industry; background and training of staff; and policies related to investigation and enforcement of legal and ethical violations.
- **Duration.** Because the scope of work for the advisory group is large (and will undoubtedly meet with some resistance and ownership struggles), the duration should be proportionate to the challenges it will face. We recommend at least one year though two or three years would probably be more realistic. Full meetings should occur quarterly with committee meetings and conference calls once or twice a quarter. Furthermore, the expectations of the Sentencing Commission for the advisory group, as well as the deadline for it to complete its work, should be clear from the start, perhaps negotiated by a steering committee comprised of Sentencing Commission staff and initial advisory group appointees.
- **Focus:** The focus of the ad hoc advisory group should be the consideration of strategies to enhance the efficiency and effectiveness of the current, largely compliance-based organizational guidelines.

Membership: The membership of the ad hoc advisory group should include, we believe, the following stakeholders:

- Industry representatives (a good mix of corporate officers [CEOs, ethics officers, compliance officers], management and supervisors, and line staff)
- Scholars (not only in general and industry-specific business/organizational compliance and ethics but also in organizational/management theory and behavioral research)
- Experts in compliance and business ethics, both general and industry-specific, particularly in strategies for integrating and institutionalizing related programs, as well as in development of standards and metrics for evaluating their impact.
- Representative from governmental and quasi-governmental bodies (Offices of Inspector General and Department of Justice, as well as particular departments, commissions, or boards charged with developing and/or enforcing regulations, such as HHS, FTC, SEC, FASB, and so on)
- Other groups as appropriate, such as professional and trade associations, consumer groups, and so on.

Because the Alliance for Health Care Integrity is dedicated to integrating compliance, ethics, and corporate responsibility (please see the enclosed prospectus), we would welcome an opportunity to participate on the ad hoc advisory group. While our mission is industry-specific, we believe the principles that drive our enterprise and the broad-based network that we have assembled are industry-wide in their application.

We wish you all the best in this bold initiative. If you would like to contact us, please call me at (714) 77-6400.

Sincerely,



Robert Olson, PhD, MPH
Executive Director

Alliance for Health Care Integrity

A Health Care Industry Initiative (HCII)
on Organizational Ethics and Business Integrity

February 21, 2001

Board of Directors (to date)

Mark Aulisio, PhD
Center for Biomedical Ethics
Case Western Reserve University

Louis Feuerstein
Ernst & Young LLP

Andy Thurman, JD
West Penn Allegheny Health System

Patricia Werhane, PhD
The Darden School of Business
University of Virginia

Founding Members (selected)

Myra Christopher
Midwest Bioethics Center

Tim C. Mazur, MBA
KPMG LLP

Brian Schrag, PhD
Association for Practical
and Professional Ethics

Paul Schyve, MD
Joint Commission on
Accreditation of Healthcare Organizations

David C. Smith, PhD
Council for Ethics in Economics

Matthew Wynia, MD, MPH
Institute for Ethics
American Medical Association

Affiliations listed for identification purposes

Staff

Robert Olson, PhD, MPH
Executive Director

Judge Diana E. Murphy, Chair
United States Sentencing Commission
One Columbus Circle, NE
Washington, DC 20002-8002

Dear Commissioner Murphy,

On this 10th anniversary of the publication of the *Guidelines Manual*, we'd like to congratulate you for the impact they have had, in particular, on the health care industry.

More than any other public or private initiative, the Guidelines have motivated stakeholders in the health care industry to take seriously the importance of compliance with federal statutes and regulations, especially those related to the prevention of fraud, waste, and abuse. In particular, the seven steps outlined in Chapter Eight to meet due diligence requirements have resulted in the creation of compliance programs—and related trade and professional associations, as well as a burgeoning consultancy sector—in the majority of health care organizations.

Yet it has been difficult to document the success of these compliance programs—even those meeting all the steps required for due diligence—in preventing fraud, waste, and abuse in the industry. The Big 5 professional services firms and regulatory agencies that have studied compliance programs have learned that very few health care organizations (HCOs) attempt to measure whether their compliance programs really reduce fraud, waste, and abuse. As one recent report stated: "Is compliance having an effect impact on organizations? The answer is: It's too early to tell."¹ According to scholarly research, however, it's not too early to tell if the health care industry is like other industries in the corporate world: compliance programs, costly both to oversee and to implement, have little or no measurable impact in preventing fraud, waste, and abuse.

Indeed, according to scholarly research, only compliance programs that have been integrated into integrity-based programs begin to show demonstrably positive results. The classic

¹ Deloitte&Touche, "Compliance Hard to Measure—Study, *Modern Healthcare* December 18, 2000.

theoretical work in this area was done by Lynn Paine at Harvard Business School. In her contrast of compliance-based and integrity-based programs, she concludes that integrity-based programs—that is, programs focused on organizational ethics—in corporations will succeed, while compliance-based programs, because of their narrow focus and emphasis on external standards, will contribute little to preventing violations of federal and state regulations, as well as the public good (and may, in fact, be counter-productive).²

Recent research, based on Paine's theoretical frame, has provided empirical support to her conclusions. For example, Treviño et al conclude that a "values-based cultural approach to ethics/compliance management works best."³ That is, their data indicates that compliance programs situated in the broader context of organizational integrity are significantly more effective than either stand-alone compliance programs or ethics programs. Our own market research confirms this conclusion: many of the compliance officers we spoke to, as well as staff in regulatory agencies, indicated that compliance simply does not go far enough. They asserted that, in the end, it is the *ethos* of the organization—the way it does business—that determines whether compliance initiatives are effective or not.

It turns out, then, that both compliance and integrity are necessary, *as long as* the focus of compliance-based programs is set within the broader, more systemic and long-term perspective of an integrity-based program. Integrity-based programs that emphasize organizational ethics and business integrity leverage the impact of compliance-based programs, resulting in significant reductions in fraud, waste, and abuse. Therefore, it is the shared values and purpose of the organization—the organization's ethic—that drive compliance.⁴

Our organization, an alliance of major stakeholders in the health care industry, drawing upon both the Defense Industry Initiative and public health models, with a vision of "responsible self-regulation," urges you to consider revising the influential guidelines you published ten years ago in light of the research related to compliance-based and integrity-based programs. In particular, we urge you to:

- Require that compliance be a component of a broader, integrity-based ethics program that emphasizes organizational ethics and business integrity.
- Require that the ethics officers in such programs have at least three university-level, full-term courses in ethics.
- Require that employee training uses whole system change technologies, involving cross-level and cross-function grouping of all employees, including executive management and board members.

² Lynn Sharp Paine, "Managing for Organizational Integrity," *Harvard Business Review* (March-April 1994) 106-117.

³ Linda Klebe Treviño, Gary Weaver, David Gibson, Barbara Ley Toffler, "Managing Ethics and Legal Compliance: What Works and What Hurts," *California Management Review* 41:2 (Winter 1999) 149.

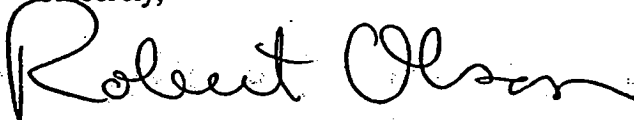
⁴ As Porras and Collins point out in *Built to Last* (New York: HarperBusiness, 1994), they also drive the profitability and sustainability of the organization—good reason enough to pay attention to organizational ethics.

- Require that the standards for organizational ethics and business integrity have an industry-wide basis.
- Require that corporations evaluate both the impact (changes in knowledge, attitude/values, and behavior) and outcomes (reduction of fraud, waste, and abuse) of their integrated compliance-ethics programs annually—and compare their results to industry-specific benchmarks.
- Require that violations of ethical standards carry penalties similar to the violation of regulatory standards.

We applaud the guidelines the Commission developed ten years ago. They have revolutionized the corporate world. Now we ask the Commission to take the next step: move this world from “obeying the law because I have to” to “doing what is right because I want to.” It’s the difference—a profound one—between compliance and integrity.

If you should decide to enhance the 1991 guidelines, and there is anything we can do to assist you in this undertaking, please contact me at (714) 307-6400.

Sincerely,

A handwritten signature in cursive script that reads "Robert Olson". The signature is written in dark ink and is positioned above the printed name and title.

Robert Olson, PhD, MPH
Executive Director

Alliance for Health Care Integrity

A Health Care Industry Initiative to
Integrate Compliance, Ethics, and Corporate Responsibility

Board of Directors (to date)

Mark Aulisio, PhD
Center for Biomedical Ethics
Case Western Reserve University

Louis Feuerstein
Ernst & Young LLP

Andy Thurman, JD
West Penn Allegheny Health System

Patricia Werhane, PhD
The Darden School of Business
University of Virginia

Founding Members (selected)

Myra Christopher
Midwest Bioethics Center

Tim C. Mazur, MBA
Ethical Advisory Services

Brian Schrag, PhD
Association for Practical
and Professional Ethics

Paul Schyve, MD
Joint Commission on
Accreditation of Healthcare Organizations

David C. Smith, PhD
Council for Ethics in Economics

Matthew Wynia, MD, MPH
Institute for Ethics
American Medical Association

Affiliations listed for identification purposes

Executive Director

Robert Olson, PhD, MPH

Mission

To assure the health care industry's commitment to integrity through an alliance of all major stakeholders that *designs, delivers, verifies, and certifies* its own model standards and metrics for compliance, ethics, and corporate responsibility.

Goals

- To prevent fraud and abuse by managing their root causes
- To reduce regulatory pressure by a demonstrated commitment to core values *and* by the targeting of inspection and enforcement activities
- To decrease business costs by integrating—and leveraging—compliance, ethics, and corporate responsibility initiatives into a unified program that is both more effective and more efficient
- To enhance business performance by building trust and reciprocity between the industry and its stakeholders through redesigning the process of *responsible self-assessment and regulation*.

Plan of Action

- Convene a summit of *independent, nonpartisan, and impartial* alliance of public and private stakeholders—professional, trade, consumer, regulatory, advocacy, payer, employer, accrediting, provider, union, shareholder, governmental, employer, academic, and ethics organizations—from across the industry.
- Develop model
 - ✓ *standards for integrity and ethical principles* that integrate compliance, ethics (research, clinical, and organizational), and corporate responsibility by aligning the core values that drive best-of-class integrity programs
 - ✓ *performance metrics by industry sector and function* that translate standards into specific and measurable process, impact and outcome objectives
 - ✓ *institutionalization strategies* that employ breakthrough, whole system change technologies to promote consensus and ownership of standards
 - ✓ *audit and assurance tools* that measure the breadth and depth of organizational commitment to standards through surveys, interviews, focus groups, document review, and observational techniques.
 - ✓ *certification program* for the health care industry
- Enroll signatories
- Retain an independent auditing firm to verify commitment to standards on an annual basis.

Potential Benefits of Participation

- ❑ Reduced legal *and* ethical exposure
- ❑ Demonstrated “good faith” commitment to compliance *and* ethics
- ❑ Increased morale and sharpened performance
- ❑ Strengthened assurance of a level playing field with competitors
- ❑ Enhanced commitment and ownership that results from *self-assessment and self-regulation*
- ❑ *Increased effectiveness and efficiency of compliance programs* achieved by integrating seamlessly with ethics program
- ❑ Technical assistance from *experts in health care and business ethics*
- ❑ Improved *competitive advantage*
- ❑ More *rigorous tools for evaluating program impact and outcome*
- ❑ Greater *patient trust and heightened public reputation*
- ❑ Lowered transaction costs
- ❑ Leveraged *bargaining power* of industry-wide group with multi-stakeholder support
- ❑ Bolstered evidence of attempt to meet *JCAHO standards on organizational ethics*
- ❑ *Decreased federal and state regulatory pressure.*

For More Information

To Be Listed as a Supporter

To Become a Member

To Provide Corporate Sponsorship

For this Ground-Breaking Alliance

Contact Bob Olson at (714) 307-6400