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# Compliance Enforcement Pressure is Increasing for Directors

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Both the Department of Justice and the Department of Health and Human Services Inspector General have long urged (and in many cases, mandated through settlements that include Corporate Integrity Agreements and through court judgments) that health care organizations have "top-down" compliance programs with vigorous board of directors implementation and oversight. Governmental reach only increased with the publication by DoJ of the so-called Yates Memorandum, which focused government enforcers on potential individual liability for corporate management and directors in fraud cases. Thus, if it isn't the case already, compliance officers should assure that senior management and directors are aware of their oversight responsibilities and the possible consequences if they are found not to have fulfilled them.

The OIG's views regarding board oversight and accountability are discussed in white papers issued by the OIG and also the American Health Lawyers Association. *See*: "An Integrated Approach to Corporate Compliance: A Resource for Health Care Organization Boards of Directors"; "Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors"; and "Practical Guidance for Health Care Governing Boards on Compliance Oversight."

Directors are not only subject to government actions, but to private ones as well. For example, several months ago, a pension system shareholder in Tenet Healthcare Corp. filed a derivative suit claiming that Tenet's board members shirked their fiduciary duties by not stopping a kickback scheme that led to a $513 million False Claims Act settlement.  The City of Warren Police and Fire Retirement System is seeking to impose a constructive trust on all salaries, bonuses, fees and insider sales proceeds paid to eight of Tenet's fourteen board members, along with damages for alleged corporate waste and gross mismanagement of the company. It's also seeking uncapped punitive damages for what it says was Tenet's act of securing the execution of documents by deception and the misapplication of fiduciary property.  The Michigan-based pension system says Tenet and its board breached their fiduciary duties by failing to adopt internal policies and controls to detect, deter and prevent illegal kickbacks and bribes. And the board participated in efforts to conceal or disguise those wrongs from Tenet's shareholders, it said.

Cases like this, both private and public (in the wake of the Yates memorandum), likely will proliferate. Indeed, notwithstanding the transition to a new Presidential administration that many hoped would lessen the intensity of its enforcement actions, the current leaders of the DoJ and various U.S. Attorneys' offices as well as the OIG have signaled their intention to keep the pressure on.

A significant compliance resource of value to health care organizations' boards recently was issued by the Baldrige Performance Excellence Program of The National Institute of Standards and Technology. The Baldrige Excellence Framework for health care organizations which sets out seven criteria for performance excellence and the means for success. A copy of the document is available for purchase here.



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