

SURVEY RESEARCH AS A COMPLIANCE TOOL

By Mark Pastin

As the market for compliance services remains hot, there has been a rush of vendors purporting to be able to “measure” the compliance environment of organizations. For a variety of reasons, hospitals and health systems are administering these surveys at a frantic pace. This article explores the reasons for conducting survey research of your organization’s compliance environment. If you decide to conduct survey research, we offer guidelines for selecting or designing a survey instrument.

(Disclosure: The Council of Ethical Organizations has administered a survey instrument - the Ethics-Compliance Survey™ - that promises to measure the ethics and compliance environment of organizations since 1986. This survey is administered on both a pure research basis and on behalf of organizations. Thus, the views expressed here may be influenced by the author’s relationship to the Council and involvement in administration of the Ethics-Compliance Survey™.)

There are many compelling reasons for administering a compliance survey. The two best reasons are to **determine how your compliance program is functioning** and to **adduce evidence of the effectiveness of your program**.

Opinions on how a program is functioning - or whether one is even needed except to satisfy government demands - tend to vary widely and in accordance with one’s background and biases. For example, hospital administrators tend to think all is well as long as they are sending the right messages and there are no outside investigators on the premises. Human resource specialists often think the key is simply to improve leadership skills, performance appraisal systems, and training programs. The reimbursement director may go to sleep thinking about jail cells, while most employees of the hospital or system may not be aware that it has a compliance program.

If you can get the various constituencies in a hospital or system to agree that the outcome of a survey will be meaningful, you may be able to gain some understanding of how and whether the compliance program is functioning. Discuss this issue with all concerned **before** launching your survey. Most people believe - correctly - that you can manipulate a survey to show anything you want it to show. Most surveys include leading questions that are likely to be answered in the way the survey administrator thinks they should be answered. The method by which the survey is distributed and returned may inhibit candid responses and force employees to parrot management’s viewpoint. You can overcome these concerns by using a genuinely validated survey instrument. (See below.) Even if you use a validated instrument, be sure that the key constituencies have committed to taking survey results seriously before you proceed.

In addition to finding out if your program is functioning in a general sense, you may be able to identify **specific strengths and weaknesses** of the program and of the organization’s compliance environment. For example, you may be able to learn if employees are fearful of using the 800 number or hotline (a common result) and might go outside the organization with a concern. You may also be able to assess the support being given to the compliance program by various

management levels. In an organization that is fairly large, you should be able to gain some comparative insight into the compliance climate at different locations and in different functions.

Your hospital or health system may also wish to implement a survey in order to **adduce evidence of the effectiveness** of the compliance program. This is a more important issue than many organizations realize. Both the Sentencing Guidelines for Organizational Crime and the various model plans/guidances issued the Department of Health and Human Services Office of the Inspector General emphasize the importance of objectively assessing the effectiveness of the compliance program and assuring that it incorporates best industry practices. This, by itself, is a good enough reason to consider administering an empirically validated survey as an element of program assessment.

A more important question is whether or not your compliance program would protect the organization if it were accused of an improper action. Many hospitals and health systems seem to believe that merely checking the boxes next to the required elements of a compliance program will earn them some leniency. This is simply not true. Since virtually every hospital and system has checked the boxes - and most compliance programs look about the same on paper, the burden is on the hospital or system to demonstrate why the government should view it as effective.

One way to demonstrate effectiveness is by tracking 1) instances in which high level officials of the organization have been disciplined, dismissed or handed over for prosecution as a result of compliance infractions, and 2) voluntary disclosures made to government entities as a result of the operation of the compliance program. While one should certainly track actions falling into these categories, most organizations would like to be able to demonstrate the effectiveness of their compliance program absent a long list of disciplines and disclosures.

A survey - especially one that is repeated annually - can be an important tool in showing that you are testing your program to ensure its effectiveness. If survey results are positive and/or show year-to-year progress, this too may count in your favor. But do not expect survey results to be uncritically accepted. The Department of Health and Human Services, the Department of Justice and many other federal and state agencies employ sophisticated empirical research methodologies, and will see through a survey designed to elicit only positive results. If there has been no empirical testing of the survey instrument to establish its validity, do not expect results to carry weight. In fact, a survey that is poorly designed or self-serving is likely to confirm any suspicions that may exist that your program is a paper program and is not seriously intended.

Even if you use a well thought out and validated survey instrument to assess your compliance program and compliance environment, do not do so in the hope of avoiding some of the other heavy lifting that goes into compliance program assessment. This includes:

- Tracking hotline calls and other reports to the compliance function
- Documenting corrective actions in areas in which there have been problems
- Auditing records to ensure that all employees have received 1) compliance training and 2) training in compliance sensitive aspects of their jobs

- Documenting disciplines and disclosures, if any, that originate through the compliance program
- Maintaining minutes of compliance committee meetings and reports to the compliance (audit, executive) committee of the board
- Conducting focused audits in high risk compliance areas

Even if you undertake a survey and the other actions necessary to on-going assessment of a compliance program, you may wish to undertake additional actions on a periodic basis. These may include a peer study comparing your compliance efforts with those of an appropriately selected peer class and/or an external review of your compliance program. An external review, if conducted, should not employ the services of your normal auditors or any consultants, auditors or lawyers that have been extensively involved in the development or implementation of your program.

In short, a survey of an organization's compliance environment is both inherently valuable and evidentially useful. But it is essential that the survey and administration process be credible and that you do not expect survey administration to substitute for other program assessment elements.

Good, Bad and Ugly Surveys

If you decide to conduct a survey, you must select (or design) and administer the survey in such a way that the results will be credible to both internal and external audiences.

The two measures used to evaluate survey instruments are **validity** and **reliability**.

Most surveys fall down on the issue of **validity**. Validity means that the survey measures what it is intended to measure. For example, a compliance survey should measure key compliance factors such as employee tendency to follow policies, report infractions and document accurately. Some surveys ask employees if they violate policies. Employees always answer that they do not violate policies. In fact, the worse the compliance environment of the organization, the more likely employees are to lie in response to this type of question.

Here is an example of a survey item that is not valid:

- 1. My supervisor never asks me to violate a policy.**

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree.

Employees who fear retribution tend to answer "Strongly agree" or "Agree." Their apparently positive response actually indicates a negative compliance environment driven by fear of reprisal.

Here is an example of an item that is valid:

- 2. When I have to choose between completing an important task and following a policy, there are policies I may not always follow.** (© Council of Ethical Organizations, 2011)

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree.

If employees tend to disagree more than agree with this item, their response indicates a strong respect for organizational policies. It is reasonable that employees recognize a trade-off between policy compliance and other demands in healthcare organizations, although it is desirable that employees favor policy compliance.

It normally takes several years of validation studies to empirically validate items. This involves administering the items in various combinations to tens of thousands of employees in randomly selected and representative organization types. Many of the surveys being marketed as compliance surveys today are not backed by validation studies. These surveys may pose a risk to organizations if they indicate a negative compliance environment when the truth is that employees are simply willing to respond candidly. A non-validated survey may also be biased in favor of commending the use of additional consulting services.

A survey is **reliable** if it has been tested and shown to yield the same result on repeat administrations and under variable circumstances. In other words, if the survey was administered on Monday and produced one result and administered again on Friday and produced a different result, both results are unreliable. Some consultants advise against using a particular survey instrument during a union campaign or employment reduction for fear of obtaining a negative result. Such advice is a sure sign that the recommended instrument is not reliable. A properly constructed survey produces almost the same result under highly variable conditions.

A good survey instrument should be brief, enjoyable to complete, and within the reading level of your employees. The results obtained with the survey instrument should not only give you insight into your own organization but should allow you to compare your organization to other like organizations with respect to compliance program issues.

If you or your organization feels unable to determine whether an instrument recommended to you is satisfactory, engage the services of a survey expert (not otherwise engaged in this project) for a day or two to review the instruments and methodologies being recommended.

Useful but not Magical

On balance, surveys are an important compliance tool. Business organizations - including healthcare organizations measure the things which they consider truly important to their success. An organization that is serious about compliance will measure its compliance environment on at least an annual basis. A survey can be the cornerstone of this evaluation effort. But, like most compliance tools, a survey can do more harm than good if you do not exercise judgment in how it is used.