

PRIVATE HOSPITALS IN SOUTH AFRICA: A COMPLIANCE FRAMEWORK

Johan Marx*, Ronald H Mynhardt**

Abstract

The primary compliance risks faced by private hospitals in South Africa were analysed. Compliance for private hospitals fell into three categories: patient care, regulatory compliance and human resources. The results of this study indicated that these hospitals are struggling to ensure compliance as a result of the complexity of and constant changes to applicable legislation. The study confirmed that private hospitals face compliance risk. A compliance framework was developed, which could reduce compliance risk of private hospitals in South Africa. Outsourcing could be considered in order to focus on core business activities and to reduce the cost of compliance.

Keywords: Compliance Risk, Cost of Compliance, Healthcare Sector, Outsourcing, Private Hospitals Regulatory Compliance, Regulatory Risk, Risk Management

* Department of Finance, Risk Management and Banking, University of South Africa

** Corresponding author, University of South Africa, PO Box 392, Unisa 0003

Tel.: +27 12 429 4927

Fax: +27 86 640 0793

E-mail: mynharh@unisa.ac.za

Introduction

Compliance describes the ability to act according to a statute, a set of rules or regulatory requirements (ICT, 2010). Compliance further consists of two components, namely compliance with the external rules that are imposed upon an organisation as a whole, and compliance with internal systems of control that are imposed to achieve compliance with the externally imposed rules.

In the healthcare sector, regulators face the challenge of regulating and monitoring hospitals in a way that will ensure safe, high-quality and efficient services, yet controlling the cost of providing such services. However, hospitals around the world have come under scrutiny for perceived inadequate quality and an inability to adequately monitor medical staff behaviour. Around the world, an estimated 100,000 patients die each year simply as a result of preventable infections acquired in hospitals (Garvin, 2010).

The healthcare sector, similar to the financial sector, experiences comprehensive and complex regulatory regimes. Hospitals are subject to laws and regulations that apply to, amongst others, medicine and patient care. In addition, hospitals are also subject to laws and regulations governing business organisations in general (Acts online, 2010). This includes, amongst others, employment, the environment and taxation. While most of the laws and

regulations are well intended, the regulatory burden plays a significant role in escalating healthcare costs.

In the South African healthcare sector, the community is served by both state-owned and private hospitals. A private hospital is a hospital owned by a for-profit company or a not-for-profit entity. It is also privately funded through payment for medical services by patients, by insurers, or by medical aid schemes. Both these type of entities are subject to the same compliance regime depending on the products and services offered (Cullinan, 2006).

Responsible persons in South African private hospitals may be fined up to R10 million or face jail terms if convicted of non-compliance with applicable laws and regulations. An example of such a penalty may be observed in the non-compliance with the pertinent sections of the Choice of Termination of Pregnancy Act (RSA, 1996). This is apart from the reputational damage suffered by such a hospital.

In view of the above-mentioned risky situation, a study was conducted amongst South African private hospitals with the main objective to ascertain on what basis they conduct compliance activities.

How does Compliance Affect Private Hospitals in South Africa?

In South Africa, there are a number of private hospital groups that offer a variety of services to the community (Cullinan, 2006). The hospital groups also own and manage hospitals in nearly every province in

South Africa (Netcare, 2010). The majority of these hospital groups are divisions of holding companies that operate hospitals around the world.

The first question that needs to be asked, is so what are the primary compliance risks faced by hospitals? These risks fall into three broad categories, namely patient care, regulatory compliance and human resources.

Patient Care

Patient care refers to the prevention, treatment and management of illness and the preservation of physical and mental well-being through services offered by medical and allied health professions. This and similar definitions are also catered for under the term "health care". Patient care consists of services rendered by members of the health professions or non-professionals under their supervision to the benefit of the patient.

This risk comes in the form of failing to prevent preventable infections and injuries, and failing to manage the many independent doctors who order and direct care in the hospitals. In addition to this risk, not improving quality care will affect the hospital's profitability as patients and doctors could simply make use of another hospital's facilities in future.

Regulatory Compliance

"Regulatory compliance" is the term generally used to describe the policies and processes which firms have in place to ensure that they follow the many laws, rules and regulations put in place by the bodies which control activities in a given jurisdiction (World Check, 2010).

In addition to patient care, compliance with complicated laws and regulations and the associated compliance cost represent the second major challenge. The hospital groups indicated that, as a result of the variety of services they offer, they find it almost impossible to ensure full compliance at an acceptable cost. Non-compliance by employees and physicians is mostly the result of the excessive quantity, complexity and constant changes of the applicable laws and regulations.

The hospitals are of the opinion that achieving cost reductions will require new ways of managing compliance, the application of new approaches to old problems, and the possible relaxation of certain laws and regulations.

Human Resources

South Africa has a shortage of healthcare professionals to serve the increasing numbers of patients and an aging population. This has a

significant impact on the delivery of health care. Increased competition for doctors and nurses in wealthy metropolitan areas is likely to be at the expense of those in rural and poorer areas.

The relationship between private hospitals and physicians is governed by numerous complex labour and other laws and regulations.

Research Methodology

The private hospital groups researched included South African-owned hospitals as well as foreign-owned hospitals. The hospitals represent 70 per cent of the total number of private hospitals in South Africa, making the sample representative of the private hospital sector in South Africa.

Firstly, the level of compliance in private hospitals in South Africa was investigated. This first step was necessary as the executives (board of directors) of private hospitals have the ultimate responsibility for compliance. A questionnaire was used for this purpose.

Secondly, a compliance framework was developed for these private hospitals, which could, when implemented, contribute to private hospitals being compliant at an acceptable cost.

Current Status of Regulatory Compliance in Private Hospitals

Based on the information obtain in the study, the following paragraphs summarise the current status of compliance in South African private hospital groups.

The majority of private hospitals are part of larger hospital groups that also have a presence in, amongst other, Europe, Africa and the Middle East. The majority of private hospitals in South Africa are active in the healthcare, emergency services and rehabilitation sectors whilst some hospitals are also active in designing and manufacturing hospital equipment and providing human resources to healthcare professionals. The main regulatory bodies for the hospital groups in South Africa are the Department of Health, the Nursing Council, the Pharmacy Council, the Health Professions Council of South Africa and the Medicines Control Council. The result is that these private hospital groups have to comply with a variety of compliance issues as well as reporting requirements not only in South Africa but also abroad.

The private hospitals were divided on which Acts they should comply with. Every private hospital group had a separate compliance universe. One of the reasons for this could be that the private hospitals do not perform the same activities. However, table 1 lists the acts mentioned by all the private hospital groups.

Table 1. Acts applicable to South African private hospitals

-	Choice of Termination of Pregnancy Act [Act No. 92 of 1996]
-	Medical Schemes Act [Act No. 131 of 1998]
-	Medical, Dental and Supplementary Health Service Professions Act [Act No. 55 of 1974]
-	Nursing Act [Act No. 50 of 1978]
-	Occupational Health and Safety Act [Act No.181 of 1993]
-	Pharmacy Act [Act No. 53 of 1974]
-	Promotion of Equality and Prevention of Unfair Discrimination Act [Act No. 4 of 2000]
-	Sterilisation Act [Act No. 44 of 1998]
-	Mental Health Care Act [Act No. 17 of 2002]
-	National Health Act [Act No. 61 of 2003]

Private hospitals have either a centralised business model for compliance or a combination of a centralised and decentralised model. In this context, “centralised” means that head office is dictating activities while “decentralised” means that business units manage their own activities. None of the hospitals in South Africa has a completely decentralised business model whilst the majority of compliance staff is deployed on a decentralised basis by the hospitals. Compliance with the vast number and the diverse nature of Acts and Regulations was stated as a problem by all private hospitals taking part in the research study. In addition, the hospitals were unclear about whether the management compliance with the different Acts should be centralised or decentralised.

Private hospitals perform the basic compliance responsibilities, namely advisory services, developing compliance policies, providing training on compliance, monitoring compliance with the different Acts, performing compliance reviews and liaising with the regulators. Once again the problem of centralised versus decentralised compliance surfaced. The hospitals have not entered into outsourcing agreements that pertain to compliance activities but indications are that ad hoc arrangements may be used.

The hospitals were unanimous that the cost of compliance has escalated over the past three years and it needed to be contained. The level of complexity in the medical and related compliance universe increased the number of Acts/Regulations and also heightened regulatory focus.

Hospitals in South Africa were divided on the question as to whether the current regulatory regime in South Africa is too onerous. The hospitals were also divided on whether the current regulatory regime influences competition between all the hospitals in South Africa positively or negatively. Some hospitals favoured self-regulation while others were totally opposed to this notion.

Compliance Framework

The results of the survey mentioned above indicated that private hospitals are at different levels of managing compliance within their respective organisations. It was also notable that the cost of

compliance could not be calculated. Two distinct areas were identified where the cost of compliance can be managed, namely areas where compliance duties are actually performed, and monitoring of compliance by dedicated compliance personnel.

Tamus (2007) is of the opinion that performing compliance is the responsibility of each of the organisation’s employees. From an employee perspective, the inclusion of certain compliance-related key performance indicators into each employee’s remuneration package will increase accountability. The inclusion of compliance in business cases for budgets and strategic initiatives and making compliance an agenda item at board meetings would increase visibility at a more strategic level. Setting up management information systems that provide relevant information to executive management and the board about the hospital’s compliance and clear, transparent reporting procedures could all contribute towards an effective compliance programme.

It is the duty of the compliance division to create, implement, monitor and report on the level of compliance in an organisation. In order to manage costs, CCH (2006) is of the opinion that organisations need to create a compliance culture by making the compliance programme part of the business and part of the mindset and responsibility of each and every employee. By communicating constantly, visibility of the compliance programme could be enhanced.

Deloitte (2006:1) is of the opinion that there is no universally applicable compliance division structure for organisations. Whilst some hospitals have created positions in compliance, others are adding the responsibility for compliance activities to existing positions within financial reporting or risk management.

This article suggests a compliance framework, which consists of defining the key functions of a compliance department, the role of the compliance officers, a private hospital’s compliance universe, a compliance organogram and applicable reporting structures.

Key Functions of a Compliance Department

A compliance department is a group of people within an organisation who are concerned with making sure all actions are conducted within applicable laws and regulations. Also known as a compliance unit, the compliance department will take into account both applicable governmental standards as well as any Regulations that are created and followed within the specific sphere of business. In general, the compliance department ensures that all transactions are legal, ethical, and in the best interests of the clients involved.

The following are the key functions of a compliance department within a private hospital group:

- to identify the risks that a private hospital faces and to advise on them – identification;
- to design and implement controls to protect a private hospital from risks – prevention;
- to monitor and report on the effectiveness of controls in the management of a private hospital's exposure to risks – monitoring and detection;
- to resolve compliance difficulties as they occur – resolution; and
- to advise the business on rules and controls – advisory.

The Role of Compliance Officers

The compliance officer has a duty to his/her employer, i.e. the private hospital, to co-operate management and staff to identify and manage compliance risk by means of internal controls. The general responsibility of the compliance officer is to provide an in-house compliance service that effectively supports business areas in complying with relevant laws and regulations and internal procedures.

Compliance officers often struggle to understand the full extent of what their job entails and the role played by their department in the hospital's overall risk management programme. Compliance responsibilities rest with compliance officers at a central level in a hospital and also with compliance officers at a business unit level. Compliance officers at the central level are called subject-matter experts (SMEs) because they are the experts on specific statutes.

The SMEs at central level, in conjunction with the business entities, audit and risk committees, management boards and boards of directors of a hospital, are responsible for the establishment of uniform risk management standards, policies, procedures and methodologies. These SMEs are also responsible for the communication of risk management strategies and general risk management requirements to the business units, creating risk awareness, monitoring the implementation and

effectiveness of the risk management processes and assisting with the improvement of risk management processes as required.

The general compliance responsibilities for SMEs at a central level are defined as:

- overseeing the distribution of policies and regulations;
- developing and distributing the specific rules governing the implementation of policies and regulations;
- interpreting or answering questions about policies, regulations and rules; and
- communicating information concerning policies, regulations and rules.

The specific responsibilities for SMEs at a central level are defined as:

- reviewing all new or revised policies and regulations;
- determining whether new rules or the modifications of current rules are applicable;
- distributing policies and regulations to all applicable divisions of the hospital;
- overseeing the development or implementation of rules;
- overseeing the distribution of rules to appropriate hospital personnel;
- publishing rules through hospital distribution channels and appropriate web sites;
- providing training to present, interpret or explain the rules;
- ensuring that the names of all the hospital's compliance officers are available to employees in order to respond to questions/comments on policies, regulations or rules;
- reporting to the appropriate forums on a regular basis on progress in developing and distributing policies, regulations and rules; and
- making recommendations to the hospital's management concerning policy compliance.

The general responsibilities of compliance officers at a divisional or business unit level are:

- ensuring that all applicable policies and regulations have been received;
- adhering to rules regarding the implementation of policies and regulations;
- obtaining answers to questions about policies, regulations and rules from subject-matter experts; and
- communicating information concerning policies, regulations and rules.

The specific responsibilities of compliance officers at a divisional or business unit level are:

- reviewing all new or revised division-specific policies and regulations;
- distributing policies and regulations through all applicable channels to all affected areas of the division;
- implementation of rules;

- overseeing distribution of approved rules to appropriate divisional personnel;
- publishing rules through the division's distribution channels;
- providing training, as appropriate, to present, interpret or explain the rules;
- providing the names of the division's compliance officers to all employees in order for the employees to respond to questions/comments on policies, regulations, or rules;
- reporting to the head of the division on a regular basis on progress regarding developing and distributing policies, regulations and rules; and
- making recommendations to the subject-matter experts concerning policy compliance.

Compliance Universe

The study confirmed that private hospitals are not clear on the compliance universe within which they have to perform their activities. Contrary to popular belief, an organisation's compliance universe does not only consist of a list of applicable Acts and Regulations but also of a number of other key elements. It is therefore important that the private hospital's compliance universe include the following key elements:

Documented Written Internal Policies and Procedures

These are policies and procedures that are brought into effect by the hospital, used by their employees only and which should comply with legal legislation, for example rules on health and safety. There are no set rules in this regard and it is up to the individual

hospital to institute its own internal policies and procedures.

Identification of Major Acts and Regulations/Compliance Requirements

This is the process of identifying applicable Acts and Regulations governing the activities of a particular hospital. The most important here is to document these requirements and then to make all personnel aware of these requirements.

A specific methodology was created to identify these Acts. To this end, a number of steps were followed, namely:

- step one: Identifying the general activities of a hospital;
- step two: Identifying the different categories into which the Acts in South Africa can be categorised and then comparing the identified general activities of a hospital to each of the categories of Acts;
- step three: Comparing the identified general activities of a hospital to each of the Acts in the different sub-categories;
- step four: Reviewing the different sub-categories for completeness and reviewing other sources to identify and add Acts not yet categorised;
- step five: Listing the particular Acts governing the identified general activities of a hospital;
- step six: Reviewing the provisional list and identifying the Acts that have to be administered centrally in the hospital; and
- step seven: Providing a final list of Acts to be administered centrally in the hospital.

By using this methodology, the following Acts were identified as part of the compliance universe of private hospitals in South Africa.

Table 2. Acts applicable to private hospitals in South Africa

Act	Description
Act 97 of 1997	Basic Conditions of Employment Act
Act 92 of 1996	Choice on Termination of Pregnancy Act
Act 71 of 2008	Companies Act
Act 130 of 1993	Compensation for Occupational Injuries and Diseases Act
Act 89 of 1998	Competition Act
Act 55 of 1998	Employment Equity Act
Act 56 of 1974	Health Professions Act
Act 58 of 1962 (as amended)	Income Tax Act
Act 66 of 1995	Labour Relations Act
Act 131 of 1998	Medical Schemes
Act 101 of 1965	Medicines and Related Substances Control Act
Act 107 of 1998	National Environmental Management Act
Act 59 of 2008	National Environmental Management: Waste Act
Act 61 of 2003	National Health Act
Act 50 of 1978	Nursing Act
Act 85 of 1993	Occupational Health and Safety Act
Act 53 of 1974	Pharmacy Act

Act 2 of 2000	Promotion of Access to Information Act
Act 4 of 2000	Promotion of Equality and Prevention of Unfair Discrimination Act
Act 44 of 1998	Sterilisation Act
Act 17 of 2002	The Mental Health Care Act
Act 83 of 1993	Tobacco Products Control Act
Act 63 of 2001	Unemployment Insurance Act
Act 89 of 1991	Value-Added Tax Act

Process for Keeping Current on Regulatory Requirements

It is no use identifying all the specific Acts and regulatory requirements and not keeping up with changes in these requirements. Again, there are no set rules in this regard, and it is up to the individual hospital to institute its own procedures in this regard. An option would be to sign up with a law firm that offer these type of services.

Process for Monitoring of Compliance Activities

Compliance monitoring is one of the key tools that a hospital can use to protect itself and its shareholders by ensuring that the hospital adheres to laws and regulations.

The Compliance Institute of South Africa (CISA, 2002) defines compliance monitoring as “An examination of business activities to assist management and the board of directors to understand whether business is conducted in compliance with the relevant regulatory requirements.”

In the compliance framework, a risk-based approach is promoted with regard to compliance monitoring. The decentralised compliance officers as well as the compliance officers at a central level furthermore perform compliance monitoring.

The role of the compliance officer at the centre or an SME can be defined as that of identifying the Acts that govern the activities of a hospital, identifying the inherent risks, assessing the risks and rating the risks. The objective is to assess high regulatory risks for the hospital that warrant monitoring on a continuous basis.

The role of the divisional compliance officer is to monitor compliance with all applicable laws and regulations relevant to that particular division. The monitoring of divisional compliance is, firstly, based on the guidance provided by the different SMEs. Secondly, the divisional compliance officer should monitor all applicable acts and regulations not managed by the SMEs and that are only applicable to that division.

There are a number of methods available to compliance officers for monitoring compliance, namely:

- to attend all meetings in the hospital or division in order to remain informed of business activities. The advantage is that any non-compliance can be identified at an early

stage and that guidance can be provided to the division;

- to constantly research the regulatory universe to identify applicable Acts and Regulations that need to be managed at a central level in a hospital; and
- to formulate and implement a risk-management plan (RMP) that will guide the monitoring process.

Compliance Reporting

Compliance officers are required to provide information on each identified area of non-compliance with a focus on strategies taken or proposed to manage or eliminate the risk. In addition, compliance officers should provide updates on the status of actions to manage risks associated with identified non-compliance as well as advice on any new areas of potential non-compliance.

The reporting process in this compliance framework starts after the monitoring process has been completed for each of the applicable Acts and Regulations. However, a disjointed reporting function and insufficient procedures could drain a hospital's resources, while poorly defined reporting structures may lead to finger-pointing in the hospital when compliance issues arise.

Compliance Training

Compliance training in a private hospital refers to the process of educating staff in terms of the laws, regulations and company policies that apply to their day-to-day job responsibilities. A private hospital engages in compliance training to achieve several goals, namely

- avoiding and detecting violations by staff that could lead to legal liability for the hospital;
- creating a more respectful workplace; and
- laying the groundwork for a defence where staff wrongdoing occurs despite the hospital's training efforts.

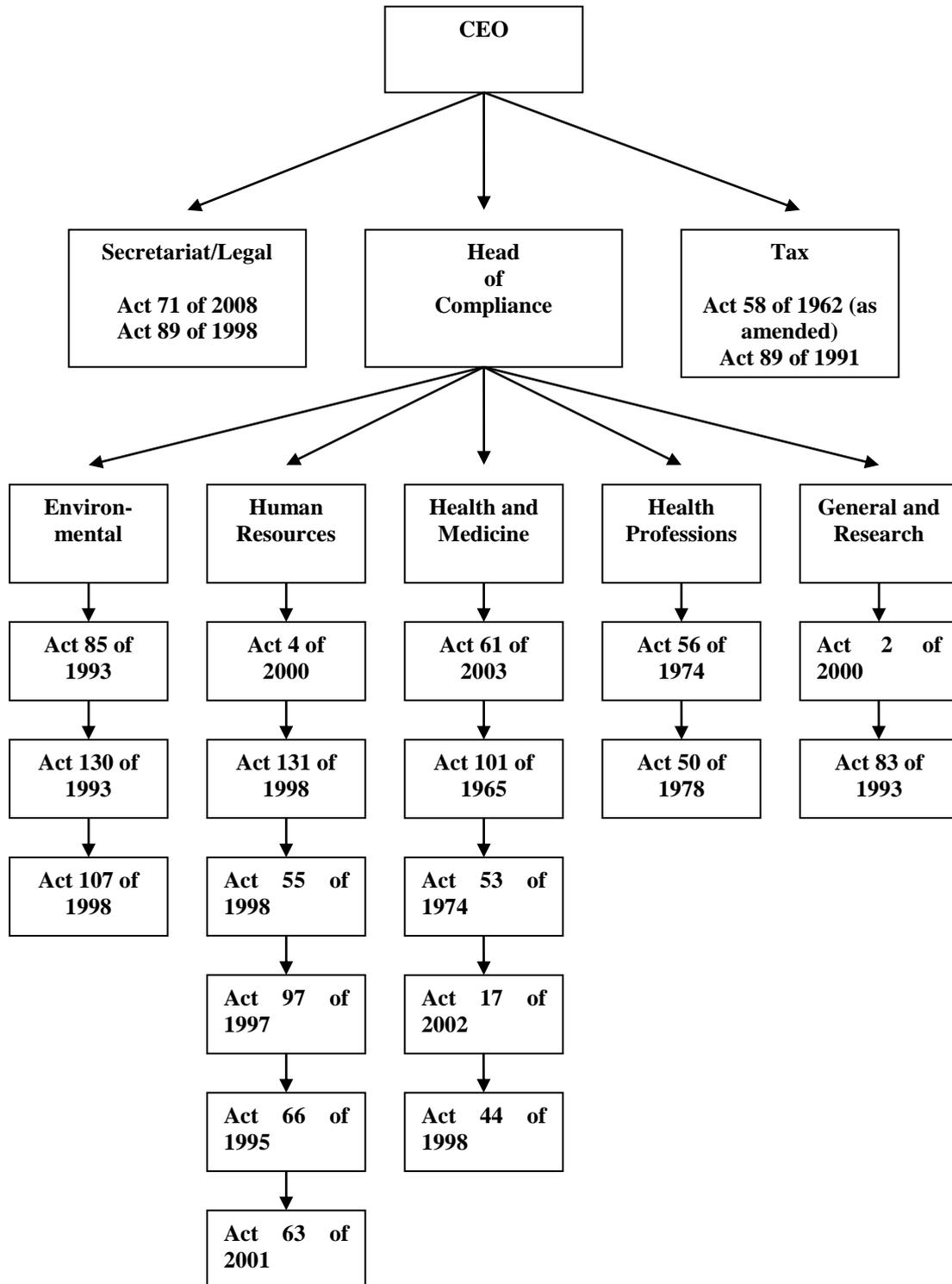
Private hospital groups have diverse activities and therefore a single, one-size-fits-all compliance training programme does not exist. However, it is suggested that hospitals create inspiring and effective compliance training.

Compliance Organogram

The compliance organogram below shows the proposed structure of a private hospital group's compliance department at a central level and the relationships and relative ranks of its parts and

positions. The compliance organogram for the compliance framework is a functional structure based on the legislative universe as described above.

Figure 1. Compliance organogram



There are four different levels in the structure, namely:

→ **Level one:** Executive management

The hospital's board of directors is ultimately responsible for compliance in a hospital. Active oversight over compliance by the board of directors and the chief executive officer (CEO) is necessary in order to manage compliance risk. A culture of compliance at top management level, ensuring that compliance is a hospital-wide priority and that business units are responsible for performing compliance in the respective units, is key to successful management of any hospital group. Top management must review the hospital's compliance policy at least once a year and assess the extent to which the hospital is managing compliance risk effectively.

→ **Level two:** Senior management

Senior management is responsible for the establishment and maintenance of appropriate compliance risk policies, procedures, and internal controls. Senior management is furthermore responsible to report any material breaches of Acts, Regulations or any other rules to the board and CEO.

Senior management is divided into these three groups based on the Acts identified in the compliance universe. The Head of Secretariat (HOS) is responsible for managing compliance with the Companies Act and Competition Act. The Head of Compliance (HOC), in turn, is responsible for managing compliance with a wide spectrum of Acts that can be divided into Acts pertaining to health, human capital, financial matters, and some other applicable acts. The Head of Tax (HOT) is responsible for managing compliance with the Income Tax Act and Value-added Tax Act.

→ **Level three:** Management

The group compliance division, headed up by the HOC, is divided into sections. A manager responsible for each set of Acts heads each section. There are therefore dedicated managers for the different sections. The manager's primary responsibility is to co-ordinate activities in the particular section and to ensure that subject matter experts (SMEs) adequately manage compliance risk for all the applicable Acts. The manager also acts as the liaison officer between the SMEs and the rest of the hospital group.

→ **Level four:** Subject matter experts

Subject matter experts may each manage a particular Act or more than one related Act. They are regarded as the experts in those specific Acts.

Outsourcing

The concept of outsourcing refers to a company that contract with a hospital to provide services that might otherwise be performed by in-house hospital staff. The most prominent advantage of outsourcing is the fact that it often saves money. Outsourcing also

allows hospitals to focus on their core business activities whilst the monitoring of compliance is taken care of by external experts. This means that hospital resources can be used more efficiently and effectively. Another advantage is that an unbiased opinion on compliance issues can be obtained.

There are some disadvantages to outsourcing of compliance. There is the danger of not being aware of compliance issues, as outsourcing may lead to delayed communication and reporting. Any sensitive information is vulnerable, and a hospital may become very dependent upon its outsource providers, which could lead to problems.

Should a hospital however choose to outsource its compliance activities, it is suggested that preconditions be set in order to successfully outsource compliance management.

Conclusion

In view of a risky compliance situation for South African private hospitals, a study was conducted with the main objective to ascertain on which basis these private hospitals conduct compliance activities. The study found that there is an element of compliance risk for private hospitals and that the different hospital groups are not coping but are trying to deal with compliance risk in different ways.

The study makes a contribution by suggesting a compliance framework for implementation by private hospitals in South Africa and outlining the responsibilities of centralised and decentralised compliance officers, a centralised compliance organogram based on the defined compliance universe and reporting structures. The findings from the study also suggested outsourcing as one way of containing the cost of compliance.

By implementing a sound compliance framework, South African private hospitals can remain healthy and prevent terminal risks.

References

1. Acts on line. 2010. *Legislation, amendments and regulations*. www.acts.co.za [Date used: 19 October 2010]
2. CCH. 2006. Building a compliance culture. [Available on the internet] http://cchworkflow.com.au/image_workflow_compliance.html. [Date used: 19 November 2010].
3. Cullinan, K. 2006. *Health services in South Africa*. <http://www.health-e.org.za/uploaded/cb1f388f3b351708d915c12cfb4fc3cf.pdf>. [Date used: 12 October 2010]
4. Deloitte&Touche. 2006. *Addressing human capital elements key to effective, sustainable compliance*. Canada. May.
5. Equalpartners. 2010. *Health and human rights*. http://www.equalpartners.info/Chapter1/ch1_1How.html [Date used: 22 September 2010]
6. Garvin, B. 2010. *100 000 patients died from hospital infections*. <http://ezinearticles.com/?Almost-100,000->

- People-Die-Every-Year-From-Hospital-Infections&id=4514259. [Date used: 21 October 2010]
7. ICT. 2010. *Compliance and the Regulatory Environment*. <http://www.int-comp.org/compliance>. [Date used: 22 October 2010]
 8. Netcare, 2010. *About us*. http://www.netcare.co.za/live/netcare_index.php. [Date used: 13 October 2010]
 9. RSA (REPUBLIC OF SOUTH AFRICA). 1996. *Choice of termination of Pregnancy Act* [Act No.92 of 1996]. http://www.acts.co.za/Choice_of_termination_of_pregnancy_act_1996.htm. [Dates used: 21 October 2010].
 10. Tamus. 2007. Audits: How to prepare and what to expect. [Available on the internet] <http://tamus.edu/offices/iaudit/presentations/CSBAFocusSession.ppt>. [Date used: 23 September 2010].
 11. Wisegeek. 2010. *Sarbanes Oxley*. <http://www.wisegeek.com/what-is-sarbanes-oxley-compliance.htm> [Date used: 23 October 2010]
 12. World Check. 2010. *Regulatory compliance*. <http://www.regulatorycompliance.org/> [Date used: 23 September 2010]