Termination for Cause:  
A Case Study

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History and Background

- The Research Foundation for The State University of New York (RF) was founded in 1951 to serve the State University of New York (SUNY) and to capitalize on its scope, scale, and diversity as an engine of New York’s innovation economy.
- The RF is the largest, most comprehensive university connected research foundation in the country supporting nearly $1 billion in SUNY research activity per year.
- The RF administers sponsored programs and innovation support, i.e. tech transfer, services to SUNY faculty performing research in life sciences and medicine; engineering and nanotechnology; physical sciences and energy; social sciences; and computer and information sciences.
- Over 17,000 W2’s issued per year
- Over 4000 grants administered annually at over 30 campus locations

RF and SUNY Relationship

- The RF is a private non-profit NYS registered Education Corporation
- 1977 Agreement between the RF and SUNY
- RF administers sponsored programs
- SUNY conducts research
- RF operates at each SUNY campus
- RF appoints an Operations Manager (OM) as senior RF official at Campus
  - Usually a full time SUNY employee assigned extra duty as an RF OM
  - Per RF bylaws the OM is an “appointed officer” of the corporation
RF Structure
- Board of Directors
- Elected Officers (President, GC & S, CFO)
- VP of Operations
- VP of Audit
- Chief Compliance Officer
- Appointed Officers including OM's

History and Background
- 2009:
  - OGCS had 3 full time and 1 part time attorney, a CPA/Office Manager, and 3 support staff and interns
  - No formal compliance function
  - No formal risk management function
  - Established board reporting Audit department with roughly 6 auditors

History and Background
- OGCS Jan 2009:
  - Acting General Counsel admitted in 1997
  - 1 attorney practicing 3 years
  - 1 attorney practicing 2 weeks
  - 1 part time attorney admitted in 1997
  - Servicing 30 Operating Locations (campuses)
History and Background

- Summer 2009:
  - Acting General Counsel Resigns
  - Receive DHHS Subpoena through Western District of NY US Attorney
  - Receive Federal Grand Jury Subpoena on behalf of a Grand Jury in the Northern District of NY

Grand Jury Subpoena

- Related to a sponsored program at one campus
- Campus "created" a center to support contractual obligations to a NYS Agency
- All center business is operated by RF employees located at the campus
- RF dba the Center contracts with NYS Agency to perform program reviews
- Employees are housed at NYS Agency
- Employees are supervised by Center management (all employees of RF)
- Center management appears to report NYS Agency management
- RF Operating Location leadership gives great leeway to the PI of the Center

Grand Jury Investigation

- Results in multi-million dollar legal defense
- Review of nearly 3 terabytes of documents
- Reviewed all relevant program records and files
- Did not review grant expenditures since there was no allegation of inappropriate billing
- Did not review records of the Centers HQ at the Campus
- Investigation still ongoing
State Subpoena

- NYS former Commission on Public Integrity issues a subpoena to the RF related to the former RF President
- RF President was also a SUNY official subject to the jurisdiction of the NYS ethics rules for public employees
- RF President received a notice of a potential violation of ethics rules in Jan '09

Confluence

- Information regarding the Grand Jury Subpoena was leaked
- After the release of the state subpoena, information about the ethics investigation was leaked
- Resulting in an immediate reaction from the NYS AG, NYS IG, & NYS Comptroller

Auditors and Investigators

- SUNY asked OSC to audit
- OSC interim findings
- NYS AG and IG – initiated investigations
OSC Audit

- Part of the OSC Audit sample coincidentally included the campus that housed the program covered under a federal investigation.
- The OSC preliminary audit raised considerable concerns about the “tone at the top” at this operating location.

Internal Investigation

- 17 high impact findings in 3 general categories:
  - Policy violations (non-criminal)
  - Policy violations (overt acts related to potential criminal conduct)
  - Criminal conduct
Reputational Risk

http://www.wgrz.com/news/article/186336/1/Audit-SUNY-Foundation-Misspent-Funds

Internal Investigation

- Findings included:
  - The operations manager lied during interviews and on the Audit Management Representation Letter
  - Adverse Tone at the Top
  - Conflicts of Interest
  - Failure to pay reimbursements for non-business related expenditures
  - Credit Card irregularities
  - Travel irregularities

Ugh!

Experience is simply the name we give our mistakes.
~Oscar Wilde

Mistakes are the portals of discovery.
~James Joyce
What went wrong?

- The federal grand jury investigation was seen as isolated
- Policy violations seen as isolated
- The legal team did not feel authorized to broaden our review

What we changed

- Corporate/Enterprise Level:
  - Strengthened and reissued the Code of Conduct and require annual certification
  - Enhanced and republished our whistleblower hotline
  - Issued new Fraud and Whistleblower policy and procedure
  - Issued new COI Policy and Procedure

- Created a new Risk Management and Ethics function
- Expanded the RM & E function into the new Compliance Office
- Operation Excelsior – 30 day Internal Control enhancement project
- Risk Management
- Internal Controls
What we changed

- Campus:
  - Personnel
  - Training
  - Audit
  - Compliance

Where we are

- Compliance program based upon the Federal Sentencing Guidelines
- New Internal Control Methodology and annual testing plan
- New risk assessment process
- Continuing process to review and revitalize corporate policies

Lessons Learned

- Admit mistakes – acknowledge mistakes, fix it, disclose it, move on
- Board and management must demand clarity to fulfill fiduciary obligations
- Ethics and Transparency matter
Lessons Learned

- Have the right people involved in decision making to get desired outcomes
- Coordinate effort between Legal, Audit, and Management
- Understand requirements, laws, and facts
- Minimize stakeholder expectations

Lessons Learned

- Flexibility and open-mindedness is essential
- Stay engaged with outside oversight authorities, i.e. law enforcement, sponsors, auditors
- React and respond in a timely fashion
- Ensure management and Board are engaged and informed

Lessons Learned

- Have policies and charters that outline roles, responsibilities, and access
- Ensure e-discovery (preservation/production) is managed properly
- Retain outside experts as needed, auditors, lawyers, and subject matter experts
- Be ready to make judgments on resource needs
Lesson Learned

- Focus areas:
  - Officer Accountability
  - Review Officer and supervisor transactions
  - Review staff performance
  - Review credit card program and petty cash use
  - Petty Cash uses
  - Internal Control testing and monitoring
  - Policy Enforcement and Discipline
  - Attention to fraud indicators

Questions??

If at first you don’t succeed, do it like your mother told you.

~Author Unknown

Try not to become a man of success, but rather try to become a man of value.

~Albert Einstein