

Letter from the CEO

The Hierarchy of Compliance/ Ethics Program Needs.

The relationship between Ethics and Compliance

For years I have toyed with the idea that there is a parallel between Maslow's Hierarchy of Needs and compliance/ethics. I thought it would be an interesting way to present the idea of compliance and ethics to others, particularly those who don't understand compliance/ethics programs. It may also help those who don't understand the importance of compliance and that the ultimate outcome of compliance is ethical behavior. It is a particularly interesting way to present the idea to people who are new to the concept of compliance. It describes compliance and ethics in a way that helps people understand the spirit of compliance and the value of each element. Most of all, developing a parallel to Maslow's Hierarchy of Needs may help compliance and ethics experts examine the relationship between compliance and ethics. After years of this thing lying in a drawer, here goes.

For years, many people have toiled over the relationship between ethics and compliance. People often debate which is more important. Of course, both are important, but that is not always how the discussion goes. People argue that if we can achieve ethical behavior, we don't need compliance. Some are concerned about compliance programs because they are onerous, and can involve the use of a stick rather than a carrot. Others worry that too much dependency or focus on ethics can drown out or dilute compliance efforts. Would that be a bad thing? Can you have ethical behavior without compliance? Is achieving ethical behavior possible without compliance? This article provides a framework to put in perspective the function and purpose of compliance and ethics, and helps move this discussion from a vague theoretical examination of the relationship between compliance and ethics to a more specific diagrammatic/scientific approach.

For the purpose of this article, I am assuming that a compliance program is defined as the basic elements as described in the US Sentencing Guidelines (insert the elements here). I am assuming that ethics is defined as any activity designed to get people to understand and follow the organization's ethical expectations. There could be some cross-

over, such as education. For the sake of this article, I am defining ethics, as it is described in the dictionary, as a set of expectations of behavior and activities related to communicating those behaviors to the staff of an organization.



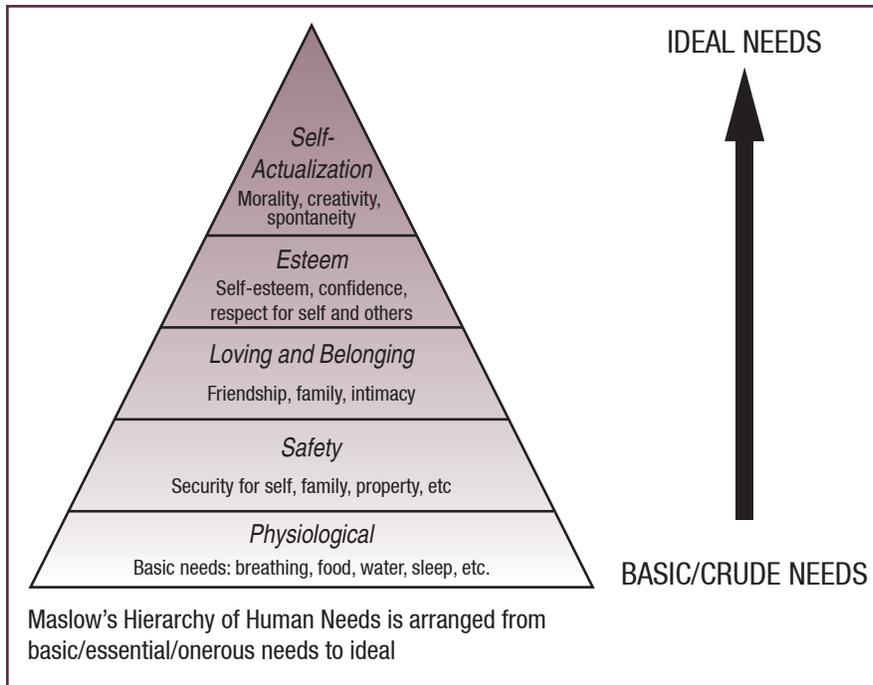
Maslow's Hierarchy of Needs is a theory in psychology that Abraham Maslow proposed in his 1943 paper, A Theory of Human Motivation, which he subsequently extended. The basis for my "Compliance/Ethics Program Hierarchy of Needs" is the fact that Maslow's chart goes from survival (at the bottom) to the ideal existence, self-actualization (at the top). Maslow's whole point is that you cannot have self-actualization if you don't have all of the other elements in place first. Reread the previous sentence; it is connected to the whole point of this article. I attempted to arrange the basic elements of a compliance and ethics program with that in mind. A few of the elements of the Compliance/Ethics Hierarchy of Needs might be interchangeable except for one. Arranging compliance/ethics elements to mirror Maslow's Hierarchy of Needs is arguable. However, the parallel to his work and the potential ensuing debate is intriguing.

Before you order the elements of compliance and ethics in a format like Maslow's, you have to decide a basic strategy. We could order them as you would when you first begin to implement a compliance and ethics program: make policies, educate, audit, take corrective action, then discipline, etc. That is not how I ordered them. I ordered them in accordance with Maslow's basic premise that the most fundamental or crudest needs should be at the bottom and the ideals at the top. They are also arranged, like Maslow, in their order of desirability; from physiological to self-actualization or from such basic needs as eating and breathing, to the ideal self. Maslow put the primitive needs at the bottom of his pyramid and I attempted to do the same; putting the things you just have to do to survive at the bottom, and the ideal things you want to achieve at the top (see charts on following page).

The bottom of Maslow's pyramid

Physiological needs are those involving basic subsistence such as food, water, etc. Anything less is death. Of all the compliance elements, it seems to me that Discipline and Corrective Action belong there. You can ask everyone to do the right thing and state that we all need to be ethical, but if you let anyone get away with bad behavior, you may be swimming upstream. Using discipline is not how you want to run your program, but is a necessary evil. Focusing on ethics all the time would be

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easier; however, there are those who force us to use discipline. One of the ways to protect people in the workplace (from various forms of harassment) is to discipline those who harass. Despite the fact that all forms of harassment are unethical, unacceptable, and obviously wrong, workplace harassment did not seem to improve until we disciplined those who did it, regardless of how important they were. Discipline is the most undesirable element of compliance and ethics. It is the last resort. It is far from the ideal condition—ethical behavior.

Maslow's next category is Safety

Although there is no direct corollary, I selected Auditing and Monitoring. I put the most onerous parts of the compliance/ethics elements at the bottom of the pyramid. They are not necessarily in the order that you would perform the steps while implementing a compliance program. They are in order from their need for basic survival to the ideal. In an ideal world, no one would intentionally or unintentionally make a mistake or break the law. No auditing or monitoring would be necessary in the ideal world. Auditing and Monitoring are less difficult and severe than

Discipline, but very onerous when compared to some of the other elements.

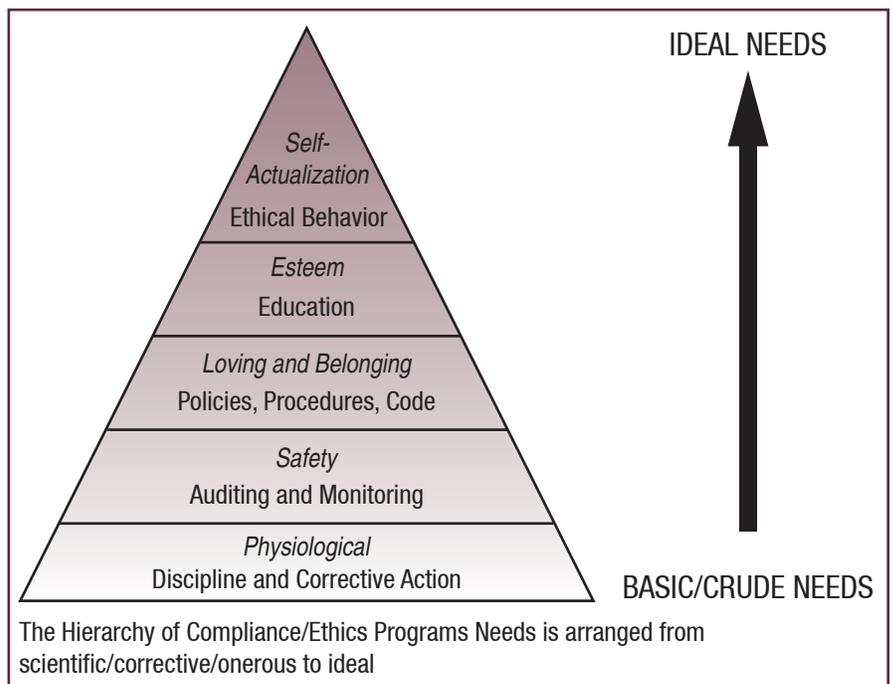
Maslow's next category is Loving and Belonging

I selected Policies and Procedures for this level and I am including the code of conduct. It can be less arduous than Auditing and Monitoring and a little more arduous than Education.

I would agree that education can take more time, but it is not necessarily more difficult. You could audit and monitor without policies and procedures; however, it would not be fair to anyone. It would be ideal just to educate and not write all those policies, but it may not be practical. Writing policies does not guarantee compliance, but it can be more scientific and more precise than education. Therefore, I felt that to be consistent from a compliance perspective with Maslow's hierarchy of needs, I would put Policies and Procedures here. (The middle of this chart of needs is the most debatable; however, switching a couple would not make any difference to the ultimate point of this article.)

Maslow's next category is Esteem.

It's getting a little easier at this point to find a more direct corollary. I selected Education. A good trainer would appeal to one's sense of self-esteem in the education process. Education, particularly regarding ethical behavior, should be rooted in appealing to the student's sense of self-worth and doing the right thing. Education is difficult, if not impossible, without policies. It is an inexact science.



Education does not test or prove anything. Education is a preventative measure. I tended to put preventive elements toward the top of the Hierarchy of Compliance/Ethics Needs and the scientific or rule-based oriented elements toward the bottom.

Maslow's top of the pyramid is Self-Actualization.

Bingo, we finally have a more direct corollary. I selected Ethics or Ethical Behavior as the top of the The Hierarchy of Compliance/Ethics Program Needs. We can debate all day long about the placement of the other elements, but it seems that Ethical Behavior at the top of the pyramid is an appropriate fit. It is the ideal. It is what we are all striving for. This leads us to the point of this article. The interesting question is, "Is ethical behavior possible without the other elements of compliance?" That is the question we have been working toward.

Actually, the whole point may be that ethics and compliance, although related and sometimes used interchangeably, should not be contrasted as either/or. Ethics and ethical behavior, as described in the dictionary, is a set of expectations, not a process. Ethical behavior may be more of an outcome, rather than a process. Compliance may be more of a process than an outcome. It is difficult to compare the two because they are dissimilar, yet they are often discussed as alternatives or as the same. Nonetheless, they are inextricably interwoven.

Let's forget about the potential for rearranging the elements and assume, for the moment, that at least Ethical Behavior is placed correctly at the top. The point of this article is that ethical behavior is the ideal condition and a condition that we may not be able to achieve without the other elements of compliance. If this kind of theory worked for Maslow, could it work for describing the relationship between

compliance and ethics? The purpose of this article is to discuss that relationship.

We need to keep in mind that ethical behavior, much like self-actualization, is difficult to achieve and is a lofty goal. It is also obvious that it is difficult to achieve self-actualization without meeting all of the other needs listed in Maslow's pyramid. Can we achieve ethical behavior without discipline, auditing, monitoring, etc.? The elements at the bottom of Maslow's pyramid are essential. Many people believe that if we just get everyone to focus on ethics and behave ethically, we can bypass some of the other elements. Many just want to focus on doing the right thing and on prevention. That would be great; however, like Maslow's theory on self-actualization, it may not be realistic.

It may be very difficult to have unethical behavior if you implement all of the other components of compliance. In fact, if you teach ethics and let unethical behavior go undetected and unpunished, you may have just the opposite effect. People may become resentful and potentially less ethical. If you educate, audit, monitor, make policies, and discipline, it creates an environment supportive of ethical behavior. It roots out unethical behavior and demonstrates support for those who will only believe the environment is ethical if they see action. Extolling the virtues of ethical behavior to solve all of our problems and downplaying the basic elements of compliance as onerous and unnecessary is easier and more desirable. It just may not work.

Self-actualization is not easy to achieve. Ethical behavior is not easy to achieve for similar reasons. You need to accomplish other things first. You need to achieve physiological and safety needs before you have a chance to achieve self-actualization. We may need to have in place discipline, auditing, etc., before we can achieve ethical behavior. People who apologize

for compliance elements and try to make the compliance department and compliance in general more likeable may dilute their effectiveness. Getting someone to like something that is difficult is easier if you are honest with them, even if the truth hurts. It may be that without auditing, monitoring, discipline, and other demanding processes, achieving ethical behavior is difficult. If people understand why we have compliance, and that its goal is to achieve ethical behavior, then hopefully, more people will be supportive. Avoiding these processes in order to get people to like compliance hasn't seemed to work too well in the past.

Nobody apologizes for the lower elements listed on Maslow's hierarchy of needs. It's tough and it's not much fun; however, it's very clear that those Maslow needs must be met. Compliance may be a stick; however, it may lead to ethical behavior, which is what we all want. Ethical behavior is the ideal condition that may require the other elements to be in place. Without compliance, what may happen is that you end up back where we started. Business was barbaric in the 50s and 60s – just ask the women, children, and blue-collar employees who worked in that environment. We are still working to achieve an ideal environment in the workplace. All the elements of a compliance and ethics program may be required to get there.

It may be difficult to have ethical behavior without the basic elements of compliance. It may be difficult to have ethical behavior by just distributing a code of conduct and telling the employees that, "ABC International is an ethical organization and you should be ethical." Many people who would like life to be easier downplay the difficult components of compliance. Some want to use the carrot instead of the stick. Many pain-avoidance approaches sell well, but may not achieve the desired goals. Why has compliance become

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Building on the work of the California Climate Registry, Regional Greenhouse Gas Initiative, and other regional and state-based climate initiatives, the Climate Registry is likely to serve as an important U.S. carbon emissions and trading mechanism, whether or not the U.S. participates in the Kyoto Protocol in the short-term.

Developments in the clean technology sector may usher in changes in business similar in scope and scale to the Internet and the Worldwide Web.

A strong enough market signal indicates that companies, small and large, need to take climate change seriously. But, for this signal to be strong enough to achieve a 50% reduction in global greenhouse gas emissions by the middle of the 21st century, the global energy, transportation, and industrial sectors need to undergo the same degree of economic and technological transformation that computers, information technology, and the telecommunications industries went through as the result of the Internet and Worldwide Web.

The internal combustion engine that still forms the basis of current automotive technology is more than 100 years old. Think of how old even the oldest computer, cell phone, and personal digital assistant might be. Many different types of new business ventures are needed, particularly in China, India, and other large emerging economies, with a business sustainability focus equal to the economic impacts achieved by Microsoft, Google, eBay, and Amazon.com.

A number of signs indicate that we are reaching that tipping point of clean technology market transformation. Most notably, a group of nearly 500 businesses and financial institutions gathered in New York City in February 2008 under the auspices of the United Nations, trying to figure out how to put a price on carbon emissions and how to build a new economy based on cleaner sources of energy.

At the conclusion of the U.N. Summit held, appropriately enough, on Valentine's Day, a group of US institutional investors, including the Cali-

fornia Public Employees' Retirement System, agreed to invest \$10 billion over the next two years in technologies that reduce greenhouse gas emissions and to pressure companies to disclose their risks associated with climate change.

Conclusion

The former BP chief executive officer John Browne delivered a landmark speech at Stanford University in May 1997 in which he broke ranks with much of the oil industry by proclaiming a link between fossil fuel use and climate change. He argued that "the global environment is a subject which concerns us in all our various roles and capacities ... (that we are now at) moment when we need to go beyond analysis to seek solutions and to take action." What appeared to be revolutionary in the business sector a decade ago has now become the conventional wisdom and it will be interesting to see the future of market-based climate solution will look like in another ten years. ■

- 1 Carey, J. "Global Warming: Why Business Is Taking It So Seriously" *Business Week*, August 16, 2004, pp 60-69
- 2 Etter, L. "In China, a Plan to Turn Rice Into Carbon Credits. *Wall Street Journal*, October 9, 2007, A1.
- 3 Capoor, K and Ambrosi P: *State and Trends of the Carbon Market*. Washington D.C.: World Bank, 2006. Available at <http://carbonfinance.org/docs/StateoftheCarbonMarket2006.pdf>

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more commonplace? What was missing from our efforts in the past? It could be that the elements at the bottom of the Compliance/Ethics Program Hierarchy of Needs were what was missing. Ethics and ethical behavior may be described more like an expectation, whereas compliance may be a process to get there. Management, theorists, and employees love to hear the idealistic pain-free theories. They want to believe less work and less pain will be effective in our effort to create an ethical work environment. We all want this to be easier, but it may not be that simple. If it was that simple to achieve ethical behavior, it probably would have happened a lot easier, a long time ago.

Maslow entitled his first paper "A Theory of Human Motivation," which I think is telling. How do we motivate humans to be ethical? Do we just jump to the top and teach people what it is that we expect? I think it is more difficult and complex than some want to believe. Those who drown out compliance with cries for leading with the carrot and not the stick may ultimately hurt their chances to achieve ethical behavior. How ironic that would be! If you don't investigate, correct, and discipline, is achieving ethical behavior possible? Employees are expecting action. Those pushing away the hard and unpleasant work of compliance may ultimately be road

blocks to ethical behavior, even if they do it in the name of ethical behavior.

It is obvious that self actualization is not possible without Maslow's other elements. It is possible that ethical behavior may not be possible without the basic elements of compliance. Employees expect leadership to aggressively look for, stop, and punish unethical behavior. If you do not practice what you preach by educating, investigating, correcting, and disciplining, you may be in an uphill struggle with people who will only meet your expectations if you meet theirs. ■