



THE AMERICAN LAW INSTITUTE

## **Crisis Management in Organizations**

Sunday, May 21, 2017

### Panel Discussion Hypothetical

MyDrugs (NYSE:MYD) is a pharmaceutical company, headquartered in NY with a market cap of \$5 billion. Earlier today, the CIO notified the CEO of a cyber theft involving 50,000 documents. The CIO reported that Risk Management and Compliance were creating an inventory of the stolen documents, which would take several days to two weeks to complete. He also reported that the Systems Division had implemented a patch that closed the pathway through which the unidentified hacker operated.

The next day, MyDrugs' Head of Risk informs the CEO that the work to date established that among the stolen items are documents relating to the sales program of N Drugs, a subsidiary. The stolen documents include: correspondence with doctors who raised questions about the incentives for MyDrugs' sales representatives; e-mails by junior employees debating whether MyDrugs' general public disclosures about its sales practices properly accounted for N's practices; e-mails from terminated employees in the NJ office stating that they were terminated for poor sales performance because they refused to offer fancy gifts and entertainment to doctors; and internal memoranda raising questions about the sales levels achieved for two of N's major drugs which exceeded forecasts based on expected market size and penetration levels.

Among a number of actions, MyDrugs decides to notify the FDA and SEC. The regulators direct Internal Audit to conduct a full-fledged control review of the sales program and of the systems processes that were compromised and/or permitted the hack.

Separately, MyDrugs' internal investigation, led by its General Counsel but employing outside counsel, concludes its work. The internal review determines that: N's executives had inaccurately described the sales program to MyDrugs' management; sales of two drugs had gone into markets for which the drugs were not then approved but are now approved; and employees who questioned the sales plan were denied promotion or fired, but the review concludes that there were independent grounds sufficient to justify the termination or non-promotion decision for each of these employees.

In a telephonic board meeting that night, an independent director requests that the board retain independent counsel, but the request is rebuffed for cost reasons. She also learns that the General Counsel and CEO have known of complaints about N's sales incentive programs but had not promptly informed the board. She is particularly concerned by two complaints. One is from another director's law firm that does work from time-to-time for MyDrugs (the particular director does not). The other complaint was from a retired partner at MyDrugs' accounting firm whose daughter used one of N's drugs. At the conclusion of the board meeting, the independent director announces that she is not comfortable with management's interactions with the board and with her potential liability as a director. She asks to resign effective immediately.

Finally, the internal review determines that N Drugs' management had funneled money through an intermediary to certain academic researchers at the Pristine Foundation whose work supported the efficacy of two of N's products. The two drugs represented 40 percent of MyDrugs' projected revenue for the next five years. N's management caused the intermediary to represent incorrectly that the funds were not sourced from a pharmaceutical company. As a result, there is no evidence that the Pristine Foundation's researchers were aware that N Drugs was a source of funds.