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**Mentoring and Succession Management:
An Evaluative Approach to the Strategic
Collaboration Model**

**Building an Effective Internal Audit Function:
Learning from SOX Section 404 Reports**

**Exploring Internet Abuse in the Workplace:
How Can We Maximize Deterrence Efforts?**

**Health Care Management in Finland:
An Analysis of the Wickedness of Selected
Reforms**

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in New York**



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From the Editor

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The Winter Issue of the Review of Business offers an interesting assortment of business-related articles beginning with a paper by Ray Haynes and Rajashi Ghosh on mentoring and succession management. After differentiating between formal and informal mentoring, they go on to describe how the role of mentoring within organizations has moved beyond the traditional one-to-one arrangement to become more network-based. They then explain the power of succession management programs in selecting an organization's next generation of leaders. Using the Strategic Collaboration Model (SCM), they take a systemic approach to matching a protégé's developmental needs with the leadership needs of a given organization. Finally, they suggest a way to evaluate the SCM process to ensure that succession management efforts remain effective.

The next article, by Dana Hermanson, Daniel Ivancevich, and Susan Ivancevich, describes the importance of the internal audit function in light of Sarbanes-Oxley. While New York Stock Exchange companies are required to have an internal audit function, other U.S. companies are not. The authors make a compelling argument that all firms could benefit greatly from an internal audit function and apply case studies from the Audit Analytics database to describe how. In specific, they explain the concept of material weakness and provide suggestions for how managers and audit committee members can better develop their internal audit function.

The paper by Joseph Ugrin and Michael Pearson explores Internet abuse in the workplace. They explain and study the potential impact of Internet acceptable use policies (AUP) in the workplace. In addition to discussing the concerns of lost productivity, legal liability, and poor corporate image from non-work-related computing, they use General Deterrence Theory to justify AUP outcomes. They then describe their research effort to determine what makes an AUP effective. Last, they offer insights and suggestions for how to successfully develop and deploy an AUP.

The article by Pirkko Vartiainen uses the concept of "wicked problems" from social policy research to examine health care management reforms in Finland. Wicked problems are those which cannot readily be defined, described, or analyzed. They are complex by nature and have no evident or easily identifiable solutions. After offering an explanation of the characteristics inherent in all wicked problems, Dr. Vartiainen then describes each in terms of the Finnish health care management system. Not only does he highlight the issues and considerations important to any reform effort, but he also provides clever insights and guidance for thinking more comprehensively about health care concerns.

Last, Steven Maffei's paper looks at legal ways for an organization to guard against a departing employee taking the organization's contact and client lists when he or she leaves. In specific, he discusses three options organizations have: 1) apply trade secret status to the client list; 2) identify a breach in the employee's fiduciary responsibilities to the organization; and, 3) use a restrictive covenant. He provides examples of each approach and offers guidance for how each should be pursued.

Mentoring and Succession Management: An Evaluative Approach to the Strategic Collaboration Model

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Abstract

This article applies a systems-oriented evaluation methodology to the Strategic Collaboration Model. The Strategic Collaboration Model is used to guide the development of mentoring-centered succession management programs. We provide a contextual discussion of mentoring and the model, and offer questions to assess the effectiveness of programs using the strategic collaboration model.

Introduction

Contemporary organizations have implemented formal mentoring programs and others have acknowledged that mentoring is useful in facilitating personal and professional development of employees. Early mentoring research (Kram, 1983; Kram and Isabella, 1985; Levinson, Darrow, Klein, Levinson, and McKee, 1978) and relatively recent scholarly literature have identified mentoring as essential to fostering career development of employees (Burke, McKeen, and McKenna, 1993; Donaldson, Ensher, and Grant-Vallone, 2000). These studies, including the bulk of

the mentoring literature, have mainly focused on individual development of the protégé and the mentor. One area that has remained relatively unexplored is the role and efficacy of mentoring in succession management programs. This article addresses and explores mentoring's role in succession management programs by applying a systems approach evaluation to Wasburn and Crispo's (2006) **Strategic Collaboration Model (SCM)**. The SCM is one of the few succession management models that incorporate mentoring as an essential mechanism in fostering leadership development and succession.

Organizational Mentoring

Historically, mentoring has played a significant role in the continuity and evolution of art, craft, and commerce (Murray and Owen, 1991). As a construct, mentoring is defined as a complex developmental and interpersonal relationship where personal support and career guidance are provided by a senior, more-experienced organizational member to a junior, less-experienced member of that organization (Carmin, 1988; Kram, 1985). Organizational mentoring has evolved and manifests itself

in two forms: (a) informal mentoring and (b) formal mentoring. **Formal mentoring** can be defined as involving all of the essential elements of mentoring. Its distinguishing characteristic, however, is that it is a program managed and supported by the organization. In contrast, **informal mentoring** is not managed by the organization and can be characterized as naturally occurring relationships based on attributes, attraction, and similar interests.

Pursuant to the mentoring literature, protégés derive psychosocial benefits such as increased self-esteem, strength of an interpersonal bond, confidence, identity and socialization (Ragins et al., 2000) and career-related benefits such as promotion, increased compensation, career development, and increased job satisfaction (Chao, Walz, and Gardner, 1992; Mullen, 1998; Ragins et al., 2000; Scandura and Schriesheim, 1994; Verdejo, 2002). Similarly, the individual benefits for the mentor include career revitalization, social recognition, personal satisfaction, increased power, leadership skill development, and supervisory and training ability development (Burke and McKeen, 1997; Messmer, 2003). At the organizational level, mentoring benefits include increased organizational commitment, employee retention, employee motivation, leadership development, improved organizational communication and productivity (Darwin, 2000; Hegstad, 1999; Ragins et al., 2000).

Contemporary organizations operate in an environment of constant change. These changes have impacted how organizations develop employees and future leaders

(Caldwell and Carter, 1993). The practice of mentoring has evolved from the traditional one-on-one relationship to a constellation of mentoring relationships comprised of mentoring networks and/or developmental networks. An individual's developmental network is made up of the people who actively support the advancement of his or her career by providing developmental guidance (Higgins, 2000).

Succession Management

Succession management is defined as any effort designed to ensure the continued effective performance of an organization, division, department or work group by making provision for the development, replacement and strategic application of key people over time (Rothwell, 2000). As input to the succession management system, an organization usually identifies its existing competencies, related to both its leadership needs and the industry it competes in (Kramer, 1990; Butler and Roche-Tarry, 2002). Apart from the set of required competencies, the organization also collects data about the employees' career aspirations, interest areas, career mobility and developmental needs (Allison, 1993; Clark and Lyness, 1991). This information is then used by the organization to align individual career aspirations with organizational needs (Kramer, 1990; Butler and Roche-Tarry, 2002). Intervention such as coaching, mentoring, formal training, performance feedback and job rotation facilitate the skill acquisition that is required to meet the leadership needs of the organization (Beatty, Schneier, and Glenn, 1987).

...Executive succession helps organizations groom and select the next generation of leaders for more responsible positions.

Succession management contributes to the professional development of managers by exposing them to different developmental experiences such as task forces, job rotations, line-to-staff switches, and turnaround or fix-it assignments (Baldwin and Padgett, 1993; Buckner and Slavenski, 1994, McCauley et al., 1995). At the leadership level, executive succession helps organizations groom and select the next generation of leaders for more responsible positions. This ability to develop and deploy leadership capabilities and talents translates into a competitive edge for organizations (Ambastha and Momaya, 2004 as cited by Mathews, 2006). Organizations adopting formal succession management plans for their top managerial positions have reportedly experienced a higher return on investment than those who have not (Walker 1998 as cited by Huang, 2001).

Leadership Development, Mentoring and Succession Management

Leadership development is defined as an expansion of the collective capacity of organizational members to effectively assume leadership roles (McCauley and VanVelsor, 1998). Mentoring facilitates leadership development through role socialization, reduced feelings of isolation, professional development, increased job satisfaction, improved leadership skills and leadership capacity building (Browne-Ferrigno and Muth, 2004; Fagan and Walter, 1982; Scandura et al., 1996; Stott and Walker, 1992). Organizations using succession management programs engage in a process of continuous leadership development. Thus, it should be noted that

mentoring and succession management are aimed at leadership development. Zey (1991) acknowledges this relationship between mentoring and succession management by noting that organizations sponsoring mentoring programs supplement their succession plans with the internal pool of groomed leaders. Zey (1991) also states that "Mentoring facilitates smooth transfer of the managerial reins from one generation of executives to the next." (p. 93).

Wilson and Elman (1990) notes that mentoring provides a structured system for strengthening and assuring continuity of organizational culture. This can be crucial at times of leadership succession, as leadership changes often require redefinition or modification of culture. Wilson and Elman (1990) also challenges the traditional view that mentoring is restricted to the indoctrination or inspiration of entry-level personnel. They propose that every hierarchical level in the organization entails socialization into a new and different subculture. Put another way, as an employee successively moves up to a first leadership position, and then continues up from one leadership position to the next, socialization and resocialization is required. Thus there is always a need for mentoring.

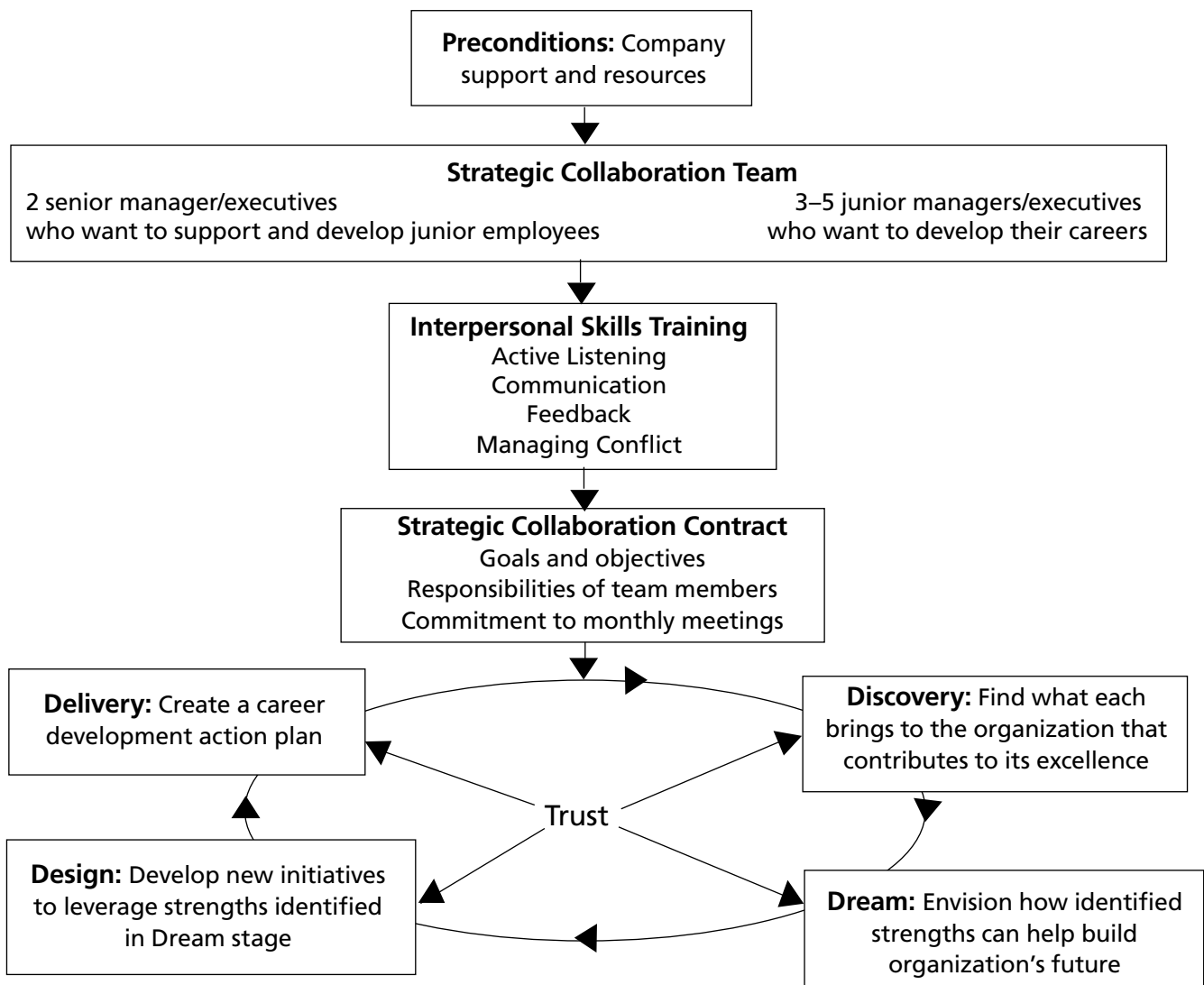
A Mentoring-Centered Model of Succession Management

Mentoring can be viewed as a means of increasing the effectiveness of succession management programs. Washburn and Crispo's (2006) **Strategic Collaboration Model (SCM)** incorporates mentoring as an essential

element of succession management. The SCM is a phased and distinct model because it is mentoring-centered, and uses appreciative inquiry to help the organization and its succession candidates. The **Appreciative Inquiry** methodology is used to define and execute each phase of a succession management

program. A hallmark characteristic of the Strategic Collaboration Model is that through Appreciative Inquiry, it considers the candidates' developmental needs and aligns these needs with the organization's future leadership needs. Exhibit 1 below shows the Strategic Collaboration Model (SCM).

Exhibit 1. Strategic Collaboration Model (™)



A Systems Oriented Approach Evaluation of the SCM
(Washburn and Crispo, 2006)

Mentoring facilitates leadership development through role socialization, reduced feelings of isolation, professional development, increased job satisfaction, improved leadership skills and leadership capacity building.

Scriven (1967) has defined evaluation as judging the worth or merit of something. In line with this definition, we propose a systems-oriented approach to judging the worth or merit of SCM-based succession management programs. The SCM can be evaluated based upon the premise that organizations are complex open systems. Open systems have inputs, processes, outputs, and there is an exchange with the environment (Swanson, 1994). Moreover, a system is comprised of a series of interdependent components (Burke, 1980). We suggest that SCM-based succession management programs are essentially systems. Consequently, a systems-oriented evaluation would not only assess the efficacy of such programs but it would also permit us to determine what role mentoring and Appreciative Inquiry plays in succession management. Exhibit 2 below shows the application of a systems oriented approach to evaluating the Strategic Collaboration Model. *The Preconditions, Strategic Collaboration Team formation, Interpersonal Skills Training, and Strategic Collaboration Contract* parts of the SCM can be examined as inputs into the model. The *Discovery, Design and Dream* phases of the SCM can be examined as the process part of the model. Finally, the *Delivery* phase of the SCM can be examined as the outcome part of the model.

Generally, evaluations are used in business and industry to judge programs and products. Evaluations focused in the area of human resource development are conducted to judge the effectiveness of corporate training programs, to judge the effectiveness of performance appraisal feedback, and to

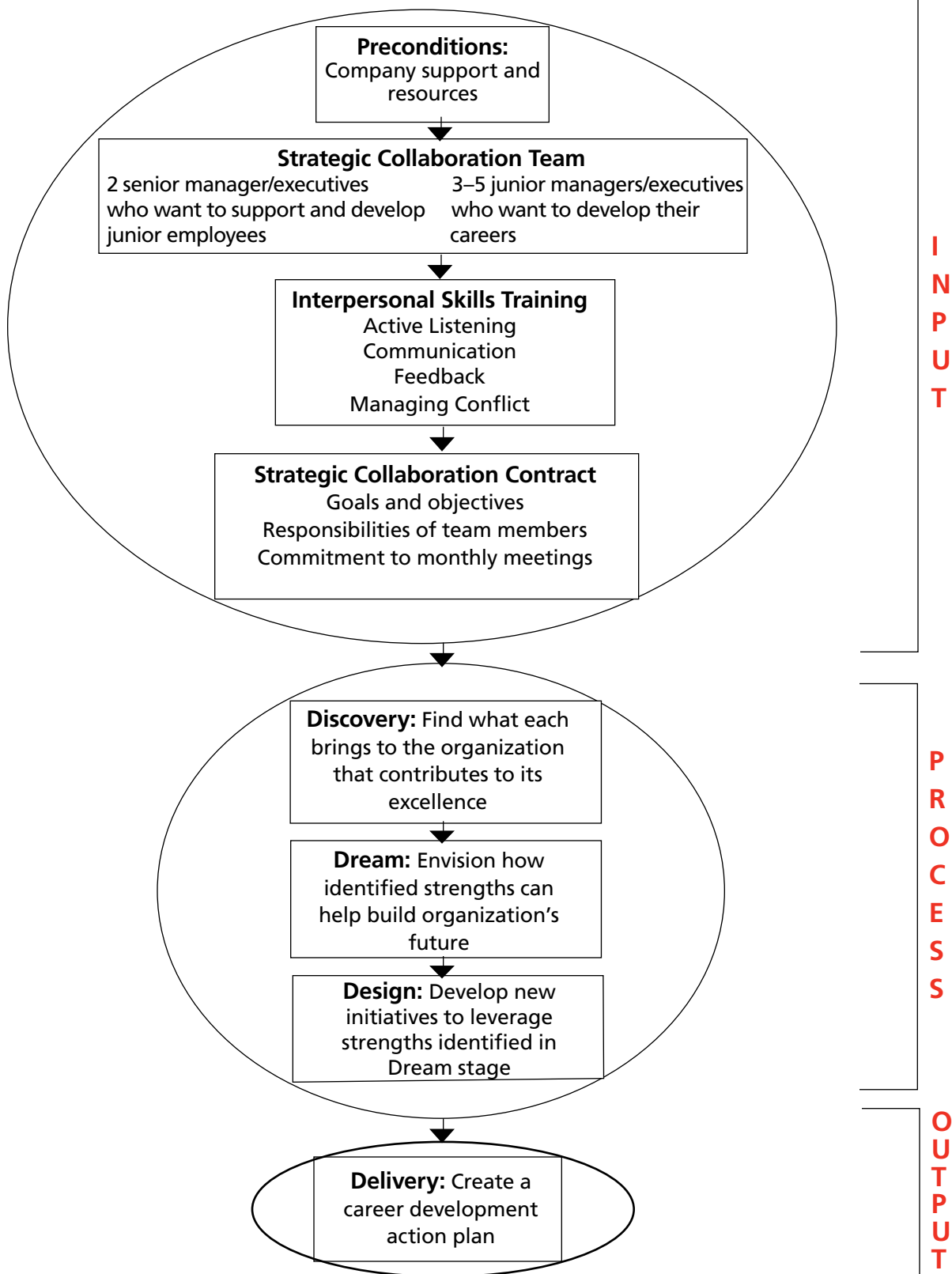
evaluate and improve retention programs for younger employees (Fitzpatrick, Sanders and Worthen, 2004).

For purposes of evaluating the SCM, we recommend a process, or monitoring, study. Typically process or monitoring studies focus on whether the program is being implemented according to plan or model. The process or monitoring study of the efficacy of SCM-based succession management programs should be conducted using a management-oriented evaluation approach. The management-oriented evaluation is focused on providing information to the decision makers in corporate settings, and is premised on the assumption that evaluative information is essential to good decision making (Fitzpatrick et al., 2004). We recommend the use of Stufflebeam's (1971) context, input, process, and product (CIPP) evaluation. The CIPP evaluation can be conducted as a management-oriented evaluation, and is based upon the basic principle of an open system (input, process, and output). The CIPP evaluation is capable of guiding decision making and addressing accountability (Fitzpatrick et al., 2004).

The CIPP evaluation is useful because it helps the evaluator generate questions about the SCM in a systems-oriented manner. The CIPP model essentially provides for four different types of evaluations of SCM-based succession management programs:

- 1) the context evaluation, which helps define the focus and objectives of the evaluation. In this instance, the evaluative focus is on the mentoring-centered SCM, and specifically the role of mentoring in succession management programs.

Exhibit 2. Strategic Collaboration Model



...The Strategic Collaboration Model...considers the candidates' developmental needs and aligns these needs with the organization's future leadership needs.

- 2) The input evaluation focuses on the resources directed towards the program. In this instance, the focus is on knowing what kind of human financial and other resources are directed towards the succession management program.
- 3) The process evaluation essentially examines the operations of the program to determine what is working well, what is not working, and what can be improved.
- 4) The product evaluation is focused on the outcomes or results of the program. In other words, this helps to determine whether the

succession management program has achieved its stated objectives, and whether the succession program is effective enough to warrant continued use.

Exhibit 3 shows how the CIPP evaluation could be applied to the SCM-based succession management programs. Additionally it provides evaluative questions that correspond to each CIPP evaluation. Taken together, these evaluations will yield evaluative information that would enable organizational developers and program managers to understand, develop and improve mentoring-centered succession management programs.

Exhibit 3. Applying the CIPP Evaluation to the Strategic Collaboration Model

Evaluation Type	Evaluation Focus and Questions
Context	Mentoring as primary developmental process in succession Planning: <ul style="list-style-type: none"> • What role(s) does the mentor play? • Does the mentor listen effectively? • Does the mentor provide effective feedback? • Does the mentor manage team conflict effectively? • How is feedback given?
Input	Determining the resources directed at the program: <ul style="list-style-type: none"> • Is the organization's leadership committed to succession management? • Do the organization's leaders serve as mentors? • Do the organization's leaders communicate that succession management is an integral part of their operational strategy? • Have financial resources been committed to the program? • Have human resources (program manager) been committed to the program? • Have mentors been formally identified? • Have protégés been formally identified? • Has the strategic collaboration team been identified? • Has a curriculum been developed for training mentors and protégés to be effective in each role? • Have contracts and codes of conduct governing mentoring relationships been developed?
Process	Examining program operations: <ul style="list-style-type: none"> • Is there a formal process for monitoring mentoring relationships in the strategic collaboration team? • Are contingencies planned for compatibility issues in the strategic collaboration team? • Have individual and team competencies been identified and shared amongst the team? • How do we leverage competencies to meet organizational needs? • Are initiatives identified and executed based upon competencies and organizational needs?
Product	Examining program outcomes: Is a mentoring-centered succession management program functioning in the organization? <ul style="list-style-type: none"> • Has the next generation of organizational leaders been identified groomed? • Does each potential organizational leader have a career development action plan?

Conclusion

The renewal and transition of leadership in organizations is necessary and vital to maintain competitive advantage. Mentoring-centered succession management programs have been developed to facilitate this process. The systems approach evaluation proposed in this article will help organizations to determine the role of mentoring and the efficacy of the SCM and its related succession management programs.

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Building an Effective Internal Audit Function: Learning from SOX Section 404 Reports

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Abstract

In the wake of the major accounting scandals, internal auditing has emerged as a powerful force in promoting effective controls, risk management, and governance in U.S. companies. This article highlights recent internal audit-related problems that were revealed in SOX Section 404 reports and offers specific recommendations for building an effective, value-adding internal audit function.

Introduction

Since the major accounting scandals in 2001 and 2002, as well as the passage of the Sarbanes-Oxley Act of 2002 (SOX 2002), the internal auditing profession has experienced

unprecedented growth and prominence. Internal audit budgets, staffing, and boardroom exposure have increased (Carcello, Hermanson, and Raghunandan 2005), and the Institute of Internal Auditors (IIA) has seen an explosion of membership and interest. In fact, one prominent CFO stated, “[Internal] auditors are rock stars now. This is their day in the sun” (Liebs 2004).

Internal auditors are experts in governance, risk management, and internal control—areas that many companies have emphasized to achieve compliance with SOX. Many public companies have dealt with SOX Section 404 audits of the effectiveness of internal control over financial reporting, and a host of organizations are

exploring the implementation of enterprise risk management tools. On top of these challenges, the pressure to produce reliable financial reports has caused many audit committees to lean more heavily on their internal auditors for information and technical guidance related to risks and controls.

Given recent developments, we believe that almost any organization can benefit from an effective internal audit function. In this article, we (a) describe the role of internal audit in the organization, (b) highlight some recent internal audit problems revealed in SOX Section 404 reports, and (c) offer practical suggestions for building an effective, value-adding internal audit function. We hope that the insights provided will be useful to managers and audit committee members in a variety of organizations.

The Role of Internal Audit

The IIA (2007b) defines internal auditing as follows:

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

The key to internal audit adding value is that it provides objective evaluations of an organization's processes and operations. The main focus is on improving risk management, internal controls, and governance so that stakeholders' value is preserved. In other words, internal audit seeks to improve the organization's operations and to reduce the chance of negative surprises, including those created by unreliable financial reporting. Through its monitoring efforts in such areas as fraud prevention, improving business processes, and promoting reliable information (including financial reports) and sound controls, a properly designed and functioning internal audit group can add significant value to an organization. Effective internal audit functions also can contribute greatly to SOX Section 404 audits, performing some work on which the external auditor can rely. Such arrangements can reduce Section 404 compliance costs.¹

New York Stock Exchange companies are required to have an internal audit function. For other U.S. companies, internal audit is a voluntary mechanism. Internal auditing appears to be growing rapidly in popularity, whether implemented as an in-house function or outsourced to an accounting firm or other provider. Research suggests that there is significant protection in having an internal audit function. For example, Beasley, Carcello, Hermanson, and Lapedes (2000) found that the presence of an internal audit function was much less common in companies that had been accused of accounting fraud by the Securities and Exchange Commission. The differences between fraudulent and non-fraudulent firms

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were particularly noticeable in two industries. In the technology industry, none of the fraud firms had an internal audit function, versus 82 percent of the no-fraud firms. In the healthcare industry, 13 percent of the fraudulent firms had an internal audit function, versus 74 percent of the non-fraudulent firms. Clearly, there is a strong association between the presence of an internal audit function and reduced accounting fraud risk.

Recent Internal Audit Problems

We believe that one way to learn how to “do internal audit right” is to study cases where there have been internal audit-related problems. To highlight deficiencies in the internal audit arena, we recently searched SOX Section 404 internal control reports for cases where there were material weaknesses in internal control related to the company’s internal audit function.²

Section 404 of SOX requires the external auditor to test the company’s internal control over financial reporting, and to highlight any material weaknesses that existed as of the end of the fiscal year. Compliance with Section 404 currently is required for public companies with over \$75 million in public float and will be required for smaller public companies in the future.

According to PCAOB Auditing Standard No. 2 (PCAOB 2004, para. 10), “A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material

misstatement of the annual or interim financial statements will not be prevented or detected.” The standard states that one strong indicator of a material weakness is (para. 140): “The internal audit function or the risk assessment function is ineffective at a company for which such a function needs to be effective for the company to have an effective monitoring or risk assessment component, such as for very large or highly complex companies.”³

The Audit Analytics database revealed 16 public companies from late 2004 through mid-October 2006 with internal audit-related material weaknesses or remediation plans. In each case, either the Section 404 report highlighted an internal audit-related material weakness, or management’s plan to remedy a material weakness included some discussion of enhancing the internal audit function. While these 16 companies represent a very small percentage of public companies subject to SOX Section 404, we believe that these weaknesses illustrate important issues for managers and audit committee members to consider.

Exhibit 1 provides an overview of the 16 companies’ size, industry, auditor, and material weaknesses. The companies are reasonably large, with median market value, revenues, and assets in the \$500 million or higher range, and they are primarily manufacturing or financial firms. Most of the companies have Big 4 external auditors and typically have other internal control problems in addition to their internal audit issues (the median number of material weaknesses per company is 4.5, with a range of 1–10).

Exhibit 1
Sample Description – Companies with Internal Audit-Related Problems (n = 16)

Panel A: Company Size (\$000s)

	Median
Market Value (n = 14)	798,959
Revenues (n = 15)	482,619
Assets (n = 15)	684,094

Panel B: SIC Codes

	N
1000–1999 Mining and Construction	1
2000–3999 Manufacturing	6
4000–4999 Transportation and Communication	1
5000–5999 Wholesale and Retail	2
6000–6999 Financial, Insurance, and Real Estate	4
7000–7999 Services	2
Total	16

Panel C: External Audit Firm

	N
Big 4	9
National Firms, Non Big 4	3
Local Firms	4
Total	16

Panel D: Total Number of Material Weaknesses

Median number of material weaknesses per company	4.5
Range of material weaknesses per company	1 – 10

Exhibit 2 presents wording quoted or adapted from the 16 companies' 10-Ks (which contain the management and external auditor reports on internal control) that describes the internal audit problems and management's efforts to

fix/remediate the problems. While many of the disclosures do not provide much detail (we provide the full text of the relevant portions in Exhibit 2), some interesting overall patterns emerge from reviewing this table.

In terms of material weaknesses, the most commonly cited issue is the lack of a comprehensive or effective internal audit program/function (seven companies). This problem generally refers to a pervasive failure to implement effective internal auditing, which means that internal auditors do not adequately monitor key risks and controls. This problem also can result from internal audit getting "sidetracked" by management requests. For example, the disclosure for Ligand Pharmaceuticals Inc. indicates that the internal audit department was redirected to help with the company's restatement of its financial statements, the Director of Internal Audit resigned, and the company did not complete much of its internal audit work.

Other problems with internal audit include (a) a lack of independence in the internal audit function (Composite Technology and Ligand Pharmaceuticals), (b) insufficient oversight of internal audit/internal audit focus (Cellstar and Ultra Petroleum), and (c) issues related to inadequate auditing of international operations (H. B. Fuller and Thermadyne Holdings). Other problems mentioned include having too few internal auditors, having inexperienced internal auditors, not having an internal audit function at all, or internal audit failing to address problems found in control testing.

Exhibit 2
Internal Audit-Related Control Weaknesses in SOX 404 Reports

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
99 Cents Only Stores 2004	<ul style="list-style-type: none"> • Did not have a sufficient number of or appropriate depth of experience for accounting and finance, inventory management, real estate management, information technology, or internal audit personnel. • Did not have an adequate monitoring program, including full testing of its internal control systems and a comprehensive internal audit function. 	<ul style="list-style-type: none"> • Adequately staffing its accounting and finance, inventory management, real estate management, information technology and internal audit departments. • Developing an adequate monitoring program, including full testing of its internal control systems and a comprehensive internal audit function.
Accupoll Holding Corp. 2005	<ul style="list-style-type: none"> • The insufficient or lacking procedures and structures include, but are not limited to (1) a failure to authorize and empower standing committees of the Board, including an audit committee and a compensation committee, (2) a failure to approve governance structures including charters, delegations of authority, codes of ethics and appropriate conduct for officers and directors, controls regarding conflicts of interest, definition of roles and responsibilities, approval of budgets, and (3) a lack of an internal audit function. 	<ul style="list-style-type: none"> • An internal audit function will be developed to perform periodic reviews to evaluate adherence to formalized procedures and controls over the financial reporting processes performed by the Company.
Aspen Technology, Inc. 2005	<ul style="list-style-type: none"> • No specific mention of internal audit in material weaknesses. 	<ul style="list-style-type: none"> • Hired additional accounts receivable, tax and internal audit personnel, including a Director of Internal Audit and a Director of Tax.

(continued)

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
Bally Technologies, Inc. 2005	<ul style="list-style-type: none"> • Ineffective controls at the entity level: As evidenced by the material weaknesses described above, and management's final assessment of our internal controls, we have determined that our entity-level controls related to the control environment, risk assessment, monitoring function and dissemination of information and communication activities did not operate effectively, resulting in a material weakness in each COSO component (COSO 1992). Such entity-level controls, and a comprehensive monitoring of internal controls by the internal audit function, are part of the framework to ensure that the designed system of internal control is operating effectively to ensure that significant transactions are adequately identified, recorded and disclosed. 	<ul style="list-style-type: none"> • <i>No remediation efforts related to internal audit.</i>
Bristow Group, Inc. 2005	<ul style="list-style-type: none"> • <i>No specific mention of internal audit in material weaknesses.</i> 	<ul style="list-style-type: none"> • Internal audits are planned to ensure that the compliance program is followed.
Cellstar Corp. 2004	<ul style="list-style-type: none"> • The Company did not maintain effective controls over the focus of the internal audit function. 	<ul style="list-style-type: none"> • Increasing the level of monitoring through the internal audit function.

Clearly, there is a strong association between the presence of an internal audit function and reduced accounting fraud risk.

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
China Energy Savings Technology, Inc. 2005	<ul style="list-style-type: none"> • Lack of Internal Audit System. The internal audit department was ineffective in preventing and detecting control lapses and errors in the accounting of certain key areas like revenue recognition, purchase approvals, inter-company transactions, cash receipt and cash disbursement authorizations, inventory safeguard and proper accumulation for cost of products, in accordance with the appropriate costing method used by the company. 	<ul style="list-style-type: none"> • Evaluating the internal audit function in relation to the Company's financial resources and requirements.
Clifton Savings Bancorp, Inc. 2005	<ul style="list-style-type: none"> • The Company's internal audit program was not sufficient to provide management a basis to assess the quality of the Company's internal control performance over time. Accordingly, management concluded that the monitoring component of the Company's internal control over financial reporting was not effective. Internal control monitoring involves assessing the design and operation of internal control on a timely basis, and taking necessary corrective actions. 	<ul style="list-style-type: none"> • We will review the need for additional compliance/internal audit personnel. • We will request testing reports from our internal auditor on a regular basis.
Composite Technology Corp. 2005	<ul style="list-style-type: none"> • The Company did not have an independent internal audit function due to the small size of the organization. 	<ul style="list-style-type: none"> • Evaluating the internal audit function in relation to the Company's financial resources and requirements.

(continued)

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
<p>Flagstar Bancorp, Inc. 2004</p>	<ul style="list-style-type: none"> • Management believes that the deficiencies noted above may have been the result of weaknesses such as (1) certain personnel lacking sufficient expertise in areas of U.S. GAAP, (2) inadequately trained employees, such as personnel who perform certain accounting functions that rely heavily on supervisors to identify problems and errors, (3) lack of communication between certain departments, (4) internal audit's failure to address certain issues identified in the internal controls testing and (5) security around user access rights to certain application systems. 	<ul style="list-style-type: none"> • <i>No remediation efforts related to internal audit.</i>
<p>H. B. Fuller Company 2004</p>	<ul style="list-style-type: none"> • In its assessment as of November 27, 2004, management identified as a material weakness, insufficient supervision and oversight of certain local accounting personnel in its Chilean accounting operations. Specifically, Company policy did not provide for regional financial management or internal audit review of the local books and records of the smaller locations within the Company's Latin America region, which includes the Chilean operations. As a result of this material weakness in internal control, H.B. Fuller Company's financial statements were misstated due to the intentional recording of incorrect accounting entries by local accounting personnel under the supervision of the 	<ul style="list-style-type: none"> • The company is in the process of expanding internal audit resources in the Latin America region.

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
<p>H. B. Fuller Company 2004 <i>(continued)</i></p>	<p>Chilean financial controller beginning in 1999, and continuing through the third quarter of 2004. These incorrect accounting entries resulted in the overstatement of other current assets and income taxes payable, the understatement of notes payable and trade payables, and a cumulative overstatement of net income during the aforementioned period amounting to \$3.1 million.</p>	
<p>Impac Mortgage Holdings, Inc. 2004</p>	<ul style="list-style-type: none"> • <i>[After a discussion of a material weakness]</i> We also noted significant deficiencies in that our internal audit function did not provide an adequate or effective monitoring of our controls, and we needed to evaluate whether we have appropriate internal resources to manage and monitor work performed by our outsourced tax compliance function. 	<ul style="list-style-type: none"> • We hired outside consultants to assist our internal audit group in documenting our accounting and business processes and identifying areas that require control or process improvement. • We hired a Director of Internal Audit whose primary responsibilities are to perform risk assessment and monitoring of our system of internal controls and, in addition, to oversee the establishment of formal policies and procedures throughout our organization.
<p>Ligand Pharmaceuticals Inc. 2005</p>	<ul style="list-style-type: none"> • Internal Audit. The Company did not maintain an independent effective Internal Audit Department. This material weakness resulted from the fact that: 1) the Internal Audit Department was redirected during the second, third and fourth quarters of 2005 to assist with the restatement of the Company's consolidated financial statements, 	<ul style="list-style-type: none"> • Internal Audit Plan. As discussed under the caption Remediation Relating to Accounting Personnel, the Company is in the process of recruiting a Director of Internal Audit and such position is targeted to be filled during the second quarter of 2006, or as soon as possible thereafter. Until the position is filled, the Company has engaged a nationally

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Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
<p>Ligand Pharma- ceuticals Inc. 2005 <i>(continued)</i></p>	<p>and 2) the Director of Internal Audit resigned December 2, 2005. As a result, the Company's Internal Audit Department executed only a small portion of the activities contemplated to be performed pursuant to the 2005 internal audit plan. In late December 2005, the Company engaged a nationally recognized consulting firm to perform the planned activities of the Internal Audit Department, most notably the Company's compliance efforts with respect to Section 404 of the Sarbanes Oxley Act of 2002. While this material weakness did not result in adjustments to the Company's 2005 consolidated financial statements, it is reasonably possible that, if not remediated, given the importance of a functioning effective Internal Audit Department in the maintenance of effective internal controls over financial reporting, this material weakness could result in a material misstatement of the Company's financial statement accounts that might result in a material misstatement to a future annual or interim period.</p>	<p>recognized external consulting firm to perform the functions of the Internal Audit Department. It is anticipated that the 2006 Internal Audit Plan will be approved by the Audit Committee in the second quarter of 2006, and until the Director of Internal Audit is hired, the Company will continue to utilize the consulting firm to implement and execute the 2006 internal audit plan.</p> <ul style="list-style-type: none"> • Monitoring Controls. As discussed under Internal Audit Plan above, the Company is in the process of recruiting a Director of Internal Audit. Additionally, and until the Company has hired the Director of Internal Audit, the Company has engaged a nationally recognized external consulting firm to implement and execute the 2006 internal audit plan starting in the second quarter of 2006. As part of the internal audit plan, these consultants will be responsible for assisting management with updating and maintaining the Company's documentation of internal control over financial reporting. The consultants will also be used until and after the hiring of the Director of Internal Audit to assist with the testing of such internal controls and in monitoring the progress of any ongoing and newly identified remediation efforts to help ensure the timely completion of the Company's 2006 monitoring program.

While the scope of the internal audit function will vary greatly across organizations, we believe that just about every organization can benefit from effective internal auditing.

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
Riggs National Corporation 2004	<ul style="list-style-type: none"> As of December 31, 2004, the Company's internal audit program was not sufficient to provide management a basis to assess the quality of the Company's internal control performance over time. Accordingly, management concluded that the monitoring component of the Company's internal control over financial reporting was not effective. Internal control monitoring involves assessing the design and operation of internal control on a timely basis, and taking necessary corrective actions. 	<ul style="list-style-type: none"> The Company enhanced the internal audit program during 2004 and has now completed implementation of that program. However, as of December 31, 2004 the updated internal audit program was not in place for a sufficient time period to fully determine its effectiveness. The Company will continue to enhance its internal audit function in 2005 by expanding the scope of certain internal audits, enhancing the tracking of outsourced audit work, and modifying its existing internal audit plan as necessary. This will also include continued focus and review of regulatory risk through the use of internal audit, including outsourced internal audit resources.
Thermadyne Holdings Corp. 2004	<ul style="list-style-type: none"> During the year-end financial statement close process, we identified unexpected variations in the balance sheet data provided from our Brazilian subsidiary. After a rigorous internal audit at this subsidiary, it was concluded that certain period costs were improperly capitalized and included in inventory and intangibles. In addition, certain contingent tax refunds were improperly recognized prior to being received. In response to the errors identified at our Brazilian subsidiary, we performed internal audit procedures at our South African subsidiaries and determined that key 	<ul style="list-style-type: none"> In order to remediate our insufficient controls relating to the oversight and monitoring of our smaller international locations, we will augment internal audit work already performed with a more extensive internal audit program for 2005 that will include work performed at our smaller foreign locations, and additional audit resources.

(continued)

Company	Deficiencies related to internal audit	Remediation(s) related to internal audit
<p>Thermadyne Holdings Corp. 2004 <i>(continued)</i></p>	<p>account reconciliations were not being performed in accounts receivable, inventory, and accounts payable. The internal audits at these locations resulted in adjustments recorded during the fourth quarter of 2004 to accounts receivable, inventory, prepaid expenses, intangibles, goodwill, and cost of sales. We have concluded that a material weakness exists due to insufficient controls relating to the oversight and monitoring of our smaller international locations.</p>	
<p>Ultra Petroleum Corp. 2005</p>	<ul style="list-style-type: none"> The Company did not maintain effective company level controls. Specifically, (1) certain of its accounting personnel in key roles did not possess an appropriate level of technical expertise, and (2) the Company's monitoring of the internal audit function was not sufficient to provide management a basis to assess the quality of the Company's internal control performance over time. 	<ul style="list-style-type: none"> Increasing training for the Company's current accounting personnel, hiring additional accounting personnel and engaging outside consultants with technical accounting expertise, as needed, and reorganizing the accounting department to ensure that accounting personnel have adequate experience, skills and knowledge relating to the accounting and internal audit functions assigned to them.

Note: The wording above is quoted or adapted from the companies' auditor reports or management reports on internal control.

Management's discussion of any remediation efforts most commonly addresses staffing issues—hiring an Internal Audit Director, hiring additional internal audit staff, or engaging an outside consultant. Having the right people in place is absolutely critical to effective internal auditing, but internal audit talent is in high demand in today's market. Thus, it is challenging for some companies to attract and retain top internal audit talent.

Other remedial steps cited include:

- enhancing international auditing efforts,
- evaluating the overall internal audit function in light of company characteristics,
- developing/enhancing a comprehensive internal audit function, and
- addressing such issues as compliance auditing, additional testing/scope, greater communication through internal audit reports, better tracking of outsourced internal audit work, and increased training.

Suggestions for Managers and Audit Committee Members

How can organizations build their internal audit functions to provide maximum value? Based on the types of weaknesses identified in Exhibit 2, as well as our own experience researching internal audit issues for several years, we offer the following suggestions for management and audit committee members. We also encourage interested readers to consult a host of IIA resources available online at <http://www.theiia.org/theiia/about-the-profession/about-the-internal-audit-profession/> and the AICPA's (2004) *Evaluating the Internal Audit Team: Guidelines and Questions*.

- **Setting up an Internal Audit Function.** Some organizations do not yet have an internal audit function, due to small organization size or lack of management or board support. While the scope of the internal audit function will vary greatly across organizations, we believe that just about every organization can benefit from effective internal auditing. Those beginning the process of establishing an internal audit function are encouraged to visit the IIA website (see *Establishing an Internal Audit Shop*, IIA 2007a) for tips in this regard. This process may start with one internal auditor, perhaps even part time, but we believe that this function is critical to effective governance, risk management, and control in the organization.
- **A Clear Internal Audit Charter.** The internal audit charter should clearly establish the role and responsibilities of the internal audit function. If the charter is deficient, it increases the chance that internal audit will be sidetracked into non-core activities or simply fail to comprehensively monitor the organization's risks and controls. The charter should unambiguously describe the scope of internal audit's activities—both for the benefit of keeping internal audit on task, as well as informing others of the role of internal audit (see Tarr (2003) for specific guidance).
- **The Right People.** If internal audit is going to be a major player in the organization, getting the right people on board is critical, especially in the Director of Internal Audit role (referred to as the "Chief Audit Executive")

in IIA professional standards). Organizations need to consider the quantity of internal audit personnel needed, which may be less than some would imagine. Also critical are desired skill sets, which should match the types of risks faced by the organization. Some internal audit groups may require people with backgrounds in environmental issues, complex financial instruments, healthcare regulations, etc. Organizations need to recognize that internal audit talent can be expensive in today's market. Finally, the organization should carefully consider whether internal audit will be an in-house function or will be outsourced to major accounting firm or other provider. There are advantages and disadvantages to each structure (see Rittenberg 1997; Rittenberg, Moore, and Covalleski 1999).

- **Carefully Constructed Reporting Channels.** To whom does internal audit report? An internal audit group cannot easily provide objective oversight of management if the Chief Audit Executive reports only to management. After all, it is difficult to be the watchdog of one's boss. What many, including the IIA, have called for is primary internal audit reporting to the audit committee, with administrative reporting to management (CFO, Controller, or even CEO) since the audit committee is not on-site most of the time. If the internal audit function is to be sufficiently independent, then it is critical that it report to the audit committee and not be under the control of management. Currently, the pendulum clearly has swung toward audit committee (rather than management) oversight of internal

audit. Many of internal audit's activities now are related to performing assurance work for the audit committee, rather than "internal consulting" or special projects for management.

- **Covering International Risks.** As indicated by two of the companies in the sample, covering international risks can be a challenge for internal audit. Remote locations often involve language and culture issues, as well as significant travel and time costs. Despite these challenges, it is worthwhile to carefully consider international risks and to appreciate the implications of a reduced emphasis on international operations due to the hassle and cost of auditing them. Problems in an international location can become significant corporate issues.
- **Monitoring the Internal Audit Function.** Once the internal audit function is designed and operational, it is important to continue to monitor internal audit's activities. Both the audit committee and top management may participate in this monitoring, as each party benefits from internal audit's efforts. Questions to consider in this monitoring process include the following:
 - Are we comfortable with the quality of internal audit's work? Are we learning new things from internal audit's reports?
 - Does the scope of internal audit's work seem adequate? Does it appear to match our understanding of organizational risks?
 - How is internal audit viewed in the organization? Is internal audit a major

“player” in organizational decisions? Do people in the organization seek internal audit’s advice, or do they avoid internal audit at all costs?

- Does the internal audit staffing level appear adequate? Does the internal audit budget consider all essential areas? Does management try to constrain internal audit through budgetary means?
- Have internal audit’s findings and recommendations been communicated to us in a timely and understandable manner? Have the recommendations resulted in value-adding changes in the organization?
- Does the Chief Audit Executive communicate well with the audit committee? Does this person appear to have the respect of management and the external auditor?
- Has internal audit’s work improved our understanding of the organization’s internal controls and risks?
- Is internal audit responsive to audit committee requests for work in certain areas?
- Is internal audit responsive to audit committee suggestions for improvement?
- Do we perceive that the benefits of the internal audit function outweigh the costs of the function? Do we gather any metrics that are used in making such an assessment of internal audit costs and benefits?

Conclusion

Internal audit can be a powerful tool for improving operations, enhancing controls, managing risks, and promoting sound corporate governance. In the current environment of high accountability and continuing governance failures (e.g., stock option backdating), such elements are vital to organizational success.

Our review of recent internal audit problems cited in SOX Section 404 reports illustrates that not all companies have implemented effective internal audit functions. We believe that companies can learn from these problems, and we have offered several suggestions to managers and audit committee members for building an effective, value-adding internal audit function. We hope that these suggestions will help to drive future internal audit improvements.

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Endnotes

- ¹ See IIA (2004) for details on the role of internal audit in Section 404 audits.
- ² We examined management's internal control report and the auditor's opinion on internal control over financial reporting, which often contain identical language to describe the material weaknesses. Typically, the auditor identifies the material weaknesses.
- ³ See COSO (1992) for discussion of the internal control framework and the importance of monitoring internal controls over time. Internal audit often takes the lead in monitoring the control system.

Exploring Internet Abuse in the Workplace: How Can We Maximize Deterrence Efforts?

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Abstract

To advance our knowledge about Internet abuse in the workplace, this study examines how deterrence mechanisms commonly used within organizations impact individual decisions to abuse the Internet. The study uses a policy-capturing approach to test the relative degree of deterrence imposed by common components of Internet acceptable use policies (AUPs). The results provide evidence that an AUP that defines acceptable Internet usage, imposes potential sanctions, and implements detection (or monitoring) mechanisms is an important deterrent of Internet abuse. In addition, these mechanisms are most effective when they are actively enforced. The study provides valuable insights and considerations for drafting and implementing an AUP in an organization.

Keywords: Non-work-related computing, general deterrence theory, Internet abuse, Internet acceptable use policy, self-control

Introduction

The Internet and its associated technologies have created a revolutionary change in the way business information flows. With the click of a button, we can communicate, order products, or track competitor activities, among other things. However, the Internet can be misused. The U.S. Treasury Department found that non-work-related computing (NWRC), such as online shopping, checking personal finances, answering personal emails, and using chat rooms, accounted for 51 percent of an employee's time online (Davis, 2001). Urbaczewski and Jessup (2002) refer to the lost productivity that takes place directly after granting employees Internet access as a "productivity vacuum," where the easy access to non-work-related activities is too tempting for employees to resist. In addition to the lost productivity, misuse of the Internet can cause other problems such as security concerns and reduced bandwidth, along with legal issues such as racist, sexist, and offensive materials being transmitted via email (Case and Young, 2002a, 2002b). This gives management motivation to try to reduce or eliminate NWRC.

Some organizations try to curb NWRC by blocking access to unauthorized Internet sites; but due to the dynamic nature of the Internet, keeping a list of unauthorized sites updated can be difficult and time consuming. Instead, many organizations rely primarily on Internet acceptable use policies (AUPs). AUPs attempt to control NWRC by providing guidelines on appropriate computer use, and outline how the organization will monitor, enforce, and punish non-work-related activities (Lee and Lee, 2002; Woon and Pee, 2004). Despite the widespread use of AUPs¹, NWRC has continued to grow (Lee and Lee, 2002; Lee, Lim, and Wong, 2005; Urbaczewski and Jessup, 2002). In addition, managers encounter a catch-22 when introducing AUPs. Potential positive effects of AUPs, such as keeping employees on task, can be counteracted by reduced workplace satisfaction and trust (Urbaczewski and Jessup, 2002). Despite the high degree of abuse shown in many studies, employees often use the Internet for short personal tasks or during breaks, which are not detrimental to the organization and would be consumed by other non-work-related tasks if the Internet were not available (Urbaczewski and Jessup, 2002). Thus managers must make a decision about the amount of NWRC they are willing to tolerate to balance productivity and morale.

This paper helps resolve this paradox by providing insights into how effectively various components of an Internet acceptable use policy deters non-work-related computing. In other words, which components of an AUP give managers the most “bang-for-the-buck?” By using a multi-criteria decision-

capturing approach (policy capturing), this study addresses these issues by examining how specific components of an AUP stack up against one another in deterring an employee’s intention to perform NWRC.

Internet Acceptable Use Policy (AUP)

Organizations are concerned about the consequences of NWRC, including lost productivity, potential legal liability, and poor corporate image. Many are resorting to AUPs for deterrence (Case and Young, 2002a; Greenfield and Davis, 2002). Typical components of an AUP are:

1. an explanation of the scope of the AUP, (e.g. who and what does it apply to)
2. a statement defining appropriate use
3. examples of appropriate versus inappropriate use
4. a statement defining punishment for inappropriate use
5. a statement about the extent of monitoring, and
6. a signature of the reader acknowledging that they have received and understand the policy (Siau, Nah, & Teng, 2002)

Even though AUPs are widespread, most companies do not actively enforce their policy (Greenfield and Davis, 2002). Despite the lack of enforcement, the mere adoption of an AUP by an organization has been shown to mitigate NWRC behavior due to increased employee awareness of the policy (Harrington, 1996; Lee and Lee, 2002; Lee et al., 2005). However, as mentioned in the introduction,

...non-work-related computing (NWRC), such as online shopping, checking personal finances, answering personal emails, and using chat rooms, accounted for 51 percent of an employee's time online.

Urbaczewski and Jessup (2002) suggest that regardless of their potential benefits, AUPs can reduce workplace satisfaction and trust; this is particularly exacerbated by monitoring mechanisms. Thus, it is important that firms do not implement deterrence measures haphazardly and instead try to implement mechanisms that have the greatest ratio of deterrence to dissatisfaction. To this end, the current paper presents an exploratory study to answer the research question:

What is the relative impact of specific control mechanisms commonly found in AUPs on deterring NWRC?

AUPs from a General Deterrence Perspective

General deterrence theory (GDT) provides a theoretical foundation for proposing and evaluating deterrence components within an AUP, and based on GDT we are able to hypothesize the relative importance of several of the deterrence components. Under general deterrence theory, individuals make rational risk/reward decisions based on their expected gratification from taking advantage of opportunities, versus their perceptions of the likelihood and severity of potential consequences. GDT has long been the foundation for crime prevention. It provides insights on how security measures can discourage illicit behaviors. GDT has been used by criminologists to examine the effects of laws on crime, but it has only recently been used to look at workplace issues such as NWRC (Lee et al., 2005; Lee and Lee, 2002; Woon and Pee, 2004).

AUPs comply with GDT because they clarify unethical Internet use and raise employee

consciousness to the potential for negative repercussions for abusive behavior. Specifically, AUPs explicate the potential severity of consequences, and by revealing the existence of security and detection systems, they create awareness to the likelihood of consequences coming about.

Researchers who have examined the impact of penalties on intentions to perform NWRC found that the mere awareness of others being reprimanded for performing NWRC reduced user intentions (Lee and Lee, 2002; and Woon and Pee, 2004). This is an intuitively logical finding and we conjecture that enforcement is the key determinant on deterring user intentions. Even when an individual is likely to get caught performing NWRC (for example, by detection systems) and potential ramifications are severe, those mechanisms will have relatively little salience without enforcement. This can be easily illustrated with a short analogy. Imagine that fines for highway speeding and the number of highway patrol officers are greatly increased. Yet you are not aware that the speed laws are ever enforced; everyone just gets a warning. Would you expect drivers to be compelled to comply with speed limits in this case? Probably not.

Kelman (1958) was one of the first to use this line of thinking. Kelman found that individual beliefs tend to change to conform with another party's rules when the other party is able to deliver punishment, is described to be socially acceptable, or is described to be highly credible. This has been extended to the business context by various authors (Tyler 2001; Tyler and Blader, 2005).

Based on this, we conjecture that the awareness that sanctions are being enforced will make the threat of sanctions more credible and increase perceptions about the likelihood of punishment, and will thus be the most salient deterrent on NWRC.

H1: Enforced sanctions will have the greatest degree of deterrence on NWRC.

Even without awareness of enforcement, we expect that the threat of sanctions will still have a relatively strong impact on deterring NWRC, particularly if the level of sanction is strong, such as getting fired. GDT suggests that individuals weigh potential sanctions against the gratification received from an illicit act. Thus, these sanctions are important in a decision maker's mental account. Based on this, we suggest that the threat of sanctions, regardless of whether or not a decision maker is aware of the sanctions being enforced, will have a high level of deterrence on NWRC as compared to other common components of an AUP.

H2: The threat of sanctions will have a high degree of deterrence on NWRC relative to other components of an AUP.

We also expect detection systems to have a strong affect. Detection systems increase perceptions of the likelihood of sanctions being enforced (Hollinger and Clark, 1983). Based on this we expect detection systems to have significant impact on deterring NWRC relative to other common components of an AUP.

H3: Detection systems will have a high degree of deterrence on NWRC relative to other components of an AUP.

Signing an Internet acceptable use policy may

not link directly to general deterrence theory, but we expect it to enhance other control mechanisms. For instance, signing a statement saying that one has read and will comply with the AUP will make the individual more mindful of the AUP's components. Case and Young (2002b) found anecdotal evidence that deterrence will be enhanced when employees are required to sign a statement indicating that they agreed to comply with the AUP at their organization. They found that 60 percent of participants who were required to sign their Internet use policy felt the policy was an effective deterrent. However, since signing a statement does not deter non-work-related computing itself, we do not expect it to have a strong relative impact on NWRC.

Finally, an AUP that merely outlines acceptable use may affect NWRC intentions by raising awareness to what type of behavior is acceptable to the employer. Using Kelman's perspective, this would have an impact if the respondent feels that it is socially desirable to follow the rules outlined in the AUP. However, the pervasiveness of NWRC seems to indicate that it is developing into a socially acceptable behavior. Based on this, we expect that merely outlining acceptable behavior will have a low relative impact on NWRC.

The Study

The study used a procedure for examining multi-criteria decisions (policy capturing) that is most commonly used to develop an understanding of the relative salience of available pieces of information on a decision (e.g. Butler and Cantrell, 1984; Pearson, Crosby

and Shim, 1996). The results of a policy-capturing analysis provide an additive linear model that illustrates how a decision-maker weighs available information (cues) to arrive at a decision (Karren and Barringer, 2002). Kline and Sulsky (1995, p. 394) state that “the goal of this approach is to understand an individual’s decision-making “policy” by observing the relationships between the decision cues given to the individual, and the final decision made by the individual and then modeling that relationship using an idiographic multiple regression analysis (i.e., regression analysis carried out for a single individual). The results of the analysis provide a description of how the individual decision-maker weights the various cues to arrive at his or her decision. Thus, within the constraints of the cue information presented, each individual’s decision-making “policy” can be observed.”

The cues (or independent variables), in this study are:

1. the perceived existence of an acceptable use policy
2. the degree of punishment for performing NWRC
3. awareness of others receiving punishment for NWRC
4. evidence of detection systems, and
5. a signature by the participant (employee) on the acceptable use policy, which indicates that they have received it.

The final decision (or dependent variable) is the individual’s intention to perform NWRC.

We surveyed 87 people at 12 companies representing a wide variety of industries throughout the Midwest. Participants were given 20 unique scenarios² covering all combinations of the independent variables with the existence of each independent variable, or cue, indicated by a yes or no statement. Considering each scenario, respondents were asked a question about whether or not they would use their company’s resources for personal use. The respondents were also asked whether or not they would use their company’s resources for personal use if they worked in a cubicle or an office (Appendix 1). In addition to the scenarios, basic demographic information was collected, along with open-ended questions about how the participants felt about NWRC in general and whether or not they felt NWRC was an inappropriate behavior.

The policy-capturing analysis involved performing a multiple regression for each respective participant on each of the 20 scenarios. The relative salience of each cue is represented by the average of the individual beta weights. The pairwise differences of the average beta weights were tested for statistical significance using Tukey’s honestly significant difference (**HSD**).

Results

In general, enforcement resulted in the greatest reduction on intentions to perform NWRC. Enforcement was initiated by presenting respondents with a scenario that indicated that others had been fired for NWRC. This was followed by sanctions (possibly getting

Despite the high degree of abuse shown in many studies, employees often use the Internet for short personal tasks or during breaks, which are not detrimental to the organization...

fired or not), detection systems, an AUP that merely communicates what types of computing is acceptable, and finally signing or certifying that one has read, understands, and will abide by the policy (Exhibit 1). This hierarchy did not change considering the participant's perceived level of privacy, an office or a cubicle.

The test of pairwise differences indicates that the marginal impact of sanctions, detection

systems, and enforcement activities were not significantly different from one another, and the impact of sanctions, detections systems and outlining acceptable Internet use were not different from one another. Requiring individuals to sign a statement indicating they had read, understand, and will abide by the policy *had the smallest marginal impact* and was significantly different than the other cues.

Exhibit 1. Study Results

Independent Variables Decision Cues (Deterrence Measures)	DV1 (Overall Likelihood to perform NWRC)		DV2 (Overall Likelihood to perform NWRC if in an Office)		DV3 (Overall Likelihood to perform NWRC if in an Cubicle)	
	Beta Mean	Group Rank	Beta Mean	Group Rank	Beta Mean	Group Rank
You are aware of others within the organization being fired for performing non- work-related activities on their computers.	-0.381	1	-0.375	1	-0.381	1
The company's Internet use policy contains a statement stating that you may be fired if you perform non-work-related activities on your computer.	-0.292	1,2	-0.264	1	-0.285	1
The company employs security detection systems capable of monitoring your computer usage.	-0.268	1,2	-0.271	1	-0.261	1
The company employs an Internet use policy that states what types of Internet use are acceptable.	-0.248	2	-0.259	1	-0.260	1
You are required to sign the Internet use policy indicating that you have read, understand, and will abide by the policy.	-0.100	3	-0.097	2	-0.089	2

*** Group Rank 1 is the highest rated group and is significantly different from 2 and 3; 2 is the second highest rated group and is significantly different 1 and 3; and 3 is the third highest rated group and is significantly different from 1 and 2. Cues that are rated 1, 2 are significantly different from only the cue rated 3.

Analysis and Discussion

As we conjectured, the components of the AUP that could be linked to GDT—sanctions, detection systems, and enforcement—were highly salient. The component that doesn't seem to have a link to GDT is the signature requirement, which was the lowest-rated cue and was significantly different from the other four cues. Surprisingly, implementing a policy that merely outlines what type of behavior is acceptable was equally as effective as sanctions and detection systems statistically.

From a policy-maker perspective, this seems to indicate that severe sanctions that are likely to be enforced are relatively effective ways to deter NWRC. This gives a signal to employers that if NWRC is a significant problem within their **organization**, they may want to implement a policy that includes potential sanctions that the employer is prepared to enforce. However, if NWRC is only a minor issue within their organization, a policy that merely outlines acceptable use may suffice and, in fact, may have the most cost benefit considering the potential loss of workplace satisfaction and trust that can occur when more intrusive mechanisms are introduced.

To give additional insight into the results, we solicited open-ended responses related to the participant's feelings on the topic, and they yielded many interesting comments. In general, employees felt that occasional use of the Internet for personal purposes is not a problem. They seem to feel that employer's demands have increased over the years; thus the separation of work and personal time gets blurred and employees have no choice but to manage some personal issues while at work. However, many employees felt that their employer should have a policy as long as it is fair. For example, one employee states, "there needs to be a policy, but a policy that can be fair and enforced." There were also many comments about pornography, and in general employees feel it should not be tolerated. It seems the general attitude among the employees surveyed is that NWRC is not a problem, which is contradictory to Davis's (2002) findings. However, the employees seem to feel that a policy is still in order. This seems to indicate that employees feel that certain types of NWRC are acceptable, while others are not. Exhibit 2 illustrates respondent's general concerns towards NWRC. These concerns give some insight into how workplace norms may be developing.

Exhibit 2. Employee Concerns

1. Occasional use of the Internet for personal purposes is acceptable.
2. Pornography should not be tolerated.
3. Increasing employer demands are forcing employees to manage personal issues at work.
4. The feel that the NWRC is not a major issue.
5. Even though the NWRC is not a major issue, a policy is still in order.

Management Implications and Directions for Future Research

The implication of these results for practitioners is that an Internet acceptable use policy outlining acceptable uses does provide a degree of deterrence, but the effectiveness of the AUP can be enhanced by including a statement indicating severe consequences (e.g., you may be fired for viewing pornography). With that said, the employer must be prepared to enforce the policy since the most salient component to our participants was the awareness of enforcement. In addition, security measures that increase the likelihood of detection are important relative to other AUP components.

Yet despite the understanding that this study gives us about the relative importance of deterrence measures, managers are still left with a dilemma about which components to implement and how severe to set the punishment, since enforcement does not come without cost and as mentioned previously, monitoring activities can create employee discontent (Urbaczewski and Jessup, 2002).

There are several items that management should consider when implementing an AUP (see Exhibit 3).

- First, what type of employees does the firm have? If the typical employee's job requires considerable use of the Internet, an AUP may be a more practical solution to NWRC deterrence as compared with technology-based solutions such as access restriction,

where keeping a restricted website list can be time consuming.

- Next, what type of culture does the organization have? Would employees accept an AUP? If employees are accustomed to a relaxed environment, implementing a restrictive policy could create disgruntlement, particularly if it involves monitoring Internet activity.
- Third, the punishment should fit the offense. It would seem to be impractical to threaten dismissal for relatively small infractions such as managing personal finances or emailing friends, as compared to more serious issues such as viewing pornography.

However, habitual use of any kind can cause a productivity issue. We suggest NWRC infractions of any kind should be carefully documented in employee personnel files. This will allow the organization to more easily recognize those that are repeat offenders and give adequate documentation in case ramifications are in order.

- Next, what is the cost of implementation, particularly the implementation of detection measures?
- Finally, if the firm has decided to implement an AUP, management should create buy-in. Surprising employees with a new policy such as an AUP could exacerbate potential employee dissatisfaction. We suggest that firms make their employees fully aware of implications and ramifications of an AUP, and

The awareness that sanctions are being enforced will ... increase perceptions about the likelihood of punishment, and will thus be the most salient deterrent ...

employees be given an opportunity to voice opinions before the AUP is implemented. However, we propose that as AUPs continue to become more common in the workplace, employees will be more familiar with AUPs and employee dissatisfaction will diminish.

Despite our findings, there are still unanswered questions that could impact many organizations. We suggest that the salience of the AUP components examined here will change if they are implemented to different degrees. For example, at what level of punishment does the threat lose its effectiveness? Future researchers should extend this study by focusing on the impact of different levels of AUP components.

We also question how well an AUP will work on employees that work from home. We have suggested that the level of privacy, either in an office or a cubicle, has no bearing on the salience of AUP components. However, we recommend that future researchers examine other settings, such as a home office.

Finally, due to the global nature of business and the Internet, we feel it is important to understand how AUPs are accepted in different cultures. For example, are individuals in cultures that rate higher in uncertainty avoidance more likely to find the mere existence of a policy more salient, or do the findings about the lack of difference between men and women hold in cultures that are more or less masculine? We suggest that future researchers test our model globally.

Limitations

The study has several limitations, most notably measuring participant intentions rather than actual behavior. However, research in many contexts; including ethics, have relied on the theory of planned behavior (Ajzen, 1991) to understand how behavioral intentions lead to action.

The next limitation is that this study treats all forms of non-work-related computing equally, as if time wasted shopping or browsing stock

Exhibit 3. Management Considerations

1. What type of employees does the firm have? Is it feasible to restrict Internet usage?
2. What is the corporate culture? Will it accept an AUP?
3. The punishment should fit the crime.
4. Document all NWRC infractions.
5. What is the cost?
6. Create buy-in.

quotes is as harmful as browsing pornography. We only asked respondents about their intentions to perform NWRC in general. Future research could examine NWRC activities, including online shopping, checking personal finances, answering personal emails, and using chat rooms, in more detail to help us understand how the control mechanisms tested impact those specific activities. For example, could monitoring activities have a greater relative impact on viewing pornography due to the social stigma attached to it? Finally, we didn't test the level of computer and Internet access our respondents have at their place of employment, so even though the scenarios used were hypothetical, we question if respondent's workplace situations impacted their responses. However, all of our respondents were office workers and presumably have Internet access.

.... deterrence will be enhanced when employees are required to sign a statement indicating that they agreed to comply with the AUP (Internet acceptable use policies) at their organization.

Conclusion

The results show that the awareness of enforcement was the most salient factor, followed by a statement indicating that one could be fired for performing NWRC, plus the existence of monitoring systems. This indicates that the effectiveness of AUPs in deterring NWRC relies on the likelihood and severity of ramifications for illicit behavior. When implementing an AUP, managers need to weigh the effects of these factors with potential pitfalls, such as reduced workplace satisfaction. Managers need to examine their employees, the employee's job functions, and the corporate culture to find the optimal mix of components for their AUP.

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Endnotes

¹ Greenfield and Davis (2002) found that nearly 87 percent of organizations have an AUP.

² 41 of the 87 subjects were aware of an AUP at their workplace. To test if those individuals responded differently than those that were not aware of an AUP at their workplace, we performed t-tests on the beta weights for all cues. There were no differences in pattern of responses for the two groups (all p values > .05)

Appendix 1. Scenario Example

Imagine that you work for a hypothetical company and the following scenario exists in regards to computer deterrence and security measures. Considering the scenario, answer the following question about your personal use of the Internet at work.

Scenario 1 of 20 (**Yes** means the measure exists. **No** means the measure does not exist)

The company employs an Internet use policy that states what types of Internet use is acceptable. Yes

The company's Internet use policy contains a statement stating that you will be fired if you perform non-work-related activities on your computer. No

You are required to sign the Internet Use Policy indicating that you have read, understand, and will abide by the policy. Yes

You are aware of others within the organization being fired for performing non-work-related activities on their computer. Yes

The company employs security detection systems capable of monitoring your computer usage. Yes

1) Based on the scenario, I would use my company's computing resources for personal purposes.

Strongly Disagree			Neutral		Strongly Agree
1	2		3	4	5

2) Based on the scenario, I would use my company's computing resources for personal purposes if I had my own office.

Strongly Disagree			Neutral		Strongly Agree
1	2		3	4	5

3) Based on the scenario, I would use my company's computing resources for personal purposes if I had a cubicle or in my office.

Strongly Disagree			Neutral		Strongly Agree
1	2		3	4	5

Health Care Management in Finland

An analysis of the wickedness of selected reforms

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Abstract

Questions regarding health care management are interesting, not least because of the nature of health care organizations. Professional expertise is high in these organizations, especially when considering medical and administrative knowledge. Nonetheless, health care management is said to have serious problems, not only in Finland, but also in other Western countries. Why is this? One reason may be the fact that health care management problems are simplified. The concept of “wicked issues” which is discussed in this article can provide the means both to understand and to solve the problems identified in health care management.

Introduction

Health care management has been under discussion in Western European countries for quite some time. Many researchers have noticed the complexity of health care organizations and systems (e.g. Kernick 2004). The complexity of health care systems, therefore, relies on health care management. For this reason, it is both surprising and disturbing to see how ambiguous, disorganized, and messy the health care management practices in different

organizations can be. Added to this is the fact that it is quite a prevalent phenomenon. It seems that the whole complexity of the management problem in health care has not been identified well enough. In other words, the clarity of health care policies, organizational structures, and decision-making practices become complicated when applied to real situations. In practice, health care systems and organizations wrestle with problems that are wide-ranging and difficult. That is why the concept of “wicked problems” is useful, because it helps to explain and describe the social and structural complexity involved in health care management. This article concentrates on two different issues. Firstly, the principles and characteristics that make health care management a wicked problem are discussed. Secondly, the wickedness of the selected health care reforms is examined.

The Concept of Wicked Problem

The term “wicked problem” originates from the field of social policy research. A well-known description of the concept is found in a classic planning theory article from Rittel and Webber (1973). They formulate wicked problems as follows:

The search for scientific bases for confronting problems of social policy is bound to fail, because of the nature of these problems. They are “wicked” problems, whereas science has developed to deal with “tame” problems. Policy problems cannot be definitively described. Moreover, in a pluralistic society there is nothing like the undisputable public good; there is no objective definition of equity; policies that respond to social problems cannot be meaningfully correct or false; and it makes no sense to talk about “optimal solutions” of social problems unless severe qualifications are imposed first. Even worse, there are no “solutions” in the sense of definitive and objective answers (Rittel and Webber 1973: 155).

Clarke and Stewart (2003: 274) also emphasize the basic wickedness of most problems to be ones “for which there is no obvious or easily found solution.” This definition clearly addresses the dichotomy of problems in organizations. Some of the problems are tame, but many are wicked. Health care organizations are not an exception. That is why it is necessary to separate wicked problems from tame ones.

When analyzing health care management as a wicked problem it is interesting to examine how the characteristics of wicked problems explain the difficulties of health care management. In the literature, the concept of wicked problem has three elemental characteristics. These are: circularity, stakeholder involvement, and investment in problem-solving processes.

Circularity means that wicked problems cannot be definitively formulated, and that each attempt to create a solution changes the understanding of the problem. According to Rittel & Webber (1973: 161) “the information needed to understand the problem depends upon one’s idea for solving it.” Thus, since it is quite difficult to define the problem exactly, it is also difficult to determine when it is actually resolved. To solve a wicked problem is a complicated situation: usually there are many alternative solutions. All potential alternatives may be useful, but some are better than others. The difficulty is that we never know whether the chosen solution is good enough when compared to the stakeholders’ needs. Different stakeholders can even compete with one another to confirm their views as a basis for problem solving.

In the context of Finnish health care management reforms, it can be proposed that the reforms fulfill many of the elements of circularity. The reforms implemented in the health care sector follow each other, and new reforms are created based on the elements of the previous reforms. Actually, the implemented reforms do not often resolve the targeted health care problems. One reason for this is that the reforms have been implemented without understanding the problem at hand well enough. Another reason may be the fact that there are symptoms of problems that have not been taken into consideration when creating the reform for a certain problem. (Vartiainen 2005).

An interesting idea in the wicked problem approach is stakeholder involvement. Clarke & Stewart (2003: 275) put this as follows: “the wicked issues are likely only to be resolved by a style of governing which learns from people and works with people.” When adapted to health care management, the statement could mean that resolving the wicked problems of health care depends on establishing a participatory management framework: a framework that emphasizes holistic thinking and the capacity to co-operate with other organizations, professionals, and stakeholders (Vartiainen 2003, 2004).

Stakeholder participation in the health care service system can be fulfilled through democratic decision making. This means, for example, that patients have the right to be involved in decisions about their treatment. This statement is widely known in health care systems as a patient’s autonomy. This “right” can, however, develop into a wicked problem because of the strong hierarchical and partly authoritative culture in health care organizations. The authoritative culture does not encourage stakeholders to participate in the decision-making processes well enough. (Conklin & Weil 2003).

It was stated earlier that wicked problems should be separated from tame problems. The difference between wicked and tame problems is the process of solution. Tame problems can be solved via traditional methods and processes. There is always some guideline or formula that helps you to solve a tame problem. Conklin & Weil (2003: 2) call these

solutions “waterfalls”. The waterfall method “predicts that the best way to work on a problem is to follow an orderly and linear process, working from the problem to the solution.”

This kind of problem solving does not function in the context of wicked problems. Instead, the problem-solving processes of complex organizations require non-linear methods. The non-linear method works through order to chaos and self-organised complexity. The method also stresses that the non-linear problem-solving process gives the possibility to analyze the problem-solving process again and again. The decision maker can move between the different stages of the problem-solving process and check the different situations in the process again, if necessary. (Article on Wicked Problems 2003; Rihani 2002).

It is conceivable that partial and linear thinking dominates in most Finnish health care organizations. The organizations are still quite hierarchical and the authority of the leading professionals (especially doctors) as well as leading administrators and politicians is high. This fact complicates the resolution of wicked problems. A strong authoritative culture in an organization may effect problem solving so that wicked problems are treated as tame problems (Roberts 2000). This means that some powerful stakeholders are chosen to conduct a linear and partial problem-solving process: to define, analyse and solve the problem. Because of the wickedness of the problem, the implemented solution does not work very well (Vartiainen 2005).

It is difficult to come to a consensus about wicked problems: the stakeholders may even disagree on what the problem is.

Health Care Organizations in Finland

The Ministry of Social Affairs and Health is mostly responsible for health care policy at the national level. The Ministry of Social Affairs and Health, together with several agencies and institutions, defines and prepares all health care reforms, makes proposals for legislation, evaluates their implementation, and assists the government in decision-making. In the municipalities, the municipal council, the executive board, and committees are the main decision-making bodies in the health care sector. These bodies work in a position of trust, and are politically accountable to all members of the municipality. The actual decision-making process varies among municipalities. However, during recent years, there has been a significant trend towards decentralization. This means that municipal councils have allocated their power to different committees and leading officials (Järvelin 2002).

The municipalities have the main responsibility to provide health care services in Finland. This means that health services are financed primarily with public monies. In 2001, approximately 43 percent of total health care costs were financed by the municipalities, roughly 17 percent by the state, 16 percent by the National Health Insurance, and the remaining 24 percent with private sources. (Stakes 2003).

Between national and municipal decision making, there are also five provinces that have an official role in the Finnish health care system. The provincial state offices

are administrative bodies which promote the objectives of the national and regional administrations in their area. Every provincial state office has many departments, one of which is the social and health department.

Health care service provision is taken care of in the 20 hospital districts, with each district having several hospitals. Every hospital district provides specialized medical care and coordinates the specialized public care in its area. Primary health care is implemented through health centers. A health center is an organization that provides primary curative, preventive, and public health services in its own area. The health center system was established in 1972. At the moment, there are approximately 270 health centers in Finland, and all of them are owned by one or by several municipalities (Järvelin 2002).

Management Reforms

There are certain overall reform trends in Finnish public sector management that have affected the whole health care system. These reforms are ones that have been under discussion and development largely in the public sector both internationally and nationally. Therefore, the main reforms applied in health care organizations are prevalent trends that have been developed in a wider management context. The central point in the dominant management reforms is their cyclical nature and fast changing political and practical idealism. This, by definition, is what makes health care management complex and multidimensional. Exhibit 1 describes the

management reforms and their characteristics that are most important from the point of view of this article. The management reforms analyzed in the article are: New Public Management, Quality Management, Decentralization, and Patient Orientation.

Exhibit 1 also gives some examples that describe the wickedness of health care reforms and their implementation. These examples are discussed in detail in the discussion of each individual reform.

Exhibit 1. Health Care Management Reforms in Finland

Change	New Public Management	Quality Management	Decentralization	Patient orientation
Administrative-policy paradigm	Managerialism More for less	Focus on professional expertise	Structural and functional changes	Patient-focused management
Key objectives	Management by results Efficiency Accountability	Quality assurance Evaluation	Coordination Co-operation	Strengthening of patients' status and rights
Implementation (e.g.)	Changes in service production processes Changes in the state subsidy process	Strengthening of knowledge	Reducing state regulation	Guarantee for care
Real examples of wicked problems in health care reform management	Inadequate management skills and imperfect management tools prevent the implementation of NPM ideas. This leads to circular reform processes.	Quality management has been seen as a tool for tame problems. E.g., too partial quality standards do not steer quality assurance well enough.	Health care development reforms succeed only partly, which can lead to circular development processes.	Hierarchical and professionally oriented management neglects the stakeholder and patient involvement.

New Public Management

The premises of New Public Management have represented the main cutting edge of Finnish health care reforms since the 1980s. These ideas have mostly been implemented through efficiency and accountability.

The efficiency and accountability discussions have focused on questions that emphasize high costs and low productivity in health care organizations. The reasons for the strengthening of the efficiency and accountability paradigms are both political and practical. Politically, the concepts of managerialism are also interesting in the field of health care management. In many political circles, the health care sector is seen as a too expensive and ineffective system. One practical reason for the implementation of reforms, which can be put under the wide umbrella of New Public Management doctrine, was the strong economic depression at the beginning of the 1990s. Also, the discussion concerning co-operation between different health care organizations was strongly criticized. The lack of co-operation led to coordination problems. This was made concrete, for example, so that the patients were treated unnecessarily in hospitals instead of health care centers or nursing homes. (Järvelin 2002).

One example of New Public Management reforms implemented in Finnish health care is the changes made in the resource allocation system. Finnish health care organizations are traditionally financed by the state and municipalities. Until the beginning of the 1990s, the financing of public health care was

based on the resources and total expenditures. In 1993, the resource allocation systems were changed on the basis of state subsidies reform. and reforms that focused on the purchaser-provider split. In these reforms, health care service provision and financing were separated from each other.

In practice, the Finnish state subsidy reform in 1993 reduced state regulation of health care provision. The main changes of the reform were focused on the financing of health care. From 1993 to 1997, state subsidies were calculated on the basis of the age structure of the population, morbidity, population density, and land area. In 1997, the subsidy system was changed, and at the moment the following criteria are used: the number of inhabitants, age structure, and morbidity. There are also additional criteria for remote areas and archipelago municipalities. The changes were remarkable because the former state subsidy system was based on actual costs, and also on the principle that more wealthy municipalities got fewer subsidies than poor municipalities. After the 1993 and 1997 reforms the state could not specify the level of Finnish health care expenditures any longer, but the portion to be financed to municipalities. The effects of the state subsidy reform were strong; the share of state financing diminished from 40 percent to 20 percent during ten years. (Vartiainen 2004; Linnakko 2005: 318; Vuori 2005).

In Finland the purchaser-provider split has aimed at the improvement of health care efficiency and mechanisms with which the state tries to direct the implementation of the model

in practice. The purchaser–provider split has not changed health care systems structurally. In practice, the reform has mostly developed health care managers who have contracting skills needed in quasi markets. However, the Finnish model has not very strongly aimed at competition for market shares, unlike many other European countries.

What characteristics of wickedness are seen in the NPM reforms implemented in Finnish health care systems and organizations? The most significant characteristic in these cases is circularity. It can be stated that inadequate health care management skills and imperfect management tools have, at least partly, prevented the implementation of NPM ideas.

One example is the Management by Results reforms, which were launched in Finnish health care organizations at the end of the 1980s. In this reform, more economic responsibility was given to clinical profit centers, and the clinical managers held both economical and medical power and responsibilities in their organizations.

However, the difficulties in applications of Management by Results ideas were a problem already in the beginning of the 1990's. One of the most serious problems was the fact that big special health care units that could have budgets of 20 million euros, for example, were managed mostly with medical, not economic, management skills. Also, the fact that most clinical doctors worked as part-time managers weakened their possibilities to go into the economical issues as a part of their

management position. Many of the doctors in management positions were also unwilling to engage their time and efforts in administrative questions. (Linnakko 2005). This, for one, led to the circularity phenomena, which means that new reforms aimed at the accountability and efficiency have followed each other, and only some of them have had the capacity to really change Finnish health care management systems.

Quality Management

From the beginning of the 1990s, Finnish health care administration has launched many new reforms that focused on the improvement of professional expertise in every sector of health care. These reforms are connected to the ideas of Total Quality Management and Continuous Quality Improvement. The key objectives for the implementation of Quality Management ideas are to analyze and improve processes in health care organizations. The idea is simple: to cut down functions that seemed to be unnecessary, and to strengthen and improve functions that are necessary (Linnakko 2005: 323). The evidence of the results of these actions are, however, quite contradictory. It is still possible to notice that the lively discussion concerning Management by Results and Quality Management has led to the fact that Finnish health care organizations are now experienced, at least to some degree, in implementing different evaluation methods in their improvement work. The benchmarking model, for example, is in use both nationally and organizationally, not to speak of Balanced Scorecard applications.

One example of the reforms in Finnish health care is the guidelines for quality assurance published in 1995 and 1999 by different national and local administrative organizations. The guidelines concentrate on the promotion of quality as a part of the daily work. They emphasize patient-orientation in service production, the use and strengthening of knowledge as a basic element of quality work, and evaluation as a part of development. On the grounds of these guidelines, quality assurance work has continued, and many separate service sectors and organizations have created their own special quality programs.

When analyzing the above-mentioned reform processes from the wicked issues point of view, it can be stated that the problem-solving processes in these cases have been quite traditional. This means that health care organizations have been simplifying their quality problems, and Quality Management has been seen as a tool for solving tame problems. As a consequence, organizations have been trying to solve their quality problems by creating, for example, quality standards that can only partly steer the quality assurance and quality assessment processes. Conceptual difficulties have also weakened the application of quality standards. It has been difficult for health care organizations to understand what "standard" means as a concept. In addition it has been difficult to decide whether the standards should describe the minimum, maximum or middle range quality of health care. (Pollitt 1996, Lumijärvi 2005). That is why the created quality standards have mostly represented technical quality factors, not

functional quality factors that are important for individual patients.

The rewarding point in the implementation of quality reforms has been the fact that the principles of Quality Management have emboldened most of the public health care organizations to analyze their processes. As a result, the quality reforms have opened up some of the critical aspects of the implementation processes in health care organizations. To find out and understand the critical elements of one's functional processes can lead organizations to move from linear problem-solving methods to non-linear methods. The non-linear method stresses that the problem-solving process gives managers a possibility to analyze the problem-solving process again and again. It follows, then, that more enlightened problem-solving processes can lead to more effective decisions and functions.

Decentralization

Decentralization activities in Finnish health care have actually been in use since the late 1980s. Administratively the aims of the decentralization reforms have been clear: the main target has been to accomplish structural and functional changes in the health care sector. However, the reforms have had different targets at the macro and micro levels. At the macro-level, these reforms focused on reducing detailed legislation and control and simplifying the planning processes of health care systems. State regulation changed from formal legislative regulation mechanisms to steering through information. However,

the state has still maintained the possibility to reset municipalities' quantitative and qualitative objectives concerning health care services. At the micro-level, the reforms aimed at decentralization by giving more decision-making power to local authorities. It actually moved authority downwards to frontline managers and even to personnel. It also aimed at better coordination of the functions of primary and secondary care, and, in this way, gave attention to more effective health care production.

The development of a patient's rights and autonomy is in many ways a wicked issue, mostly because different patients have different possibilities and skills to take part in the planning of their treatment.

One example of macro-level decentralization is the 1993 reform which reduced state regulation of municipal health care organizations. Previously, this had been very dominant. After the 1993 reform, the municipalities' authority and responsibility to reorganize and finance health care increased. Municipalities were still responsible for producing health care services, but the state did not specify how the service production had to be organized. At the moment, there are many different possibilities. The municipality can produce the services through their own organizations or together with other municipalities. It can also purchase health services from other municipalities or from private service producers. Thus, a well functioning service system comes before the manners of production.

In this article decentralization is understood as a phenomenon that transfers authority and power from high-level decision makers to lower level decision makers. In concrete terms, this means that Finnish high-level decision-making organizations (e.g., the Ministry of Social and Health) have launched new development reforms one after another to solve both structural and functional problems. Some examples of the wide-range decentralization reforms in health care are the delegation, de-concentration, and prioritization processes. The circularity phenomenon is strengthened by the fact that many of the Finnish welfare reforms as well as individual sub-projects have proved to be ineffective and unsuccessful. In addition we are currently lacking deep analysis of the Finnish health care reforms and their implementation and outcomes. The serious thing in this is that, in fact, we do not have enough understanding of the relationships that led to the unsuccessful processes. For this reason, this article claims an analysis that takes into consideration the wickedness and complexity of health care management problems and problem-solving processes.

Patient Orientation

Administratively, the reforms concerning patients' rights have aimed at management systems that emphasize patients' participation and possibilities to effect their treatment. The law for patients' status and rights was introduced in 1993. The law was mainly targeted to improve patients' possibilities to get information about their treatment and medical documents. The autonomy or the

right to determine one's own affairs, also in questions of health care, was strengthened.

The general principle, at the moment, is that patients cannot choose the hospital or the doctor. However, the newest reform—the Government Resolution on the Health 2015 public health programme (2001)—also stresses patients' rights and possibilities to choose. The reform decreases the differences between patients' access to care by introducing criteria for access to non-urgent treatments in the country. If health care institutions maintained by the local authority or federation of municipalities cannot fulfill the criteria, treatment must be procured from another service provider at no extra charge to the patient (MSAH 2002).

The reforms directed to improve access to care are closely connected to the other reforms mentioned above. Reforms aiming at improved access to care are linked to the projects dealing with effectiveness and efficiency, and to the structural changes of health care systems. The meaning of the term "access to care" is convergent. The term refers to interventions that are taken to secure patients' possibilities to get treatment.

Long waiting times for care have been a constant problem in Finnish health care. In the 1980s waiting times to health center doctors, for example, could be two to six weeks for non-urgent cases. Both patients and doctors were unsatisfied with the situation. The reform aiming at the "personal doctor system" was therefore launched during the late 1980s

and early 1990s in many municipalities. The aim of the reform was to simplify patients' access to care so that they could enter their own doctor's reception within three days. The results of the project were quite good; waiting times were shortened and patient satisfaction in the services improved. The main problem with the system was that many small and poor municipalities could not implement the system at all. Also, the lack of doctors in many municipalities led to the situation where the personal doctor system could not work in practice. However, the results of the reform led to a further development; the new reform can be described with the concept "personal responsibility." The concept means that doctors and nurses form a team that has the responsibility for the care of persons living in a certain area. In practice the personal responsibility system is functioning inconstantly in different parts of the country. (Järvelin 2002).

As stated above, the reforms emphasizing patient orientation and autonomy have been seen as an important element in Finnish health care development. Many of the projects have been successful, and the patients have, for example, better possibilities to effect their treatments and in some cases even choose their own doctors and service providers. However, the development of a patient's rights and autonomy is in many ways a wicked issue, mostly because different patients have different possibilities and skills to take part in the planning of their treatment. This fact is often forgotten when development projects and reforms are planned. The hierarchical and professionally oriented management

often neglects or does not have a very high opinion concerning stakeholder and patient involvement. Thus, reforms aiming at patient orientation have in many cases been created by authorities without stakeholder contribution.

Conclusions

Many of the health care management reforms have treated wicked problems as tame problems. Thus, the results of the reforms have not always been as expected. The reason for this can be the fact that both national and local decision makers as well as researchers and health care staff do not take the complexity of health care management as seriously as they should. This leads to the simplifying of problems as well as the reforms created to solve them.

It is also possible that health care problems are thought to be separate issues that can be solved through separate solutions. One example is the fact that many Finnish health care centres suffer from a lack of qualified doctors. Finnish authorities have made efforts to solve the problem by increasing the number of medical students in Finnish universities. The solution has not been successful. This means that there are other reasons behind this problem. These may be the high stress levels among health centre personnel, busy schedules, and few possibilities to concentrate on research and further education. The example shows that a problem that, on the surface, seems to be tame is actually wicked, and deep analysis is needed to understand the many-sided facets behind this single problem.

Exhibit 2 describes the characteristics of health care reforms from the point of view of the wicked problem concept. The table offers examples of the most obvious characteristics, not an overall picture of the reform areas. At the end of this chapter there are four different cases of the wicked concept, which may be able to help managers to analyze and perhaps even solve the wicked elements of health care management.

According to the circularity principle, problem-solving processes have the tendency to continue like a revolving door. This means that the reforms are following each other, and new reforms are created based on elements of the previous reforms. It may also happen that the implemented reforms do not resolve the targeted health care problems. This is mostly because the targeted problems are more multi-dimensional than the creators of the reforms have expected. For example, the reforms aiming at the structural and functional changes in health care systems have been, to some degree, alive for a long time. Still, the changes have been quite minor. The purchaser–provider split model has moved ahead step by step; in practice, the expectations addressed by the model have only been partially fulfilled. Lately, development work has mostly been directed towards the improvement of health care managers' contracting skills in quasi markets. It is also evident that the purchaser–provider split does not give any mechanisms that could help to cut health care expenditures.

Exhibit 2. Wickedness of Finnish health care reforms

Wickedness	Changes in service production system	Guidelines for quality assurance	Reducing state regulation	Strengthening of patients' rights
Circularity	The execution of market orientation mechanisms has taken more than ten years. The application of purchaser-provider split has proceeded step by step.	Quality work in health care has advanced gradually.	Difficulties to make real structural and organizational changes.	The increasing of patients' rights and possibilities to choose their doctor or hospital has, in practice, been slow.
Stakeholder involvement	Stakeholder participation is marginal. Patients' fees are 5.8 percent from the total expenditures of public special care.	Patient participation through feedback systems.	In theory, stronger decision-making power at the local level can better take into account patients' needs.	In principle, the patient can participate in the planning of his or her own treatment.
Problem solving	The marketing of public health care services has been difficult. The efficiency of health care has not been treated as an ambiguous problem.	The definition of quality standards. Constant improvement. Quality debugging.	Weak national steering mechanisms call for innovative problem-solving capabilities at the local level.	Traditional thinking still dominates, and slows down the development of patients' participation.

Wicked issues can be solved better with adaptive rather than empirical methods. The adaptive process contains discussions with different stakeholders, many-sided analyses of data, and innovative thinking.

The characteristics of the circularity principle are also seen in the reforms aiming at structural changes in the health care sector. For example, the aim of more effective co-operation between hospital districts could have been more successful. It seems that solutions aiming at better co-operation between hospital districts have in some cases been treated as a tame problem. Co-operation is not a question of mutual statements concerning treatments and other health-related issues, but very much a question of political interests. For example, the question of political interest is very relevant if the aim is to get the hospitals which use Swedish as the dominant language to co-operate with hospitals whose dominant language is Finnish. In these cases the practical solutions have been obvious even if they have been treated as tame problems. Instead, the political decision-making processes have changed practical solutions to a wicked problem within the party politics process. As a consequence of this, many of the practical solutions planned in the particular hospitals have been cancelled.

Stakeholder participation mechanisms can be emphasized through quality evaluations and patient-oriented measurements. In Finland there have been several reforms aiming at the improvement of patients' status and autonomy in health care service processes. These reforms are connected to the discussion of general interest concerning customer satisfaction and participation in public services. As a result of these reforms it can be stated that these challenging targets have not been fully met. Perhaps the implementation means have been

too traditional. The changing of health care acts or national public health programs have not been sufficient alone. Significant changes in patient participation also require attitudinal changes among patients and health care staff.

The problem-solving processes in health care seem to be linear in many cases. They have also treated health care problems as tame problems. For example, the generally-known requirement for more effective health care services has been treated as a tame problem. This has meant that efficiency has mostly been treated as a question of inputs and outputs. However, the profound analyses concerning health care organizations ask us to treat health care efficiency as an ambiguous question. This means that the problem-solving process has to recognize the contexts and situations obvious to health care efficiency.

To summarize, the context of health care management is more multi-dimensional than the solutions and reforms created to solve the problems that management have acknowledged. That is why the results of these reforms have succeeded only partly. The introduction of new reforms straight after the previous reforms have finished has also confused the improvement of health care management. In the future, deep analysis concerning the context of health care problems is needed.

How, then, can the concept of wickedness help managers to better understand and analyze complex health care management issues? The discussion concerning wicked issues gives some relevant answers to the question.

Firstly, when health care management problems are viewed through wicked issue ideas, managers have more possibilities to identify and distinguish wicked problems from tame problems. This, in turn, helps managers to allocate resources to the problem-solving processes that cannot be resolved via traditional problem-solving processes. In health care management, it is easy to find solutions to tame problems, and the solutions are accepted among different stakeholders. However, it is difficult to come to a consensus about wicked problems: the stakeholders may even disagree on what the problem is. For example, different stakeholders may have totally different opinions about “why the health care center is suffering from the lack of doctors.”

Secondly, by viewing health care problems through the lens of wickedness, the managers have better possibilities to be acquainted with the problem at hand. Wicked problems often arise when organizations operate in a turbulent and complex environment. It is quite impossible to understand the problem if you do not know the context of the problem. For example, it is difficult to create a reform that aims at more effective health care delivery if you do not know how the professional structures (policy, decision-making process, resources, etc.) of the system function.

Thirdly, the wicked issues concept can help managers to select the applicable problem-solving process. Wicked issues can be solved better with adaptive rather than empirical methods. The adaptive process contains discussions with different stakeholders, many-sided analyses of data, and innovative thinking. The process introduces and rejects solutions, analyzes the data again and again, and tries to find the solution that can be accepted among the different stakeholders. This, in turn, makes the decision-making processes and the implementation of health care development more effective.

Fourthly, because of the complexity of health care management, managers must have the means to consider possible alternatives to solve the problem. Wicked issues thinking can help in this. Thus, the managers often have to admit that definitive solutions to wicked problems cannot be found. Instead, you have to find a “best one.” The main idea is that the created solution should function (give results) even in a complex and conflicting environment. It may, for example, be difficult to implement a new management ideology in a health care organization without the support of powerful stakeholders (politicians, doctors, personnel, etc.).

Managers often have to admit that definitive solutions to wicked problems cannot be found. Instead, you have to find a “best one.”

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Protecting Client Lists from Departing Employees in New York

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Abstract

In today's service economy, an employer must guard against departing employees soliciting the employer's clients after that employee has taken a new position elsewhere. This article discusses some common misconceptions employers have, and reviews various court rulings related to employers attempting to enjoin former employees from contacting clients.

Introduction

A salesman for a computer software company goes to work for a rival company, contacts his former clients, and asks them to buy their products from his new firm. An investment advisor compiles a list of his firm's clients before resigning and contacts the clients when he's employed at a new company. A company purchases a list of sales leads from a list broker, only to have a departing employee take a copy with her when she leaves to start her own business. In today's business environment, where the average worker can be expected to change employers many times over his or her career, companies face the problem of having departing employees taking the company's clients with them when they leave.

Theft prevention and employee monitoring in the workplace has become a multi-billion

dollar business. Surveillance cameras, global positioning systems, computer hardware registration, and employee background checks have become common as employers try to protect themselves. However, many companies fail to protect or misunderstand the ways they can protect their most valued asset—the client list.

A departing employee who has been with a company for a relatively brief period of time can take a group of clients that an organization has taken years to develop. This article will discuss the issues that arise when an employer tries to prevent a former employee from soliciting the company's clients.

When a company discovers that a former employee is contacting its clients, it can petition the court for a permanent injunction, together with a temporary restraining order which will prevent the former employee and the new company from contacting any clients in question pending the final disposition of the matter. Generally, a court will grant a temporary restraining order if the company can show that there is an immediate threat of harm or loss of business, or the damage of allowing the activity to continue would be irreparable, that there is a likelihood the company will succeed on the merits, or that there is enough of a controversy that a trial would be necessary

in order to ascertain the facts. (1) Depending on the circumstances, the company may also ask for money damages for the lost profits. There are several claims a company will usually raise when arguing that its client list should be protected.

Trade Secret

A company may claim that its customer list is a trade secret:

- If a client list is determined to be a trade secret, the company can prohibit the former employee from soliciting the clients.
- A party may also be entitled to damages of lost profits that resulted from the solicitation. (2)
- “A trade secret is any formula, pattern, device, or compilation of information which is used in one’s business and which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it.” (3)
- The court considers six factors to determine if a trade secret exists:
 - 1) how well is the subject information known outside the business;
 - 2) the extent to which the information is known by a business’s employees and others involved in the business;
 - 3) what measures are taken to guard the information,
 - 4) what is the value of the information to the business and its competition,
 - 5) how much effort and money is expended by a business in developing the information, and

6) how easily the information could be properly acquired or duplicated by others. (4)

Customer lists alone are generally not considered confidential information. (5) A list must be unique to a specific company, thus giving it a competitive advantage. If customer lists can be ascertained by means other than the efforts of the company, then there is no trade secret protection. The employer must prove that the list was obtained through expenditure of substantial time, effort or money, and that the information accumulated was not readily available to the general public. (6) Client and price information that is widely disseminated in an industry is not a trade secret. (7)

In *Webcraft Technologies v. McCaw* (8), the plaintiff manufactured custom printed materials. It used a procedure which was relatively new in the industry. After working for Webcraft for less than three years, the defendant left to work for a rival company. The defendant began to contact her former clients and Webcraft commenced a court action. The court addressed the issue of whether Webcraft’s customer list was a trade secret. The court ruled that the plaintiff’s list of *prospective* customers was not considered a trade secret since the names of prospective companies were readily available by other means outside of Webcraft. The court did rule that the list of Webcraft’s *current* customers was a trade secret because of the efforts required to develop a customer. Plaintiff was required to spend a great deal of time educating the prospect as to the new

manufacturing process. Plaintiff also had to become familiar with the customer's needs and operations in order to customize a program for the customer. The court reasoned that this additional work required by the plaintiff to develop its client base made the list unique to this employer and deserved protection from the defendant

The uniqueness of a list must be examined on a case-by-case basis. The identity of plaintiff's customers, which are readily ascertainable through hospital, pharmacy and surgical supply directories, are not trade secrets. (9) Lists that are compiled through the actions of the company, such as direct solicitation of prospects, can be considered trade secrets. Lists that detail the fuel oil capacity of their customers' tanks, and the amount those customers were willing to pay, (which could only be found through direct solicitation), help a company to establish prices. Such lists can be considered trade secrets. (10) A customer list of a coffee servicing business, which could only be compiled by personal solicitation that listed potential customers who used the machines for employee break rooms, were held to be trade secrets. (11) However, a list purchased from a commercial list broker is not a trade secret. (12) A limousine service business's customers were easily identified and therefore not protected trade secrets. (13)

When determining whether to grant trade secret protection, courts will also consider how a company treats its client list. Can all employees access the names and contact information? Does everyone have access to all

physical files or are they locked in cabinets? How freely are employees allowed to contact clients? The more accessible the client list, the less likely the company considers the list a trade secret.

Therefore, the employer must evaluate its client list as to *how it was compiled, its contents, and the company's treatment of the list* to determine if it is entitled to trade secret protection.

Breach of employee/ fiduciary duty

Employee misconduct while in the employ of the company may also preclude a departing employee from contacting a company's clients. During the course of employment, the employee is the agent of the employer. As an agent, an employee owes an employer a duty of honest and fair dealing. (14) An employee may not breach his or her fiduciary duty to the employer and must exercise the utmost good faith and loyalty in pursuing these duties. (15) If an employer can prove that an employee breached one of these duties when obtaining a client list or soliciting clients, then the company can enjoin the employee from using this information.

An employee may not perform any acts which are contrary to the employer's best interests such as taking client lists for his own use while still employed. Information obtained only through the trust of the employer may not be used to further the employee's own ends. (16) Many employees who contemplate a move may begin to inform clients of the impending move while still employed and ask the customers to

leave with the employee.

In *Fortune Personnel Agency, Inc. v. Livingston*, (17), the plaintiff was a personnel agency and the defendants were employees of the company and a corporation formed by the employees while still employed by the plaintiff. Plaintiff compiled a list of individuals searching for jobs and their personal information. The departing employee took this list and began to contact the individuals through the new corporation. There was no evidence that the employee had stolen or copied the list, but the court enjoined the defendants from using such information because their only access to this confidential information was as a result of the employment with the plaintiff. The employee had a duty not to use the information in any way for personal gain, and therefore could not contact the clients.

The problem with this claim is an issue of proof. An employer must affirmatively show that the employee engaged in some misconduct while employed. However, the employer usually does not become aware of the problem until after the employee is gone and begins to contact clients. The employer must then find someone to come forward and testify to the employee's conduct, or present some physical evidence showing the misconduct. Customers may not be willing to testify, and the employer may be reluctant to get them involved.

Employees who physically take company property, such as a Rolodex of customer names, can be prevented from using them even if the departing employee could have remembered the names without the list. (18) Companies should have a practice, in writing, that departing employees turn over all computers, files, lists and any other material compiled while employed.

Restrictive covenants

Employers may try to protect existing clients and their businesses by having employees sign an agreement that the employee will not contact company clients for a period of time after they leave the company, or that the employee will not work in an industry for a certain period of time, within a certain time, and within a certain geographic area. These agreements are usually referred to as covenants not to compete, or non-compete agreements.

A standard employer/employee contract does not imply that a former employee is prohibited from contacting clients of the firm. (19) Therefore, an employer must have an express written agreement with an employee that an employee will not solicit clients of the company for a specific period of time after leaving the company. The best time to have an employee sign this agreement is at the time he or she is hired. New employees usually sign many documents at the time of hire and are amenable to signing agreements because they are anxious to begin employment and are not thinking about their careers after leaving the company they are about to join. Current employees, however, may be reluctant to sign

Companies should have a practice, in writing, that departing employees turn over all computers, files, lists and any other material compiled while employed.

a non-compete agreement. They are under no obligation to sign. If the employer fires them for refusing to sign, the fired employee may be now motivated to engage in the conduct that the employer wants to prevent. Asking an existing employee to sign a non-compete agreement may also raise employee suspicions that something has now changed in the course of his or her employment, now that a non-compete agreement is required.

Even if the agreement is breached, an employer is not afforded automatic protection under the law. The validity of these agreements is subject to judicial review, and the courts have invalidated many of them. Courts are concerned with balancing two important conflicting policy considerations which non-compete agreements bring into play. (20) Courts are reluctant to enforce these covenants, which restrict a person's right to earn a living. (21) However, courts also understand that an employer has a right to protect the business he has developed. (22)

Courts attempt to balance each of the above on a case-by-case basis. The restrictions on the employee may only go so far as to protect an employer's interests. They cannot impose an unreasonable burden on the employee, the time and geographic restrictions must be reasonable in scope, and the public may not be harmed. (23) Employers most likely cannot forbid an employee from never working in a particular industry or never servicing clients of a company. Courts tend to construe agreements against employers, and view them in the best light for employees, since employers

are the ones drafting these agreements and the employee rarely has any bargaining power at the time it is presented for the employee's signature.

A non-compete agreement may bar a former employee from soliciting a former employers' clients if it can be proven that the customer list is a trade secret, contains confidential information, or that the employee's services were unique or unusual. (24) When trade secrets are involved, agreements will be upheld; however, one questions whether the restriction was a function of the agreement or whether the restriction was upheld because the material was determined to be a trade secret.

Employers attempting to enforce agreements will usually also claim they are entitled to trade secret protection in addition to the right to enforce the agreement. A court may simply rule that the information is a trade secret, thus rendering the issue of enforcing the agreement moot. The question of the validity of the agreement arises when the list sought to be protected is not a trade secret but the employee has signed a non-compete agreement. Courts have refused to grant an injunction to prevent former employees from soliciting customer lists when no trade secret protection was attached and the names of the customers are attainable through other sources. (25)

The Court of Appeals addressed the issue in *Reed, Roberts Associates, Inc. v. Strauman* (26). Reed Roberts provided consulting services to companies with respect to pension plans,

A list must be unique to a specific company, thus giving it a competitive advantage.

workers compensation, and advising employers with respect to their obligations under state unemployment laws. The defendant, Mr. Strauman, signed an agreement which stated, among other things, that he would not solicit any customer of the plaintiff for three years. The defendant then formed a company that competes directly with the plaintiff, and the plaintiff asked the court to enforce the agreement.

The plaintiff did not dispute that no trade secrets were involved. Plaintiff did not prove that defendant engaged in any wrongful conduct to procure the list. The court therefore reasoned that the defendant should have the right to realize his earning potential since there was no breach of the employer/employee relationship and there were no trade secrets to protect. Therefore, the agreement was ruled to be invalid.

The Court of Appeals then went on to modify its standard in *BDO Seidman v. Hirshberg*. (27) In this case, a manager from BDO, as a condition to his promotion to manager, signed a post-employment agreement that he would not service any clients of BDO's Buffalo office for 18 months after leaving their employment or he would have to pay one-and-a-half the fees collected to BDO as a penalty. The court did not invalidate the entire agreement, but instead recognized that an employer has a legitimate interest in protecting its goodwill, and upheld the clause to the extent that it protected the relationships that the employee developed during his employment at BDO. The agreement did not apply to those clients whom

the manager serviced at BDO but had a prior relationship with before to joining BDO. The court appears to have modified its earlier ruling so that an employer now has a greater ability to protect its non-trade secret property.

When drafting an agreement, an employer should try to choose the shortest term it thinks necessary for a substitute employee to establish a relationship with the company's current client. A "departing employee" and his new employer may honor this period simply because it would be more cost effective to do so rather than oppose a petition for an injunction. It would not be worth the legal fees to defend an action concerning an agreement, when that agreement would expire or be close to expiring by the time a final judicial decision is handed down. Instead, a new employer may have the "departing employee" use the time to develop new clients, and perhaps contact his former clients once the time period of the agreement expires.

Customer lists are not automatically protected against departing employees. The list must be somewhat unique to the employer for it to be granted trade secret protection. You may not be able to prove to a judicial body that your former employees engaged in misconduct or bad acts. In addition, a court may not honor a written agreement between you and your former employee. Therefore, a company must be diligent in protecting its relationships with its customers at all times, to avoid the risk of having them taken away by a departing employee.

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