When Internal Control Failures Result in Crises – Lessons Learned from the MA RMV Investigation

Presented by:
Jimmy S. Pappas
National Leader
Forensic Advisory Services
Marcum LLP

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marcumllp.com
THE ACCIDENT

- Volodymyr Zhukovskyy, 23, held a Massachusetts-issued Commercial Driver’s License.
- On June 21, 2019, Mr. Zhukovskyy was driving a 2016 pick-up truck in rural Northern New Hampshire when his vehicle struck and killed 7 motorcyclists while injuring 3 others.
- The motorcyclists were members of the Jarheads Motorcycle Club, a New England group that includes Marine Corps veterans and their spouses.
- Prosecutors have alleged that Mr. Zhukovskyy was under the influence of drugs.
OUT-OF-STATE NOTIFICATIONS

- Federal regulations require that when any state suspends the driving privileges of a commercial driver whose license was issued by another state, the state imposing the penalty notify the license-issuing state.
- It is mandatory that such notifications be made electronically through a nationwide computer system that is operated by the American Association of Motor Vehicle Administrators.
- These notifications are referred to as out-of-state notifications.
On May 29, 2019, 23 days before the Accident, the Massachusetts RMV received a notification through the electronic system that the State of Connecticut suspended Mr. Zhukovskyy’s commercial driving privileges effective June 10th, due to his refusal to take a breathalyzer test on May 11th.

The enterprise software system of the Massachusetts RMV received Connecticut’s electronic notification but did not automatically post it to Mr. Zhukovskyy’s record, which would have resulted in the suspension of his license before the Accident.

Due to the future-dated suspension effective date, instead of posting the Connecticut notification to Mr. Zhukovskyy’s record, the RMV’s system diverted it into a queue requiring manual review. Connecticut’s out-of-state notification remained in that queue without being addressed by anyone until after the Accident.
A few days after the Accident, the RMV released its preliminary assessment indicating that the Connecticut electronic notification had been received by the RMV with no action taken in a timely manner.

The Accident attracted the interest of the MA Legislature which opened an inquiry into the matter, the attention of federal and state regulators, and the spotlight of the national news media.

The RMV Registrar resigned, and the Governor ordered an independent investigation.

**Lesson learned**: the importance of independence and transparency when dealing with a situation that has the potential to undermine the public’s confidence in its government.
THE INVESTIGATION

- Three months and more than 6,500 professional hours.
- More than 40 interviews with RMV employees, vendors, and contractors, as well personnel from other state agencies.
- 5 different focus groups of RMV union employees.
- Multiple meetings with state and federal regulators and interaction with the state legislature.
- Forensic analysis of computer hard drives and relevant electronic systems.
- Review of over 200,000 documents.
- Lesson learned: the importance of giving relevant stakeholder groups the opportunity to comment and provide input. Hearing from different stakeholder groups was beneficial in informing the direction of the investigation and it provided those groups with the chance to participate in the process.
INVESTIGATION FINDINGS

- Multiple opportunities existed for the RMV to suspend the license of Mr. Zhukovskyy prior to the Accident, but because of a confluence of internal control failures and weak enterprise governance, those opportunities were missed.
FIRST MISSED OPPORTUNITY – ELECTRONIC CONNECTICUT NOTIFICATION

- A year before the Accident, the RMV had adopted a new enterprise software system, which had significantly affected the agency’s operating efficiency.
- The team that was responsible for evaluating items that made it into the queue where the Connecticut electronic notification had been diverted, believed that the new enterprise software system often, BUT NOT ALWAYS, generated erroneous notifications within that queue.
- Pending any system reconfiguration, all notifications that made it into that queue needed to be contemporaneously evaluated, or valid notifications would not be acted upon in a timely manner.
- The notifications in the queue were not evaluated in any systematic manner.
- As of the date of the Accident, 364 notifications (including the Connecticut notification) remained unresolved.
SECOND MISSED OPPORTUNITY – ELECTRONIC CONNECTICUT NOTIFICATION

- The 364 unresolved notifications within the queue appeared in management reports that were supposed to be reviewed by senior RMV personnel who could have been alerted of a processing bottleneck and may have taken action. Unfortunately, due to lax management oversight, those reports were not reviewed.
THIRD MISSED OPPORTUNITY – ELECTRONIC CONNECTICUT NOTIFICATION

- Despite the fact that notifications in the queue were not systematically evaluated, an RMV employee who was a member of the group that was responsible for monitoring the queue, accessed Mr. Zhukovskyy’s driving record before the Accident, as part of executing other responsibilities.
- Upon accessing the driving record, the phrase “Add Conviction” was displayed on the screen, indicating that an infraction needed to be added to Mr. Zhukovskyy’s record, which would have automatically suspended Mr. Zhukovskyy’s commercial driver's license. That infraction related to the Connecticut electronic notification.
- Employee took no action as he did not have the requisite training.
FOURTH MISSED OPPORTUNITY – PAPER CONNECTICUT NOTIFICATION

- Although not required to do so, Connecticut also sent a paper notification to the RMV via mail.
- Federal regulations mandate that states inform each other on commercial driver infractions. No such requirement for non-commercial drivers exists and states rely on voluntary and loosely-enforced agreements among themselves.
- Connecticut’s paper notification was sent to the RMV department responsible for processing in-state infractions and out-of-state notifications for non-commercial drivers – the Merit Rating Board.
- The Merit Rating Board, however, had ceased processing any paper out-of-state notifications since the implementation of the new enterprise software system more than a year earlier and our investigation found that even before that only sporadically did so, all the way back to 2000.
OVERLAPPING PROCESSES FAILED SIMULTANEOUSLY

- Two separate processes - one related to the processing of electronic out-of-state notifications and one related to the processing of paper out-of-state notifications - with each process handled by different departments of the RMV, had simultaneously failed to revoke the commercial driver license of Mr. Zhukovskyy before the Accident. So why did this happen and what can we learn from this failure?
IMPORTANCE OF THREE LINES OF DEFENSE

The Three Lines of Defense Model

1st Line of Defense:
- Management Controls
- Internal Control Measures

2nd Line of Defense:
- Financial Control
- Security
- Risk Management
- Quality
- Inspection
- Compliance

3rd Line of Defense:
- Internal Audit

Source: Institute of Internal Auditors
IMPORTANCE OF THREE LINES OF DEFENSE

- **The first line of defense** are the operational managers who own and manage risks. With respect to the processing of out-of-state notifications at the RMV, the first line of defense was deficient on multiple fronts as described earlier by virtue of the four missed opportunities to suspend the license of Mr. Zhukovskyy in a timely manner.

- **The second line of defense** includes risk management and compliance functions to help build and monitor the first line of defense. The second line of defense was significantly deficient and largely non-existent.

- **The third line of defense** is internal audit. The internal audit group was the only functioning line and one that came closest to identifying the problem in a timely manner.

- **Lesson learned**: Fundamentals matter. In order to minimize the opportunity for a risk to become a reality, an organization’s risk management process must have three lines of defense that function at optimal levels.
IMPORTANCE OF ENTERPRISE (CORPORATE) GOVERNANCE
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- The RMV is part of the Massachusetts Department of Transportation, which by statute is overseen by a Board of Directors. The audit committee of the Board of Directors, while engaged, was not asking the right questions in ensuring that management and the internal audit group were employing effective risk management methods.
- The Merit Rating Board, which failed to process the paper notification, and whose membership consists of the MA RMV Registrar, the MA Attorney General, and the MA Commissioner of Insurance, had not held a meeting in five years.
- Lesson learned: Effective organizations have governing boards or oversight committees that ask the right questions and work with management to ensure that appropriate risk management processes are in place.
IMPORTANCE OF ORGANIZATIONAL CULTURE

- An organization can have outstanding internal controls but if its culture is not healthy, the effectiveness of those controls will be undermined.
- There was a perception among employees handling the back office operations of the RMV, which included the processing of out-of-state notifications, that their work was not viewed by management to be as important as the work of employees in the service centers where the RMV interacts directly with the public in issuing licenses, etc.
- That perception stemmed from an emphasis by management on improving customer service at the service centers.
- While management rejected such an inference, the reality was that the perception of employees differed from management’s reality.
- In part due to such perception, internal control lapses were not brought forward through whistleblower venues.
- **Lesson learned**: Never underestimate the importance of an organization’s culture in effective risk management.
THANK YOU