

**BUSINESS ETHICS IN THE WORKPLACE:
GENETIC SCREENING
PART A**

INTRODUCTION

Home Office Designs (HOD) is an \$11.5 million service company on the forefront of a new, niche industry. As more and more individuals work from home—because of advances in computer and telecommunications technology, the efficiency of avoiding commutes, the global economy—an industry has grown to meet the need for high-tech, effective home offices. HOD has set itself apart from the competition by specializing in the creation of ideal, adaptable, home offices, yet doing so in ways that don't compromise what persons love about their individual living spaces.

The HOD team visits the home and discusses the client's needs, and then returns with a design and description of all the furniture and technology that will accomplish the goal. Once the client approves, HOD employees do it all: acquire permits and restructure the space (if necessary); buy and install the furniture and technology; work with the client's IT group (if applicable) to complete all security and compliance testing; and then train the client how to get the most from the new office, including what to do if something doesn't work.

HOD opened in Columbus, Ohio, in 1993 and grew from its three founders—Nicole, Trevor, and Jack—to 13 employees. The company is run like a family business—in fact, one employee has been with the three co-owners almost from the beginning. Over 21 years, HOD has experienced a lot of ups and downs, but mostly ups. The business involves endless change—the ebb and flow popularity of feng shui and other unique approaches to design, technology seeming to change every year, workers' compensation regulations (and how they apply to home offices) differing from state to state, fly-by-night competitors coming and going like the wind—but HOD has survived and thrived through it all.

HOD's management team is its three co-owners: Nicole, Trevor, and Jack. Their backgrounds include:

Nicole Jedlicka, Chief Executive Officer

It was Nicole who developed the idea behind HOD—she has the architectural and interior design backgrounds. From the beginning, it was clear she would be CEO because of her vision and natural leadership skills. That said, she regularly shoulders the most responsibility for the success of the organization, and always is the one pushing hardest to ensure nothing harms the company and its future potential.

Trevor Sherlock, Chief Operations Officer and General Counsel

Trevor is an attorney with a strong financial mind; he loves the mix of business law and business leadership that represents his role at HOD. While Nicole focuses on design and marketing, and Jack focuses on technology, it's Trevor's job to focus on finance and HOD's employees. It's Trevor, for example, who deserves credit for creating and sustaining HOD's family business atmosphere—a corporate culture that everyone agrees helped the firm survive the 2008-2011 financial crisis.

Jack Barnes, Chief Technology Officer

Technology is a huge part of HOD's business and equal to "non-invasive design" in what sets the company apart from its competitors. Jack is an IT professional who loves identifying new business technologies and finding ways to economically integrate them into HOD's offerings. Nothing disappoints him more than a client for which Jack has found the perfect technology solution but who declines because it's too pricy. Jack is all about showing how an up-front investment now will pay off in the long run.

VISION AND MISSION

The vision of HOD's leaders is a company at the forefront of an exploding market for high-end home offices. As changing demographics deliver a greater need for in-home elder care; as traffic worsens in major metropolitan areas; and as more and more smart businesspeople pursue careers as independent contractors, working from their homes as they market their skills and knowledge to various business partners and clients, HOD wants to imagine, design, and deliver the perfect working environment that allows them to be their best.

HOD's mission is to exceed each client's expectations, with specific emphasis on leveraging the most-relevant and most-reliable new technologies while ensuring that the new home office preserves the primary purpose of the client's living space.

COMPETITIVE LANDSCAPE

HOD competes on three fronts. First, while Nicole effectively created the modern version of this niche industry in 1993, many other firms jumped in immediately thereafter. In-home Design Group (IDG), for example, based in Chicago, is HOD's biggest competitor from a market-share standpoint, though it similarly has fewer than 20 employees. Like HOD, IDG mostly brings in contractors when orders are high, and then reduces their count when sales drop.

The second competitive front reflects the previously mentioned fly-by-night operations that undercut longer-standing companies like HOD and IDG. They low-ball bids and then under-deliver to clients, often harming the reputation of the industry along the way. Some of these companies take deposits and then never deliver—HOD is constantly fighting to persuade prospective clients not to go with a competitor that has no reputational history.

Third are the vertical integrators—this is the most-recent competitive front and the most troubling. HOD is finding that some of its primary technology suppliers have concluded they can hire their own designers and grab market share to guarantee use of their products. Because these companies are important suppliers to HOD, it is creating two serious threats: reliability (i.e., if a supplier has limited supply of an important item, it may hold it for its own clients rather than make it available to HOD as it did in the past) as well as competitive intelligence (i.e., HOD recently had to train its employees not to divulge certain information about clients or the overall market to suppliers now that some suppliers are using the information to compete against HOD).

CORPORATE CULTURE

As listed above, HOD is proud to be compared to a family business. The three co-owners met in college and have been close friends their entire adult lives. They believe that a big part of HOD's success is a working environment where employees are treated with respect, just as if they were a part owner in the business. Many attributes of the workplace reinforce the corporate culture, including:

- HOD celebrates employees' work anniversaries more than it does their birthdays. A bulletin board at the entrance to the warehouse lists each employee's tenure and every team meeting, training session, and performance review is designed under the assumption that each employee will work for the company indefinitely.
- All employees call each other by their first names, there are no preferred parking spaces for management, and every employee's office is the same size. The three leaders use the Open Book Management approach, making all the company's financial statements accessible to every employee.
- The company has a profit-sharing plan that extends to the lowest-level employees, including part-timers (but not contractors). Also, to the extent any employee wants to buy (for herself or a family member) any of the technology or services sold by HOD, all employees earn the same discount.

While 70 percent of HOD's client base is large organizations buying services for its individual employees (i.e., it's the company paying the bill and "signing off" on the work), everyone at HOD acts as if the home office worker is the client. Employees believe this is what makes HOD different—that it does everything possible to please workers in their homes, so that they constantly brag about their in-home workspaces, leading to new client leads. Numerous times a worker who benefited from HOD's service and quality at one company will go to another company and require that the new employer hire HOD to retrofit the working space.

ISSUE: GENETIC SCREENING

It is a busy time of year. While many days feature most of the team at a client site, today was all about working the warehouse and back office. At lunchtime, Trevor headed for the microwave to prepare a quick bite to eat. The table in the small dining area was filled so he headed to the warehouse where he could find a quiet place to sit.

To Trevor's surprise, he wasn't the only person eating in the back. As he approached, he could hear voices on the other side of a huge stack of product. He quickly realized it was Monica and Olga. He didn't want to interrupt their conversation so he quietly sat and ate, unnoticed. As the ladies' conversation continued, though, Olga became emotional, which raised her voice to a point where Trevor couldn't help but overhear.

"I just got the results 10 minutes ago; I don't know what to do," Olga cried. Monica replied, "Well, what did the doctor say?" Olga responded, "The genetic screening test says I have a mutation for a potentially fatal condition called HCM. It's the heart disease that killed that basketball player, Hank Gathers. It means that, at some point, sooner than later, my heart could become too thick in certain places, which forces the blood to have to work harder to leave the heart. It's massively serious because, like the basketball player, it can lead to sudden death."

Monica was horrified, “I can’t believe this! I’m so, so sorry! Is there medicine you can take? Can it be cured? Is there a chance she made a mistake? What are you supposed to do?” Olga interrupted before Monica could add another question, “Drugs can minimize the risk, the doctor said, but there’s nothing close to a cure. There’s no mistake—I took a genetic screening test that confirmed the HCM. What am I supposed to do? The doctor said I need to immediately avoid high-intensity exercise or work.”

“So you have to stop working here, you’re telling me?” Monica followed with tears in her eyes. “I mean, you’re the strongest woman here—you lift thousands of pounds of product and equipment each week!” Olga replied, “That’s my immediate problem—I can’t stop working here—I don’t care how much I need to lift. You know that Johnny lost his job six months ago; he hasn’t had so much as an interview since, and remember hearing that Congress just canceled extended unemployment benefits for everyone? My salary holds the family together every day. There’s no way I can find another job that pays this well that doesn’t involve physical work—this is all I’ve ever done and I’m great at it!”

“I don’t understand, Olga,” Monica added. “Are you telling me you’re going to do exactly the opposite of what the doctor said, because of a paycheck?” “Think about it, Monica. Johnny and I have three kids that depend on us—without my paycheck we have no food, no place to live, nothing. In fact, I almost didn’t even have the screening test done because I was scared I could be fired if HOD ever found out. Thankfully, the doctor told me that a federal law passed in 2008 makes it illegal to be fired because of a genetic test.”

It was never Trevor’s intention to eavesdrop on the conversation but, between Olga’s emotion and how shocked he was to hear her diagnosis, he couldn’t help but listen. Fearing her reaction if she knew he heard, he quietly stepped away and headed to the managers’ office. There he found his fellow co-owners: Nicole and Jack.

On Trevor entering, Nicole immediately saw he was troubled. “You two aren’t going to believe what I just heard. Olga just found out she’s got something called HCM, a life-threatening condition affecting her heart.” “No!” Jack inserted. “I know,” Trevor continued, “but it’s that sudden-death condition you may have heard about with young athletes. She was telling Monica that her doctor said she needs to stop working here because the lifting can kill her in a second.” “That’s awful!” Nicole exclaimed.

“It gets worse,” Trevor responded. “Olga told Monica that she won’t follow the doctor’s orders because she needs to keep her job here for the money.” “Olga said that in front of you?” Nicole asked. “No. Neither of them knew I was there. It was an accident that I overheard their conversation. This is crazy—what are we going to do?” Trevor questioned.

“What do you mean ‘we’? Isn’t this Olga’s problem to solve?” Nicole replied. Trevor countered, “I mean, we’re management here, and now we know something seriously important about an employee. First, a member of the HOD family just learned that she has a serious heart condition. Second, she said she’s going to keep doing her job here even though the doctor said it will greatly increase the likelihood of her early death. Third, Olga doesn’t know that we know. Fourth, as a small company, we have to be honest: all of us could be hugely affected by expensive health insurance costs associated with Olga’s illness. And fifth, we need Olga—if something happens to her and she quits or can’t work, we don’t have enough people to fill the orders we’ve accepted.”

"I can't believe you're being so selfish and crass ... thinking about our health costs and unfilled orders when a close friend may be dying," Jack inserted. "Sorry, Jack, I don't mean it that way," Trevor quickly replied. "I'm just stating the obvious—I can't pretend that I didn't hear what I heard, and while there may be nothing we can do to change Olga's diagnosis, our decisions in response could influence her life, the lives of her family members, and every other employee here. Even the future of this business, Jack; that's not nothing!"

"What are you saying, Trevor?" Nicole asked. Trevor responded, "I mean that we have to decide what to do ...

1. We could fire Olga to save her life. She'd earn unemployment while she transitions to another job that isn't so stressful to her heart. You know that her dad owns that small computer repair company. Maybe she can work for him and live a longer life because she wouldn't be doing stressful lifting anymore." "But isn't it illegal to fire someone based on a medical screening test?" Nicole asked. "You know, Olga and her doctor discussed that very thing," Trevor continued. "But get this—the doctor told her it was illegal, but she's wrong—it's not illegal for us because we have fewer than 15 employees. The law they're talking about is one of those laws that doesn't apply to small businesses like us." Jack interrupted, "But we do have 15 employees." Trevor replied, "No, Monica and Stuart are contractors. I did that on purpose so they don't count as employees. That way this genetic law and 100 others don't apply to us." "Geez," Jack followed, "that makes me so uncomfortable that we can get away with doing something like this because of a legal technicality."
2. Nicole asked, "How about doing nothing and us pretending Trevor never heard the conversation? If Olga wants to tell us, then she will. If Monica feels compelled to come to us, then she will. And if we learn about it from either of them, we can make decisions based on what we're told. Until then, we can't risk the possibility that Trevor didn't hear everything that we need to know, and we can't risk the employee backlash if people think we manage by eavesdropping."
3. Trevor offered, "We can fix the question of what's really happening here. Based on our health plan, we can force Olga to get the same genetic screening test, acting as if we didn't know about the first. We can make up any excuse for why we're doing it—she looks tired lately or something. When the test reveals her illness, or if she admits to us that she's already had the screening, we can act on it any way we want, including showing her the compassion she deserves. Or we can go back to Option 1 and fire her if we think that's in her best interest or the best interests of everyone here." "Yeah," Nicole inserted, "why did Olga get the test in the first place? Did you overhear that, Trevor?" "Nope," Trevor answered, "not that I remember." Nicole added, "Trevor, you need to look into what our health plan says about pre-existing conditions. I mean, Olga wouldn't have had that test done unless she knew there was a problem. I hear that those things are expensive and not many insurance companies pay for them. How long has she known? Was it before she started working here? Is this another technicality we can exploit—I mean, the whole Obamacare thing hasn't kicked in yet, right?"
4. Trevor continued, "Another thing is that we can keep her here but 'demote' her into a less-stressful job. I mean, what if she can't make enough money on unemployment or can't get a job with her dad? While we can't pay her to do an office job anywhere close to the rate she makes now—we don't have that kind of money—something is better than having her continue her lifting until she drops dead one day."

5. “I have a crazy idea,” Jack asserted, “I can’t believe you didn’t start with this Trevor. Why don’t we show her the respect she deserves, admit to her that Trevor accidentally overheard her conversation, and ask to talk to her to find out what’s going on?” “As general counsel,” Trevor inserted, “I’m sorry to say that my advice is that’s a bad idea. If Olga knows what we know, that limits our choices to do what we think is best for her. The most important thing here is saving Olga’s life, and I was the one who heard her, Jack. I swear, if we approach her, she’ll deny everything and do absolutely anything to keep her job, maybe even sue us to ensure her family has the money it needs to survive. I still say that the most-certain way of accomplishing the goal of saving her life is to fire her.” “Why ‘fire,’ Trevor?” Nicole asked. “Why not lay Olga off? Why do we have to insult her and harm her ability to get other jobs?” Trevor replied, “Because we’ll need to replace her ASAP. It’s against the law to call a termination a layoff if you immediately replace the worker,” Trevor answered. Jack closed the conversation with, “Please, both of you, do not use the word ‘termination’ right now.”

DECISION TIME

Nicole spoke. “Listen you two, I appreciate how many of these five options care about Olga—you know I love her like a sister—but let’s not lose sight of our ethical, and fiduciary, responsibility to everyone else involved here. If we don’t handle this right, we could sink this company we love, this business we’ve spent years building together. Whether her medical bills bankrupt us or we make a legal mistake and she sues us, we’ve got all our clients, employees, suppliers, families—literally hundreds of people who will be harmed if we don’t factor them into this conversation. No matter what we do, please don’t let our feelings for Olga get in the way of doing the right thing for the business and all its stakeholders.”

Trevor broke an awkward silence. “Nicole’s right—this whole thing is serious on several fronts and we don’t want to make a mistake. Plus, the one downside of the ‘family business’ culture we’ve achieved is our objectivity in a situation like this. Here’s what we should do: at my last job, we had a somewhat similar problem, so we hired a management consulting firm to research and analyze the issue and then recommend what we should do. Given the urgency of everything, I can contact the gal I know today and ask her team to visit the three of us as soon as it’s ready with a recommendation.”

Jack asked, “What do we do about Olga in the meantime? Are we risking her life by not sending her home today?” Nicole inserted, “Let her make the next move. She has more information than we do about the seriousness and urgency of when she should stop working. Let’s let Trevor’s consulting team analyze this—we’ll make a decision by mid-April.”

Tim C. Mazur, Chief Operating Officer, Ethics and Compliance Officer Association, wrote this case with the expressed approval and collaboration of the Daniels Fund.