Conducting Investigations

HCCA Regional Conference
December 1, 2017

- Tamara Neiman, Director, National Special Investigations Unit
- Dan Falzon, Investigations Manager, National Special Investigations Unit

Kaiser Permanente, National Compliance, Ethics & Integrity Office (NCO)

Objectives

- Planning and working an investigation.
- Interviewing protocol and techniques.
- Closing an investigation and writing a report.
- Considering corrective actions.
- Referring a case to law enforcement.
Kaiser Permanente Across the Nation

- 11.8 million Members
- 44.7 million Doctor’s Office Visits
- 78.3 million Prescriptions Filled
- Serving 8 states and D.C
- 38 Hospitals
- 670+ Medical Offices and other facilities
- 21,275+ Physicians
- 54K Nurses
- 201K Employees
- 44.7 million Doctor’s Office Visits
- 78.3 million Prescriptions Filled
- Serving 8 states and D.C
- 38 Hospitals
- 670+ Medical Offices and other facilities
- 21,275+ Physicians
- 54K Nurses
- 201K Employees

Issues Investigated

- Fraud, waste, and abuse allegations.
- Pharmacy theft and drug diversion.
- Member fraud.
- Identity theft.
- Health care and claims fraud.
- Privacy and computer fraud.
- Cash and check fraud.
- Embezzlement.
- Vendor fraud.
- Kickbacks.
- Major crimes.
Planning and Working an Investigation

National Fraud Control Program
Protecting Kaiser Permanente Assets and Revenue

Investigations

“If you don’t know where you are going, you might wind up someplace else.”

Yogi Berra

- Assess the scope and nature of a potential problem.
- Determine appropriate corrective actions.
- Meet legal and compliance obligations.
- Prepare to defend the organization’s actions.
- Realize the purpose, scope, and context of investigations may vary, but require a similar skill set.
National Fraud Control Program
Protecting Kaiser Permanente Assets and Revenue

Investigative Objectives

- Thorough, timely and objective.
  - Full and fair, with no rush to judgement.
- Maintain confidentiality.
- Avoid creating new claims.
- Ensure witnesses, documents, and physical evidence will objectively support action(s) taken.
- Provide findings and facts.

“Fairness is not an attitude. It's a professional skill that must be developed and exercised.”

Brit Hume

Full and Fair Investigations

- Declare any conflict which might be raised.
- Assess if you are the right person to investigate.
- Maintain an open mind and professional demeanor.
Investigative Process

Who?
- Who is the subject?
- Who are the witnesses?
- Who should be involved?
  - Human resources?
  - Legal?

What?
- What is the allegation(s)?
- What policy, procedure, or law was violated?
- What happened?

Where?
- Where did allegation occur?
- Where is subject or witnesses located?
- Where were interviews held?

Why?
- Why did incident occur?
- Why was this reported?

When?
- When did this allegation occur?
- When were interviews conducted and/or documents obtained?

How?
- How did violation and/or incident occur?
- How did the activity occur?

Initiating an Investigation Plan

- Review the allegation or complaint.
  - Is the allegation clear in the complaint?
  - Does this lead to other allegations?
  - Are others already conducting an investigation for a related subject?
- Who should be on the investigation team?
- Who should be involved or notified?
  - Human resources, labor relations, security, legal, compliance?
National Fraud Control Program
Protecting Kaiser Permanente Assets and Revenue

Things to Consider

- Management’s role.
- Elements of prove.
- Reporting requirements.
- Criminal implications.

Potential witnesses.
- Employees, physicians, patients, vendors, or other third parties.

Interviews.
- Questions and plan.
- Who should conduct the interview?
- Who should be present?

Proprietary and confidential. Do not distribute without permission.
Evidence Collection and Review

- Policies and procedures.
- Conduct rules.
- Performance evaluations.
- Attendance records.
- Previous issues.
- Medical records
- Email and electronic records.
- Invoices, receipts, and expense claims.

Additional Considerations

Relevant Documents
- Include electronic records and data.

Surveillance
- Are cameras in the area?

Photos
- Should photographs be taken?
- Should diagrams be created?
Confidentiality

- HIPAA and state laws require protected health information (PHI), electronic health records (EHRs), and personally identifiable information (PII) to be maintained confidentially.
- Limited exceptions for disclosure:
  - Union grievances.
  - Law enforcement.
- Confidential information should be removed whenever possible.
- Comply with minimum necessary requirements.
- Handle documents in a confidential manner.
- PHI, EHRs, and PII disclosed to a third party must be logged and tracked.
- Seek guidance before disclosing PHI, EHRs, and PII.
Health Information Privacy

The Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.

The Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities and their business associates to use to assure the confidentiality, integrity, and availability of electronic protected health information.

http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html

Interviewing Protocol and Techniques
Interview vs. Interrogation

The purpose of an interview is to question an individual believed to have information of interest concerning a particular matter.

The purpose of an interrogation is to question an individual, that for a variety of reasons, may be either withholding information or being untruthful concerning a particular matter.

Which is which?

- Interview vs. interrogation.
  - Non-confrontational.
  - Confrontational.
  - One-way conversation.
  - Two-way conversation.
  - Low stress.
  - Admissions and confessions.
  - Used for witness and victim.
  - High-level planning.
  - Used for non-cooperative subjects.

Characteristics of an interview.

- Non-confrontational.
- Two-way conversation.
- Low stress.
- Used for witness and victim.

Characteristics of an interrogation.

- Confrontational.
- One-way conversation.
- High-level planning.
- Admissions and confessions.
- Used for non-cooperative subjects.
Interview Protocol

- The goal is to conduct a neutral, fair, and thorough investigation.
  - All subjects, witnesses, and victims.
  - Obtain factual information.
- Uncooperative subjects may require some interrogation techniques.
- Witness and victim interviews should be non-accusatory and used for information gathering.
- Subject interviews should be structured and private.

Investigations

Who is in the interview?
- Limit people in the room.
- Include human resources and legal representatives.
- Represented employees must be advised that they’re allowed representation.
- Immediate supervisor should not be present.

What is the best interview environment?
- Ensure privacy.
- Avoid distractions.
- Allow enough time.
During the Interview

Be a good listener.
- Pay close attention and make eye contact.
- Don’t interrupt and let the subject finish their thoughts.

Build a rapport.
- Show compassion.
- Don’t reveal signs of your own personal beliefs.
- Don’t yell, curse at, or alienate the subject.

Put the subject at ease.
- Display pleasant emotional responses.

Let the subject know you’re paying attention.

Don’t jump to conclusions.

Note Taking

It is best to listen, but good interview notes are important.
- Recommend co-interview.
- Human resources or compliance contact takes notes.
- Prepare your interview report immediately after conclusion.
Preserving Statements

- Take notes, but listen and watch interviewee.
- Include relevant documents or emails.
- Seek a signed handwritten or typed statement.
- Use quotation marks only when certain the quote is accurate.
- Take legible notes.
- **Recommend** notes be transferred to a written interview report.
- Ensure notes are signed and dated.

Follow Up Interviews

- Re-interview witnesses, as necessary.
- Conduct new or additional interviews.
- Follow up with any witnesses named by the subject.
Closing Investigations and Writing Reports

Tell the Story

- Get all the facts.
- Keep it simple.
- Explain acronyms.
- Cite the information source.
- List facts in chronological order.
National Fraud Control Program
Protecting Kaiser Permanente Assets and Revenue

If it wasn’t documented...

It didn’t happen...

Quality Reports

- The best investigation
  - Is only as “good” as the written report.
- A quality report
  - Is an effective report.
    - Complete.
    - Clear.
    - Concise.
    - Accurate.

Effective Report
Report Facts, Not Opinions

- Facts versus opinions
  - Opinion: Jack Sparrow is a crook and a thief.
  - Fact: Jack Sparrow perpetrated a vendor invoice fraud scam that resulted in an $8.2M loss to the company.
- Make sure
  - To cite the source of your information.
    - The suspect entered the hospital storeroom at 2311 hours.
    - The suspect said she entered the hospital storeroom at approximately 2311 hours.

Writing a Case Report

Organize your notes → Write your case report → Each report should have

An opening paragraph → Chronological facts → A conclusion
Finalizing the Report

- Don’t cut corners!
  - Did you include all the pertinent case information?
  - Have you forgotten anything?
- Attach referenced documents.
  - Consider reporting templates.
- Prior to submitting your report.
  - Check for clarity and accuracy.
  - Ask for feedback.
  - Proofread.
- Consult with your legal team or other experienced investigators with questions.

Case Documentation – Rationale

General
Cases may undergo
- Civil or criminal litigation.
- Regulatory auditing.

Grammar & Syntax
Case files should be free of:
- Fragmented sentences.
- Tense errors.
- Plurality errors.
- Possessive errors.

Details, Details, Details
- Critical for proof of evidence acquired.
- Actions taken.

Case Documentation
- Concise and comprehensive.
- Free of unnecessary words.
- Objective, clear, and factual.
- Organized and structured.
Corrective Actions

- If the allegation is substantiated, disseminate the report for implementation of corrective actions.
- If the investigation was worked under attorney privilege, forward the summary to legal.
- If allegation involves an employee, provide investigative summary to human resources.
Corrective Actions to Consider

**Initial Triage and Outside Regulatory Reporting**: Ensure adequate initial triage on subject information to applicable outside regulatory reporting.

**Public Data Base Work-Up**: Conduct public database searches to confirm identity.

**Forensic Work-Up**: Conduct internal forensic review to identify like commonalities.

**Pharmacy Alerts**: Upon satisfactory identification of all known or possible medical record numbers used, initiate alerts for drug seeking behavior.

Additional Corrective Actions to Consider

**Internal Patient Health System Fraud Alerts.**

**Patient Financial Services**: Coordinate identified outstanding debt with Patient Financial Services and applicable outside collection agencies.

**Medical Record Number Merge and Chart Accuracy Notifications.**

**Drug Caution List Notifications**: Review with Pharmacy & Therapeutics Committee Chief for Drug Caution List consideration.

**Fraud Alert Flyer Dissemination and EMTALA.**

**Member Services for Membership Termination for Cause Review.**
National Fraud Control Program
Protecting Kaiser Permanente Assets and Revenue

Fraud Alert Flyer

Law Enforcement Referrals
When to Make a Law Enforcement Referral

- Violation of criminal statute.
- Clear evidence to support criminal violation.
- Prosecutive interest (egregiousness of violation).
- Internal leadership support.
- Mandatory referral considerations.

Which Law Enforcement Agency Should You Contact

- Statute violated (state or federal).
- Location of criminal act(s).
- Relationships.
- Geographic considerations.