Conducting Investigations

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

Objectives

- Planning and Working an Investigation.
- Interviewing Protocol and Techniques.
- Closing an Investigation and Report Writing.
- Corrective Actions to Consider.
- Referring a case to Law Enforcement.
- Case Study
Conducting Investigations

Kaiser Permanente Across the Nation

- 12.2 million Members
- 44.7 million Doctor’s Office Visits
- 90 million Prescriptions Filled
- Serving 8 states and D.C.
- 39 Hospitals
- 680+ Medical offices and other facilities
- 22K Physicians
- 57K Nurses
- 216K Employees
- 44.7 million Doctor’s Office Visits
- 90 million Prescriptions Filled
- Serving 8 states and D.C.
- 39 Hospitals
- 680+ Medical offices and other facilities
- 22K Physicians
- 57K Nurses
- 216K Employees
- 44.7 million Doctor’s Office Visits
- 90 million Prescriptions Filled
- Serving 8 states and D.C.
- 39 Hospitals
- 680+ Medical offices and other facilities
- 22K Physicians
- 57K Nurses
- 216K 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.
Investigative Objectives

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

- Assess the scope & nature of a potential problem.
- Determine appropriate corrective action(s).
- Meet legal & compliance obligations.
- Prepare to defend the organization’s actions if later challenged.
- The purpose, scope, and context of investigations may vary, but all investigations require a similar skill set.
Investigative Objectives

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

Brit Hume, Journalist

- Thorough, timely and objective, full & fair; no rush to judgment.
- Maintain confidentiality.
- If litigation and/or government action follows:
  - Witnesses, documents, and physical evidence will objectively support action(s) taken.
- Provide findings/facts to the decision makers

Full and Fair Investigations

- Declare any conflict which might be raised.
- Ask yourself whether or not you are the right person to investigate.
- Maintain an open mind and professional demeanor during the entire investigation.

**Who?**
- Who is the subject?
- Who are the witnesses?
- Who else should be involved?  
  - HR?  
  - Legal?

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

**What?**
- What is the allegation or allegations?
- What policy, procedure or law was violated?
- What happened?

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

**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?

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Initiating an Investigation **Plan**

- Is the allegation clear in the complaint?
- Does this lead to other allegations?
- Are others already conducting an investigation and/or for a related subject?
- Review the allegation/complaint
  
  - HR, Labor Relations, Security, Legal, National, Regional, or Local Compliance?
- Who should be part of the investigation team?
Things to Consider

- The role of management in the investigation and/or interviews.
- The elements needed to prove the alleged offense and/or performance issue.
- Reporting requirement: Privacy & Security, Medicare, Medicaid/Medi-Cal, Federal Employee Health Benefits Program.
- Criminal implications that may require law enforcement referral.

Things to Consider Prior to an Interview

- Potential relevant witnesses:
  - Employees.
  - Physicians.
  - Patients.
  - Vendors or other third parties.
- Interview(s):
  - Interview order.
  - Who should conduct interview?
  - Who should be present during interview?
## Evidence Collection and Review

### Policies & Procedures
- Conduct Rules (POR)
- Performance Evaluations
  - Attendance Records

### Prior Discipline and/or Investigations
- Medical Records
  - Ensure in compliance with Health Insurance Portability and Accountability Act (HIPAA)

### Email
- Other electronic records including internet, iPhone, iPad etc.
- Invoices, Receipts, Expense claims

## Additional Considerations

### Relevant Documents
- Include electronic records and data.

### Surveillance
- Are there cameras in the area?

### Photos
- Should photographs be taken and/or diagrams created.
Protected Health Information and Disclosure

- HIPAA* and state laws require protected health information (PHI), electronic health records (EHRs), personally identifiable information (PII) to be maintained confidentially.

- PHI, EHRs, PII disclosed to a third party must be logged and tracked

- Comply with minimum necessary requirements handle documents in a confidential manner

*Health Insurance Portability and Accountability Act

There are limited exceptions for disclosure:

- Union grievances

- Law enforcement

- Seek guidance before disclosing PHI, EHRs, PII

- Confidential information should be removed whenever possible
Planning and Working an Investigation

Let’s Review

- Initiating an investigative plan
- Things to consider prior to an interview
- Evidence collection and review
- Practice confidentiality

Interviewing Protocol & Techniques
The purpose of an interview is to question an individual who is believed to have information of interest concerning a particular matter.

**Interview vs. Interrogation**

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.

### Interview vs. Interrogation Activity

#### Which is which?
- Interview vs. interrogation.
  - Non-confrontational
  - Confrontational
  - One-way conversation
  - Two-way conversation
  - Low stress
  - Admissions & confessions are the goal
  - Generally used for witness & victim
  - High level of planning
  - Generally used for non-cooperative subjects

#### The characteristics of an interview.
- Non-confrontational
- Two-way conversation
- Low stress
- Generally used for witness & victim

#### The characteristics of an interrogation.
- Confrontational
- One-way conversation
- High level of planning
- Admissions & confessions are the goal
- Generally used for non-cooperative subjects
Interview Protocol

The goal is to conduct a neutral, fair, and thorough investigation...of all subjects, witnesses, and victims, to obtain factual information.

Subject interviews should be:
- Structured
- Private

Witness & victim interviews should be:
- Used for information gathering
- Non-accusatory

Uncooperative subjects:
- May require use of some interrogation techniques

Interview Planning

Who will be in the interview?
- Limit the number of people in the room.
- Include Human Resources.
- Represented employees must be advised that they’re allowed representation.
- Include the Legal Department.
- The employee’s immediate supervisor should not be present.

Prepare the best interview environment:
- Ensure privacy.
- Avoid distractions.
- Allow enough time.
During the Interview

Be a good listener:
• Pay close attention
• Make eye contact
• Don’t interrupt
  • Let the subject finish his/her thoughts

Build a rapport with subject
• Show compassion
• Do not reveal signs of your own personal beliefs
• Do not yell, curse at, or alienate subject

Put the subject at ease
• Display pleasant emotional responses

Let the subject know you’re paying attention: Interject comments; “Really”, “I see”, “I’d like to hear more about...”

Don’t jump to conclusions!

Note Taking

Generally it is best to listen with minimal note taking, but good interview notes are important.
  • Recommend co-interview.
  • HR or compliance contact takes notes.
  • Prepare your interview report immediately after conclusion.
Preserving a Witness and/or Subject Statement

- Take notes but listen and watch interviewee.
- Include documents or emails referred to as part of any interview.
- Seek a signed handwritten or typed statement.
- Use quotation marks only when certain the quote is accurate.

Follow Up Interviews

- Re-interview witnesses, as necessary
- Conduct new or additional interviews
- Follow up with any witnesses that were named by the subject
Let’s Review

- Interview protocol
- Interview planning
- Conducting the interview
- Preserving a witness and/or subject statement
- Follow up interviews

Closing Investigations & Writing Reports
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

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Closing Investigations and Writing Reports

**Process...**

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, which must be:
    - Complete.
    - Clear.
    - Concise.
    - Accurate.

Report Facts, Not Opinions

- Facts vs 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.
      - How do you know? Where you there?
    - The suspect said she entered the hospital storeroom at approximately 2311 hours.
Writing a Case Report

1. Organize your notes
2. Write your case report
3. 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?
- Include referenced documents as attachments.
- Consider templates for consistent report formats.
- Prior to submitting your report:
  - Check for clarity and accuracy.
  - Ask a colleague to review and provide feedback.
  - Proofread for punctuation and correct sentence structure.
  - Use online spell and grammar check software.
- If there are questions, consult with your legal team or other experienced investigators.
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.

Let’s Review
• Tell the story
• Quality reports
• Writing a case report
• Finalizing the report
Corrective Actions

Things to Consider

- If the allegation is substantiated, disseminate report, as appropriate, for implementation of corrective actions.
- If the investigation was worked under attorney privilege, summary forwarded to legal.
- If allegation involves an employee, provide investigative summary to Human Resources.
Corrective Actions

Things 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 Pharmacy Information Management Systems alerts for Drug Seeking Behavior.

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Corrective Actions

Things 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 Emergency Medical treatment and Labor Act.**

**Member Services for membership termination for Cause Review.**
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.
Law Enforcement Referrals

Which Law Enforcement Agency Should You Contact

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

Law Enforcement Referral Template
Case Study:
Identity Fraud

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Questions?
Conducting Investigations

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