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

Kaiser Permanente Across the Nation

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

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 Filed

12.2 million Members
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

Investigative Objectives

- If you don’t know where you are going, you might wind up someplace else.
- 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 content 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 are the location(s) of incident or interview(s)?

When?
- When did incident occur?
- When were interviews held?
- When did the allegation occur?
- When were the cases conducted and documents obtained?

How?
- How did violation and/or incident occur?
Initiating an Investigation Plan

Review the allegation/complaint

- 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?
- Who should be part of the investigation team?
- Who else should be involved and/or notified?

HR, Labor Relations, Security, Legal, National, Regional, or Local Compliance?

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

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*Health Insurance Portability and Accountability Act*
Planning and Working an Investigation

Protected Health Information and Disclosure

There are limited exceptions for disclosure:
- Union grievances
- Law enforcement
- Seek guidance before disclosing PHI, EHRs, PII
- Confidential information should be removed whenever possible

Let's Review

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

Interviewing Protocol & Techniques
Interviewing Protocol and Technique

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
  - Confidential
  - One-way conversation
  - Low stress
  - Generally used for witnesses & victims

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

**The characteristics of an interrogation:**
- Confidential
- 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.

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

**Subject interviews should be:**
- Structured
- Private

**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
- Hear their 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
Tell the **Story**

- Get all the facts
- Keep it simple
- Explain acronyms
- Cite the information source
- List facts in chronological order

**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.

Facts vs Opinions

- Opinion: Jack Sparrow is a crook and a thief.
- Fact: Jack Sparrow perpetuated 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 were you?
- 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?
- 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.
- Authors 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.

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.
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.
- Prosecutorial 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.

Law Enforcement Referral Template

Case Study:
Identity Fraud
Questions?

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