

Internal Compliance Investigations

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1

Business Situation

Consider these facts as we go through the presentation today as we discuss internal investigation elements and processes.

- You have just been hired as the new Compliance and Ethics Officer of a complex health system (“Health System”), reporting to the General Counsel. The Health System operates throughout Alaska. The Health System also utilizes remote coders in the lower 48 and the Philippines and India. As of 2019, the Company has 3,000 employees including approximately 500 employees that are off-line and do not have direct access to the company’s intranet on a regular basis. The Health System recently purchased Home Health, Hospice and Inpatient Rehab service companies.
- The General Counsel wants investigations to be handled quickly and quietly and investigations that doesn’t take up too much in resources or staff time. The Compliance Office will be staffed with only one resource (you) and provided with a very limited budget.

2

How Investigations are Initiated

- Competitor complaints
- Consumer complaints
- Current employee
- Former employee
- Whistleblower complaints
- Payor complaints/investigations

3

Your Role as an Investigator

- Your investigation decision is supported by evidence
- You are independent
- You are impartial and open minded
- You have no connection to the participants or a stake in the outcome
- Manage the roles of decision-maker and investigator
- Fairness and credibility

4

When Must You Investigate?

- Any time there is:
 - A report of improper conduct or non-compliant activity
 - An allegation of a violation of law
 - A potential for government overpayment
 - A potential for an overpayment by any other third-party payer
 - An allegation of policy or Code of Conduct violation
 - A potential for whistleblower activity

- Others.....

5

Doing Nothing is Risky

- Demotions, counseling and bad evaluations after a compliance issues reported
- Promotions of employees who caused non-compliance
- Complaints dismissed because employee was rude, incompetent, lazy, fill in the blank
- Multiple internal audit reports identified the issue and management ignored it
- Administrator looked the other way because the physician was a high admitter

6

Key Purposes for Your Investigation

- You must determine the true story as well as the back story
- You must determine the root causes of the non-compliant activities
- Your findings must establish accountability and those involved in the non-compliant activity
- The investigation must be done timely both for practical reasons as well as to prove there was no cover-up of improper conduct

7

How Much Must You Investigate

- Depends on the facts
- Initially, need to investigate enough to gauge the credibility of the allegation and to advise client as soon as possible
 - Reliable and credible evidence
 - Documentary evidence
- Dollar amount of potential exposure impacts practical decisions regarding scope, depth and personnel involved in investigation
- Tailored investigation vs boiling the ocean

8

Investigation Roadmap

- Investigations should follow the same basic roadmap:
 - Identify potential issue – those already identified, others that should be investigated
 - Identify individuals likely to have information, both inside and outside the company
 - Identify potentially relevant documents and institute document “holds” to prevent destruction or disposal;
 - Identify individuals best suited to conduct investigation (in-house resources or outside counsel and/or consultants)
 - Prepare investigation plan – the more serious the issue, the more detailed the plan

9

Investigative Process

- An investigations policy or associated policies that address non-retaliation, duty to cooperate and confidentiality provisions
- Process for report intake with assessment steps and escalation criteria
- Protocol for conducting investigations organization wide
- Toolkit with instructions and template documents for consistent investigation tasks
- Training for all the team who would be conducting investigations organization-wide
- Reporting at appropriate levels of investigations statistics – volume, results, trends

10

Investigators

- Who should investigate?
 - Different categories of problems are best investigated by different personnel:
 - Criminal issues or issues likely to result in significant civil liability (whistleblower situations, high dollar overpayments, systemic problems) should not be investigated without the assistance of competent and experienced legal counsel and investigative team
 - Attorney-client privilege important – may want outside counsel involved to strengthen application of attorney-client privilege
 - Staff who conduct internal investigations
 - Training
 - Skillset
 - Professionalism and competency
 - Independence & objectivity

11

Document Reviews

- Identify, gather and review documents
 - Authorized personnel should collect and deliver documents to counsel (i.e. custodian of records)
 - Track where documents came from
 - Make sure system reports are dated and the search criteria, author/generator and time frame of report are documented.
 - Keep confidential documents confidential
 - Identify “hot” documents
 - Documents that suggest wrongdoing
 - Documents that are exculpatory (favorable to defendant)
 - Documents that raise questions and need further clarification
 - There is no reasonable expectation of privacy in company systems, desks or other company property.

12

The Interview Process

- Gather intelligence on your witnesses before you interview them
- Interview witnesses by starting with a “skeleton” and filling in the landscape
- Make a list of interview topics, not questions. A script will limit you unfairly
- The interviewer must control the interview
- Keep your opinions to yourself when conducting the interview
- Phone interviews are a necessary fact of life, but they have limited value to the investigation
- Joint interviews. They can be a recipe for disaster

13

Interviews

- Interviews should be conducted in private
 - To the extent practical and needed for the type of investigation being undertaken, have witness present during interview to take notes and corroborate your understanding of facts and impressions of witness
- Keep notes of interview
 - Do not record interviews
 - Do not transcribe interviews
 - May prepare written report describing facts of each interview

14

Interviewing the Reporter

- The reporter is your initial source of information. Take full advantage of the opportunity to gain understanding and clarity
- Make sure you understand the substance of their report
- Don't adopt the reporter's characterization of the facts
- Be alert to confidentiality and retaliation concerns
- Be sure to manage the reporter's expectations
- Start considering what the "back story" may be when the report is considered

15

Interviews

- Management rarely needs to be present
- Employees must be advised that legal counsel represents company, not employees individually and what they say may not be kept private (legal counsel can provide guidance)
 - Depending on the severity of the allegations and potential culpability of the employee, you may choose to advise them of the potential need for their own counsel
 - In some instances, organization may pay for employee counsel
- Employees must be encouraged to report if they have been threatened or asked to change their stories

16

Investigation Report

- Summary of the facts
- Describe allegation and how it was reported
- Identify potential cause(s) of the incident
- Describe the incident in detail, including how it happened and/or continued and procedure of investigation
- Identify individuals interviewed and documents reviewed
- Identify financial impact and any health and safety matters
- Identify time period in question
- Identify individuals who should have detected non-compliance
- Include at least an estimate of the magnitude of the issue and recommendations for corrective and other remedial action

17

Communication of Investigation Outcomes

- Oral or Written Report
 - Report is discoverable in litigation
 - The report should be distributed within organization on a limited basis.
- Report must remain confidential-limit circulation of report-oral report preferred
- Work with counsel on reporting to organization on some matters
- Report kept in accordance with record retention policy

18

Fix the Problem

- Using the report, identify and assist in development of root cause analysis and corrective actions needed to fix the problem.....monitor corrective action plans
 - Will action taken in response to the issue prevent a reoccurrence of the issue?
- Need to assess compliance process and policies to identify deficiencies in existing compliance programs and reporting mechanisms
- Recommend discipline for responsible employees, as appropriate
- Additional policies, procedures or processes should be added as necessary to promote future compliance

19

Now What....

- Ensure adequate and timely escalation of investigation outcomes
 - Significant investigations are reported to senior leadership and the governing body
- Voluntary Disclosure
 - Need to discuss with organization
 - Whether past conduct needs to be disclosed and any related liability resolved with government
 - Options of self-disclosure – to whom?
 - Department of Justice, Attorney General, Insurance Commissioner?
- Tracking and Trending Investigations
- Incorporating “lessons learned” into training...department education....leadership training.....foster/building relationships with risk partners.....contract & policy revisions
- Take time to assess your investigation processes and how they worked or did not work
- Measuring Compliance Program Effectiveness: A Resource Guide 1-17-2017

20

Quality and Consistency of Investigations

- Ensure that the who, what, when and how is answered in every investigation
- Audit investigations to look at:
 - Quality of questions and asked and content considered, involved parties and report out of findings
 - Did they involve the appropriate parts of the organization
 - Are they broad enough
 - Did they use internal or external auditors
- Does the audit files reflect a through, timely and consistency in the investigation process among investigators
 - Audit investigation files
- Triage your process: Do a mock report/multiple mock reports on different issues to test process
 - Mock presentation – mock presentation (devil's advocate) role playing what a regulator might ask regarding the investigation and remediation process at your organization

21

Group 1 Exercise

Ethics Action Line call received alleging the Director of the Home Health Division has instructed the Supervisor of the Division to hire her daughter for an open position within the Home Health Division.

- Who will investigate the allegation?
- Who will do the interviews?
- Who will you interview?
- What documents will you need?
- Who will your report the outcome of the investigation to?
- What corrective actions would you recommend?
- Will you expand the scope of the investigation?
- Will you involve Legal, if yes, when?

22

Group 2 Exercise

An new Billing Department employee has come by your office and said that during their training the Department Manager instructed all billers/collectors that any claim that was in their work queue that had not been paid by the end of the month were to submitted as a new claim to the payer.

- Who will investigate the allegation?
- Who will do the interviews?
- Who will you interview?
- What documents will you need?
- Who will your report the outcome of the investigation to?
- What corrective actions would you recommend?
- Will you expand the scope of the investigation?
- Will you involve Legal, if yes, when?

23

Group 3 Exercise

A member of the housekeeping team has stopped by your office to ask if they are to clean the office of Dr. Houser, a non-employed physician, who has been using a vacant office in the clinic.

- Who will investigate the allegation?
- Who will do the interviews?
- Who will you interview?
- What documents will you need?
- Who will your report the outcome of the investigation to?
- What corrective actions would you recommend?
- Will you expand the scope of the investigation?
- Will you involve Legal, if yes, when?

24

Group Exercise

The Compliance Department received an anonymous complaint that in the Inpatient Rehab Department, the Physician Director of the Unit has not been by the unit to complete their documentation for the patient case plans for the past 3 months. The Nursing Director spoke to the Physician Director on the telephone and the Physician Director told the Nursing Director that "you know what I do with patients so go ahead and document that in the chart and sign my name."

- Who will investigate the allegation?
- Who will do the interviews?
- Who will you interview?
- What documents will you need?
- Who will you report the outcome of the investigation to?
- What corrective actions would you recommend?
- Will you expand the scope of the investigation?
- Will you involve Legal, if yes, when?

25

Questions?

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