

An Institutional Response to Investigations, Subpoenas, and Search Warrants

**Society of Corporate Compliance & Ethics
Annual Compliance Conference
New Orleans, Louisiana**

**Spencer D. Levine, Senior Vice President
Chief Administrative Officer/Compliance & Ethics
North Broward Hospital District
Fort Lauderdale, Florida
September 10, 2007**

How are Investigations Initiated?

- Disgruntled employees
- Former employees
- Competitors
- Individuals or companies under investigation
- Routine regulatory oversight
- “Hotline” calls to regulatory phone line
- Relatives or former spouses
- “Outlier” conduct of company



Who Will Contact Your Organization?

- State regulators
- Federal regulators
- State law enforcement
- Federal law enforcement, i.e. FDA, EPA, etc.
- FBI, OIG-HHS
- State police
- State Attorney General's Office
- U.S. Justice Department



3

What are the types of contact that are initiated by government representatives, to your organization?

- Letter – routine request for information from regulators
- Phone call – from regulators
- Subpoena
- Search warrant
- Undercover investigation
- Cooperating witness



4

When? Where?

- Early morning
- Late night
- At work
- At home



5

What are the different reasons for contact?

- Civil investigation or inquiry
- Qui tam/whistleblower investigation
- Criminal investigation or inquiry or both



6

Institutional Response to Regulatory Demand

- Each institution should have a written policy stating that it is their intent to cooperate fully and respond appropriately to any regulatory visit or investigation.

7

- The policy should include the following:
Regulatory visits
 - a.) Immediately notify their supervisor, and the appropriate manager, including the Compliance Officer
 - b.) Request identification and request a business card
 - c.) Ask the regulator the purpose of the visit



8

d.) Try to determine and request if possible the legal authority for the action (i.e. rule or statute)



e.) The regulator should be escorted at all times by an institutional representative



9

f.) The regulator may be permitted to request and receive copies of documents without a subpoena

g.) They should check with the Compliance Officer or General Counsel, if they are unsure about the regulator's authority to request documents



10

Investigations by Law Enforcement or Other Government Officials

- a.) Contact immediately your Supervisor, Risk Manager and/or Facility/Institutional Ethics and Compliance Officer

- b.) In turn, they should contact the General Counsel and Office of Ethics and Compliance

11

- c.) Request a business card and/or record the name, agency, and phone number of the investigator

- d.) If by phone, ask the investigator to fax a business card or other identification



12

Subpoena and Search Warrant Policy

- It should be the policy of your institution to fully cooperate and respond appropriately to any state or federal issued subpoena.
- It is critical to have a separate policy from your regulatory investigation policy, to deal with subpoenas and search warrants.

13

- Your policy should clearly delineate a procedure of notification to the supervisor of the named party as well as the Risk Manager, General Counsel, and the Office of Compliance and Ethics.
- The Policy should also delineate a procedure for subpoenas for appearance at Deposition or trial; as well as subpoenas for the production of Documents and Tangible Items (Subpoena Duces Tecum).

14

In Healthcare Situations:

- Of course, all requests for patient medical records will comply with the applicable federal and state law protecting PHI (in this case HIPAA).



15

- Your policy should delineate situations where the investigator appears with a search warrant;
- If the investigator does not have a search warrant, the Risk Manager or Facility Ethics and Compliance Officer or designees, should request that the Investigator obtain a search warrant to search any areas or review any documents owned by your institution.
- Issues

16

- Of course, your employee or staff member should contact his/her supervisor, the facility compliance and ethics officer or designee and the General Counsel and Office of Compliance and Ethics when a warrant is being executed.

17

- The Facility Ethics and Compliance Officer, the Office of Compliance and Ethics and the General Counsel, should do the following:
 - a.) Carefully review the warrant
 - b.) Identify the agent in charge
 - c.) Have the investigator identify the prosecutor by name and phone number
 - d.) Determine the warrant was signed by a judge or magistrate

18

- You should determine the scope of the warrant
- The type of evidence to be seized
 - Make sure there is no discrepancy between what was is on the warrant and what the agent is actually searching



19

Key considerations:

- Advise staff that individuals executing the warrant may ask them questions and that it is the employees' choice, whether they want to speak with the investigators and that they are not required to do so
- Monitor the search, but never interfere, impede or obstruct
- Issues



20

- Ask the investigator if the investigator is willing to accept copies of documents instead of originals
- Request back-up copies if original data is seized
- Request a copy of the search warrant inventory
- Do not sign anything that verifies the content or accuracy of the search warrant inventory



21

- The Facility Regional Ethics and Compliance Officer, the Office of Ethics and Compliance and General Counsel should participate in a debriefing to discuss the search, after its conclusion.
- Press considerations



22

Common Perceptions or Misperceptions

- “Helping” or “Cooperating” with the government, over and above, what is required by law is expected
- Refusing to “cooperate,” over and above what is required by the law, will make the individual or institution, “look” or be perceived as “guilty” or as having something to “hide.”

23

- Regulators are attempting to just “clear up” issues and merely need these documents or issues “cleared up” in order to resolve the matter
- The regulators’ inquiry is a mere formality, and your refusal to answer or cooperate, over and above what is absolutely required, will be a “red flag” to the government

24

What can be done if your organization receives a subpoena?

- Your counsel and/or compliance and ethics officer should review the subpoena
- There should be a determination if there are legal grounds to object
- Motion for protective order (i.e. overbroad and not reasonable)
- Know the legal limits of the regulators' regulatory review authority

25

- Consider whether to send your employees home during the execution of the warrant
- As stated before, “object” to searches outside the letter of the search warrant
- As stated before, get a copy of the inventory, or attempt to compile your own inventory of the search warrant



26

- See if the investigators can take copies, instead of originals of records and documents
- Restate to employees, that they do not have to discuss matters with investigators. However, never tell employees that they should not speak to investigators.



Obviously, never “obstruct” or “interfere” with the investigation or execution of lawful process (the search warrant)

27

Final Considerations

- Implement a “non-destruction” policy of documents that are being requested or reasonably could be expected to be requested due to a governmental investigation
- Once again, this could be perceived as an “obstruction”



28

- What do you do, or advise, if the investigators are requesting your help (or demanding your help) in locating documents?
- How far should you go to help the government?

29

- In conclusion, a well crafted compliance program and specific policies dealing with governmental investigations, and subpoenas and search warrants will result in your organization being ready to deal with these real challenges.



30

- Any Questions?