Internal Investigations
Intake to Investigative Report
International Considerations

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Join Us – Intro and Agenda

Wendy Evans
Latour “LT” Lafferty

• Intake
• Investigative Plan
• Evidence Collection
• International & Legal Considerations
• Investigative Conclusion & Documentation
• Presentation to Discipline Committee
Intake --- Jeff

What did you think of Jeff?
Did he seem credible?
What did he allege?
Did he name any witnesses?
What’s next?

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Wait a minute...what did Jeff think of YOU?

• Jeff could tell I bought his story--hook, line and sinker. I’m all in! That Becca...
• He thought I looked bored. He was right. Yes, I’ve heard it all before.
• Well...I think he caught me checking my phone during the interview...maybe...
• He could tell I was an engaged professional who actively listened to his concerns
**INTAKE TIPS**

- Build Rapport
- Active Listening
- Build Trust
- Obtain Facts
- Narrative
- Ask Clarifying Questions
- Promise fair, timely and thorough investigation
- Set Expectations
- Explain Process

**INTAKE IS CRITICAL**

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**Investigative Plan**

- Roadmap
- What are allegations?
- Who is the Subject of the report?
- What witnesses did Jeff name?
- What Functional Support will you need?
- What notifications need to be made?
- What policy is impacted?
INVESTIGATIVE PLAN

A FAILURE TO PLAN IS A PLAN FOR FAILURE

Legal Considerations

- Confidentiality - Banner Health Decision (NLRB)*
  - Represented Parties
  - Non-Represented Parties
  - Leaders versus non-leaders
  - Exceptions

- Other Legal Considerations:
  - CBA-represented Parties – Weingarten Rights
  - Parties who say they have a lawyer
  - Parties who ask for complete confidentiality
  - Parties who ask to record the interview

*Banner Health Systems, 362 NLRB No. 137 (June 26, 2015)
International Considerations

• Privacy Laws
  • GDPR (EU General Data Protection Regulation)
  • What could it mean to you?

• What if?
  • What if the Subject (Becca) lives in the UK?
  • What would you do differently in the investigation?
  • What special legal considerations are there?

Evidence

• Documentary (consider chain of custody)
  • Email
  • Instant Message
  • Facility Access Records
  • Conflict of Interest Declarations
  • Public Record Searches

• Physical Evidence (chain of custody/storage considerations)
  • Hard copy notes, letters, documents
  • Thumb drives (engage your computer experts, as needed)

• Testimonial (memorialize notes soon as possible)
  • Manager Discussion
  • Human Resources
  • Witness Interviews
  • Reporting Party and Subject Interviews

Holland & Knight
Witness Interviews

- Do your homework
- Keep it Collegial
- BOVINE Approach:
  - Build Rapport
  - Open-ended questions
  - Visualize their story
  - Introduce clarifying questions
  - Notice the Gaps
  - End with Closed Questions
- Challenges
  - Uncooperative/hostile
  - Reluctant/Nervous

Reaching your Investigative Conclusion

- Review Allegations
  - How did your investigation evolve?
  - What does evidence suggest?
- Standard of “proof”
  - More Likely than Not
  - Good faith investigation
- Courage of your Convictions
  - Confer with Subject Matter Experts
  - Don’t fear the gray areas or elephants in the room
  - You are the policy expert
  - Document the conclusion
Bringing it in for a landing – Investigative Report

- Format
- Consider Outline to prepare for ROI
- Avoid legal conclusions and legalese
- Third Person; Active Voice
- Keep it concise
- Peer review

Feedback, Presentation, Follow-Up

- **Feedback**
  - Reporting Party
  - Subject
- **Presentation**
  - Be present
  - Be prepared
  - Be polite
  - Be professional
- **Follow-Up**
  - Legal/Regulatory Issue?
  - Security Issue?
  - Surveys of Reporting Party? Subject?
Now you can RELAX until the next case!

Ethics Officer Conclusion

• Best Practices for Training Investigators
  • Role Play
  • Key Learning Points
  • Mock ROI

• Questions?
Thank you!

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