Internal Investigations
Intake to Investigative Report
International Considerations

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Join Us – Intro and Agenda

- 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?
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

INTAKE IS CRITICAL

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

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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?

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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

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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