



# How to Navigate an Internal Investigation

## TEN QUESTIONS TO GUIDE YOUR COURSE

By Holly Louie, CHBME

**K**nowing whether or when to launch an internal investigation into compliance issues can be intimidating and confusing. Is it necessary? Who should conduct the investigation? How do you attack the problem in the most efficient, least disruptive, and most cost effective way? How do you know you've done a thorough job of identifying all the variables that created the problem?

The following ten-step approach asks basic questions and provides tips that should help guide you in making the right decisions. The key factors are based on the volume of the problem, the duration (pattern), the dollars involved, the scope, intent, and the level of risk to your organization or company. This approach applies whether you are the largest HBMA member company or an owner who wears all the hats.

### 1. When is an investigation called for?

To determine the answer, ask yourself these questions:

- Is the allegation credible?
- Is this a simple error or misconduct? To understand the magnitude of the problem, determine your best estimate of the variables specified in the allegation.
- Is the problem a system wide failure or isolated to one area?
- What is the level of risk? Are there overpayments involved?
- Is this a repeat problem?
- Do you or the client currently have a Corporate Integrity Agreement (CIA)?
- Are there significant obstacles to the investigation beyond your control? For example, must you collaborate with other entities?

If you determine the allegation is credible and the problem is due to misconduct, a system-wide failure, or a recurrent problem or a pattern, or if it involves high dollars and/or long duration, then your answer is yes. Any or all of these elements call for an investigation. In addition, any entity or individual with a CIA must adhere to the conditions and thus an investigation is probably mandated.

### 2. Should the investigation be conducted in-house or with outside resources?

If your answer to any of the questions could undermine the credibility of your investigation, or your company's viability is contingent on the outcome, independent experts with demonstrated expertise are indicated.

- Does the investigation require detailed, specialized knowledge?
- Do you have a conflict of interest?
- Can you be completely objective?
- Is there legal or financial risk to the organization?
- Do you need attorney-client privilege?

### 3. Should you engage a knowledgeable healthcare attorney?

Spend time thinking this question through from an end result, rather than from an upfront cost perspective. Do you want or need the investigation to be protected? Handling an investigation without legal counsel can cause possible complications, such as additional risk and/or flawed findings due to a lack of expertise in the correct and accurate documentation of the investigation. Give due consideration to the benefits of counsel, not just the cost.

### 4. What should you document?

The answer is everything. Document *every* step of the investigation: who, what, when, where, and why. Once you've determined there is a credible issue and started an investigation, you have to complete the process by addressing the following operational questions:

- Who found the problem and how?
- What are the details of your investigation?
- Who was interviewed and how were they selected?
- What actions did you take and why? Did you educate? Did you write new or revised policies and procedures? What auditing and monitoring did you institute? What corrective actions did you take?

### 5. Who should conduct the investigation?

The answer to this will vary depending on your organization, expertise, attorney involvement, and who is involved in the allegation. Possible answers include a knowledgeable compliance officer or owner, designated employees under the compliance officer's direction, and independent persons under an attorney's direction. Typically independent persons are used in cases where criminal activity is suspected or where high-level company involvement is suspected; internal investigations are *not* recommended for these scenarios.

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## CONTEMPLATING COMPLIANCE

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### 6. How should you proceed once the decision to investigate has been made?

Stop the bleeding!!! As soon as you know there is a credible problem, stop the claims or processes that create additional risk. Then follow these steps:

- Develop a detailed plan of action and stick to it
- Protect all relevant information
- Spell out duties, responsibilities, deliverables, and timelines
- Control the information, details, and processes
- Make determinations regarding the need for self-disclosure and reassess the involvement of legal counsel. What are the dollars involved? Is a simple repayment adequate resolution?

### 7. What documentation is relevant?

Once you begin an investigation, you have plunged into the World of Documents. You need to gather them all and step away from the shredder. Define the population. Do you need a statistically valid sample? Will this be a self-disclosure to the government? If so, you probably need counsel and an accounting expert familiar with government sampling requirements.

Consider all of the documentation relevant to the problem. This includes paper documents, electronic files, e-mail, archived data, employee "cheat sheets," relevant education, policies, procedures, auditing and monitoring findings, etc. Stop the normal course of business-document destruction. Document any records that were destroyed *before* the start of the investigation and provide the schedule that shows this destruction was part of your normal course of business.

### 8. How should you conduct yourself during an ongoing investigation?

First, assume everything will be seen by someone else at some time. Maintain professionalism and avoid subjective statements. Don't try to play games. In the words of Mayflower Madame Sydney Biddle Barrows, "Never say anything on the phone that you wouldn't want your mother to hear at the trial."

### 9. How should the investigation be reported?

The report may be oral or written, depending upon how the investigation was conducted and by whom. Reports should include an objective analysis of the findings, recommendations, corrective-action details and timelines, responsibility assignments, and future plans related to the issue, i.e., auditing, monitoring, and repayment schedule.

### 10. Whom should you tell about the investigation?

This will vary depending on the findings, but basically only those who have a need to know should be given the details. Was there criminal activity? Was this an innocent mistake? Most investigations are the result of system failures, innocent mistakes, or lack of education, not criminal enterprises. However, even in the case of an innocent mistake, you have liability.

When an investigation is necessary, do it immediately and thoroughly. In the meantime, build effective prevention and detection measures and operational safeguards to protect your company. ▲

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