



# Policy & Procedure

## CORPORATE COMPLIANCE PROGRAM RESPONDING TO GOVERNMENT INVESTIGATIONS

**FUNCTION**

Administration

**NUMBER**

VI.I

**ISSUED**

June 2000

**REVISED**

1/06; 12/13

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### PURPOSE

- Center staff are accustomed to on-site visits of a more routine nature from government investigators representing the state health department or state fire marshall for the center annual survey or for a complaint survey. However, government investigators from such agencies as the Federal Bureau of Investigation (FBI), the Office of Inspector General (OIG), the Medicaid Fraud Control Unit (MFCU), state attorney general, Occupational Safety and Health Administration (OSHA), the Department of Labor or the local prosecutor, may signal a more serious matter and require a more prescriptive and orderly response. Government investigators may arrive unannounced at Good Samaritan Society facilities or the home of present or former employees and seek interviews and documentation. The purpose of this policy is to establish a mechanism for the orderly response to government investigations to enable the Society to protect its interests as well as appropriately cooperate with the investigation.

### POLICY

The Society will cooperate with any appropriately authorized government investigation or audit; however, the Society will assert all protections afforded to it by law in any such investigation or audit, including the consideration of acts and omissions of employees acting within the scope of their employment.

### PROCEDURE

#### **Establish Communication with Appropriate Society Staff**

1. Staff should immediately obtain the name, agency affiliation, business telephone number and address of all of the investigators as well as the reason for the visit. The investigators should produce some form of official identification.
2. As soon as possible after the arrival of government investigators from any of the above stated agencies or other similar government agency, staff should contact the center administrator and/or director of nursing, who will be the designated Society employee in charge. If neither the administrator nor director of nursing is available, another center department head should be designated as the employee in charge. If no department head is available, a center-employed charge nurse should be designated as the employee in charge of the investigation.
3. As soon as possible after the administrator or designee has been contacted, the Compliance Solutions Hotline [(800) 631-6142] should be contacted to inform them of the investigation. Compliance Solutions Hotline staff will then contact the center's director of operations, the Society's chief legal officer, corporate compliance officer and director for communications. The administrator or designee should inform Compliance Solutions Hotline of the following: the name of the government agency, the name and title of the lead investigator, the number of investigators, and the reason for the investigation. Compliance Solutions Hotline staff will also request that any written legal requests for information (e.g., subpoena, search warrant) be faxed to the National

Campus. The administrator or designee should inform the Compliance Solutions Hotline of any requests, demands or actions currently made or taken by the investigators.

### **Request for Interview**

1. When the investigator arrives, ask if there is a subpoena or warrant to be served and request a copy of the subpoena or warrant.
2. Any staff member contacted by an investigator should immediately notify his or her supervisor. Provide this individual with as much information and documentation about the investigation that is known. Ultimately, the request should be reported to the chief legal officer and the corporate compliance officer.
3. The staff members should always be polite and should obtain the following information:
  - a. The name, agency affiliation, business telephone and address of all investigators;
  - b. The reason for the visit.
4. When government investigators request an interview from a Society employee, there is no obligation to consent to an interview although anyone may volunteer to do so. One may require the interview be conducted during normal business hours, at a Society center, or another location.
5. The interview may be stopped at any time, with a request that the investigator return when counsel can be present. The Society will be represented by its chief legal officer; employees have the right to their own individual legal counsel at their own expense. Local counsel should be present for interviews whenever possible.
6. If an employee chooses not to respond to the investigator's questions, the investigator has the authority to subpoena the employee to appear before a grand jury.

### **The Search**

1. Request an investigator on the Society premises to wait until the administrator or designee arrives and the Society's chief legal officer and corporate compliance officer can be contacted.
2. Society employees must not alter, remove, or destroy permanent documents or records of the Society. All records are subject to Society retention guidelines and may be disposed of only in accordance with these guidelines. Once there has been notice of an investigation, the destruction portion of any policy on record retention is suspended.
3. If the investigators present a search warrant or subpoena, the investigators have the authority to enter private premises, search for evidence of criminal activity, and seize those documents and items listed in the warrant. No staff member has to speak to the investigators, but must provide the documents or items requested in the warrant.
4. Request copies of the warrant and the affidavit providing reasons for the issuance of the warrant.
5. All staff members should request an opportunity to consult with the Society's legal counsel before the search commences. Provide counsel with a copy of the warrant immediately. If counsel can be reached by phone, put counsel directly in touch with the lead investigator.
6. Cooperate with the investigators, but do not consent to the search.
  - a. The employee in charge should instruct the lead investigator that:
    - 1) The Society objects to the search;

- 2) The search is unjustified because the Society is willing to voluntarily cooperate with the government; and
    - 3) The search may violate the rights of the Society and its employees.
  - b. Under no circumstances should staff obstruct or interfere with the search. Although they should cooperate, any staff member should clearly state that this does not constitute consent to the search.
  - c. Whenever possible, keep track of all documents and items and what information the documents contain given to the investigators.
7. If local counsel is not available, the employee in charge should contact the prosecutor immediately and request that the search be stopped. One can negotiate alternatives to the search and seizure, including provisions to ensure that all existing evidence will be preserved undisturbed. If the prosecutor refuses to stop the search, request agreement to delay the search to enable the Society to obtain a hearing on the warrant.
8. The employee in charge should attempt to negotiate an acceptable methodology with the investigators to minimize disruptions and keep track of the process. Considerations include the sequence of the search; whether investigators are willing to accept copies in place of originals; and if so, who will make the copies and how; whether the Society will be permitted to make its own set of copies; and arrangements for access to records seized.
9. The employee in charge should point out limitations on the premises to be searched and on the property to be seized.
  - a. Avoid expansion beyond the proper scope of the search to prevent confusion or overreaching.
  - b. Never consent to an expansion of the search.
  - c. Disputes regarding the scope must be brought to the attention of the prosecutor or the court to be settled. Society staff should not prevent the investigators from searching areas they claim to have the right to search.
  - d. Investigators generally have the right to seize evidence of crimes that is in their “plain view” during a search regardless of whether such evidence is described in the warrant.
10. The employee in charge should take these appropriate steps to protect other Society staff members.
  - a. The employee in charge should send all but essential personnel home or temporarily reassign them to other areas when a warrant is served.
  - b. Selected employees should remain along with the employee in charge and/or Society counsel to monitor the search.
  - c. Investigators should never be left alone on the Society’s premises, and no employee should be left alone with the investigators.
11. Object to any search of privileged documents.
  - a. If there is any possibility that the search will compromise privileged information, the Society should object on that basis, and raise the issue with the court if necessary. Examples of privileged information include, but are not limited to: 1) any attorney correspondence, 2) patient information, and/or 3) personnel files. (Note: Health Department Surveyors have specific authority to view patient records and check time cards to verify stated hours are worked.)

- b. Negotiate a methodology to protect the confidentiality of any privileged information pending a resolution of these objections. For example, segregate the privileged documents from other files and investigators will not read the documents until the court has made a decision or the investigators will seize the document, but place them unread in sealed envelopes until the matter is resolved.
12. The employee in charge should keep a record regarding the search.
  - a. Ask each investigator for proper identification, including their business cards.
  - b. List the names and positions of all the investigators with the date and time. Verify the list with the lead agent and request he or she sign it.
  - c. Monitor and record the manner in which the search is conducted. Note in detail the precise areas and files searched, the time periods when each of the files was searched, the manner in which the search was conducted, the agents who participated, and which files were seized.
  - d. Several individuals will probably be needed to monitor the different areas being searched simultaneously.
  - e. If the monitor is ordered to leave, contact the lead investigator. A person should only be ordered to move if they are in the way, not to avoid being observed. Never provoke a confrontation with an agent.
13. If possible, do not release a document to the investigators unless it has been reviewed by counsel. This is not possible under a search warrant.
14. Keep all privileged and confidential documents separate and labeled accordingly. If seized, the documents should be protected from disclosure if labeled properly.
15. If possible, the employee in charge should make a record and a copy of all records seized.
  - a. If this is not possible, before the agents leave the Society's premises, request an inventory of the documents seized.
  - b. Request the lead agent to note the date and time the search was completed, as well as sign the inventory with the agent's full title, address, and telephone number.
  - c. When documents are seized, the investigators are required to give the occupant a copy of the warrant.
  - d. Copies of the seized documents should be requested as well, especially the medical records, as this is the most efficient way to inventory the documents seized.
  - e. Create a parallel inventory of the documents seized.
  - f. Download copies of the files from hard drives of computers, and copy diskettes, especially if the material is essential to the ongoing operations of the Society.
16. If possible, videotape the search.
  - a. A videotape may provide evidence of undue disruption or misconduct on the part of the investigators.
  - b. If the investigators claim the taping interferes with the search, the employees in charge should make a record of the refusal. Do not persist if the agents have warned that they regard the taping as interference.