Responding to Search Warrants

Statement

The university recognizes that the United States government has increased its scrutiny of health care providers by deliberately focusing on practices it considers fraudulent and abusive. It has a number of techniques at its disposal to use when investigating suspected fraudulent activity. Those techniques include grand jury subpoenas, civil investigative demands, civil subpoenas and search warrants. Among these techniques, the use of search warrants has grown in popularity among government investigators for a variety of reasons, thus increasing the likelihood that the university, its Office of Compliance, or other officers may be served with a search warrant. The Fourth Amendment of the U.S. Constitution guarantees people the right to be secure in their persons, papers and effects against unreasonable searches and seizures. A search may be conducted only upon a finding of probable cause. Probable cause to conduct a search is based on a review of all of the circumstances surrounding a situation and whether a reasonable person has an honest belief that the objects sought are linked to the commission of a crime, and that those objects will be found in the place to be searched and the items to be seized. The investigating officer(s) has no discretion to determine what should be seized or searched; the officer must follow the description on the face of the search warrant.
Policy

It is the policy of the university to cooperate with the government’s execution of a search warrant within the bounds of the law. The university recognizes that access to an investigating officer possessing a valid search warrant cannot be refused; however, the university further recognizes that it is not legally required to relinquish all rights of ownership, or provide access to objects and areas not defined in the search warrant. The university, therefore, sets forth the following guidelines for responding to a search warrant and encourages all departmental entities to adopt this or a similar policy.

Procedure

Should the Office of Compliance or a University School of Medicine Department governed by the compliance plan receive a search warrant, the following steps shall be taken:*  

1. The Director of the Office of Compliance (hereafter “Director”) shall request to see the search warrant, and the affidavit of probable cause, if available. The Director shall carefully review, and copy, the search warrant and affidavit to identify the areas of the search.

2. The investigating officer(s) will be confined to the areas where the records specified in the search warrant are located. The investigating officer(s) will be given access to only those records, items and areas specified in the warrant.

3. Following the arrival of the investigating officer(s), the Director or his or her designee shall immediately notify the Dean, or his or her designee, and the university counsel.

4. The Director or his or her designee shall discharge all nonessential personnel for the day. Personnel shall be instructed that absent a subpoena directed at each individual, they are under no obligation to answer any questions asked by the investigating officer(s).

5. The Director or his or her designee shall remain with the investigating officer(s) at all times. Except to answer questions pertaining to the location of documents, or other questions wholly unrelated to the search (for example, location of copy machines, coffee machines, lavatories, etc.),
the Director or designee shall not answer any questions asked by the investigating officer(s) unless counsel for the university is present.

6. Should the investigating officer(s) attempt to enter unauthorized areas or search or review documents not specified in the warrant, the Director or his or her designee shall strongly and clearly object to the investigating officer(s)’ request. If the investigating officer(s) ignores the objections of the Director, the Director shall continue to object throughout the investigating officer(s)’ review of the objected-to material. The compliance officer or his or her designee should carefully document the items which he or she objected to and the nature and extent of all objections.

7. The Director and/or his or her designee shall closely monitor the activity of the investigating officer(s):

   a. The investigating officer(s) should not remain alone but should be chaperoned at all times by the director or his or her designee;

   b. The investigating officer(s)’ activities should be closely observed and notes made by the Director and/or his or her designee of the items and areas searched and the items seized;

   c. The Director and/or his or her designee should create a contemporaneous detailed inventory of all items or documents seized; and

   d. The Director and/or his or her designee shall observe the investigating officer(s)’ search only, but shall not in any way impede, assist, explain or otherwise answer questions posed by the investigating officer(s).

8. The Director and/or his or her designee shall advise the agents about what material is required in order to allow the Office of Compliance to carry out its business following the departure of the investigating officer(s). The Director and/or his or her designee shall obtain the investigating officer(s)’ permission to:

   a. Make copies of all documents essential to the continued conduct of business of the Office of Compliance or University School of Medicine Department prior to turning over the material to the investigating officer(s);
b. If computer files are requested as a part of the search, then copy those files prior to turning them over to the investigating officer(s); and
c. Duplicate any other material essential to the continued conduct of the business.

9. The Director and/or his or her designee shall request from the investigating officer(s) a copy of their inventory that they have created pursuant to the search and seizure. The Director and/or his or her designee shall ask that to the extent possible, if the inventory identifies the boxes and contents of boxes by numbers and documents therein, that the copy of said inventory be turned over to the Director.

10. Following the investigating officer(s)' departure from the premises, the Director and/or his or her designee shall review, with the Dean and university counsel, the inventory of items seized. University counsel, the Dean, and the Director shall formulate a plan for debriefing any employees and other university officials as soon as conveniently possible.