

## HCCA Compliance 101, Fifth Edition

### Chapter 8. Investigations, Addressing Noncompliance, and Remediation

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If there is reason to believe that misconduct or wrongdoing has occurred, the organization must respond appropriately and promptly. Failure to respond or lengthy delays in responding can have serious consequences (such as civil and/or criminal penalties, corporate integrity agreements, and exclusion). Violations of the organization's code of conduct, policies, rules, laws, or other types of misconduct threaten an organization's status as reliable, credible, honest, and trustworthy. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of an organization. Ignoring a legitimate report of wrongdoing will also alienate staff—especially the person who reported the problem—and could encourage quiet action. Cover-ups usually cause more problems than they solve. In the event of misconduct, it's important to face the problem. Work with legal to make the decision about whether to disclose and fix it. No matter how daunting it may feel to face possible misconduct, remember that one of the goals of a compliance program is *detection*. Having found a problem is an indication that *your program is working*.

#### Internal Investigations

The first step is to conduct a preliminary assessment of the alleged wrongdoing to substantiate the issue. This includes gathering basic facts and relevant information. If you have the capability, work with a small team with whom you can consult regarding next steps. This team may include HR, risk, legal, and possibly a key leader who understands the subject matter related to the alleged wrongdoing. If you do not have resources for a small team to consult with during the investigation, then consider selecting an objective individual to be your sounding board as you determine next steps. Together you can decide how serious the misconduct or wrongdoing is, clearly define the scope of your review, and develop an appropriate plan of action. An investigation is recommended any time a potential violation is identified. Therefore, your action plan will likely begin with a timely and thorough internal investigation. Depending on the extent and seriousness of the alleged infraction, outside counsel or content experts may be needed.

Your counsel will help decide what protections, if any, can be used in the investigation. While an internal investigation is the first action, also be sure to take the necessary steps to immediately stop or modify procedures that are the source of the alleged wrongdoing. Your approach to the investigation process should be consistent and credible. Investigations will have basic elements you can follow no matter what the allegation. The process must be objective, independent of management, and conducted by a skilled investigator. Having investigators without training or a clearly defined process can result in increased risks for the organization.

When choosing an investigative team, look for professionals who are appropriately trained and knowledgeable about the area in question, as well as people who are independent and objective fact finders. If the issue is related to physician documentation, then you may want a physician or clinician on your investigative team. The compliance officer should be a part of the team, and participation by a member of the senior staff is also desirable, when possible, to emphasize high-level commitment to the program. If outside consultants are involved, the compliance office still must be represented on the team. If the issue is of an HR nature, it is advisable to hand it off to HR and then have HR follow up with compliance on the outcome. Be sure you close the loop. Completely handing the problem over to someone else, however, is not a solution. Outside consultants need to be directed, overseen, and evaluated just as closely as an internal investigation team (if not more so).

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The team should meet as a group in the beginning to delineate the problem and decide on an approach or strategy. It should also receive senior management's guidance and support. The team should then develop an investigative plan to define the scope of the investigation, establish what evidence is needed, identify a list of potential witnesses, and start leveraging the needed resources. Instructions on timeframe, process, and documentation are also in order. At a minimum, the team should meet again as a group at the end of the investigative process to discuss findings, plan the final report, and ensure that all the necessary bases are covered before closing the investigation.

## **Documenting the Investigation and Its Results**

The internal investigation must be thoroughly and meticulously documented. Detailed documentation is critical. If it is necessary to defend the actions of the organization, a clear paper trail makes the process much easier. Thorough documentation should include the following:

- Description of the potential misconduct and how and when it was reported
- Description of the investigative process
- List of affected policies and procedures
- List of relevant documents reviewed
- Chronology of relevant dates and details
- List of witnesses interviewed and their respective statements (you may consider employees and nonemployees to interview)
- Interview questions and notes
- Detailed and objective analysis explaining the findings (which would include a root-cause analysis)
- Changes to policies and procedures, if appropriate
- Documentation of any systemic issues
- Documentation of control failures
- Documentation of any disciplinary actions
- Final report of the investigation with recommended remedial actions

The final report and any attached documents are sensitive materials that should be distributed in limited quantities on a need-to-know basis. This report should provide an explanation of what the investigation entailed and an analysis of how the investigator reached a conclusion.

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