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Dos and don'ts of internal investigations for healthcare organizations

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In December 2017, a nurse practitioner reported that she smelled alcohol on a physician's breath during work. The physician was questioned about the incident and placed on an administrative leave pending an evaluation for alcohol abuse through the state medical association. The physician was subsequently diagnosed with alcohol use disorder, completed a treatment program, and returned to work subject to a mandatory five-year monitoring program.^[1]

The healthcare organization's response seems reasonable, right? An Indiana jury disagreed and awarded \$4.75 million to the physician in her ensuing lawsuit against a St. Vincent hospital and medical practice for defamation, tortious interference with an employment relationship, and related claims in January 2020.^[2]

A postmortem of publicly available information about the investigation that started this chain of events can help *all* healthcare organizations understand how to identify and avoid potential compliance issues related to internal investigations.

Don't: Deviate from internal policies and practices

Every healthcare organization should have clear, written policies for receiving, investigating, and responding to complaints from and about workers. In fact, federal^[3] and some state civil rights laws require covered healthcare organization employers to maintain written policies for receiving and investigating complaints of harassment, retaliation, and discrimination.^[4] Whether or not it is legally mandated, maintaining and following written procedures for handling complaints is recommended for workplace morale and consistency. It is also advisable, and in some cases mandated by state law,^[5] that healthcare employers train all employees to promptly report complaints to management, a compliance officer, or human resources.

In the *Denman v. St. Vincent* case, written procedures existed but were not followed. According to hospital policy, physicians suspected of being under the influence of alcohol were supposed to be *immediately* removed from duty and requested to submit to blood testing.^[6] However, the nurse practitioner waited until the next day to report her suspicions to anyone, on the ground that she was allegedly unaware of the policy that required her to immediately report her suspicions.^[7] St. Vincent allegedly waited another two days before it disclosed the nurse practitioner's report to the physician, at which time the physician was not asked to submit to testing. At trial, the physician successfully argued that St. Vincent violated its internal policies by delaying its investigation until it was too late for her to be able to clear her name through blood testing.

The *Denman v. St. Vincent* case demonstrates the potential pitfalls of failing to follow internal written procedures when conducting investigations. In reality, it may not always be possible to follow existing policies to the letter.

Deviating from normal policies and procedures for conducting investigations should be a rare occurrence and justified by the particular circumstances. When deviating from standard internal policies and procedures, healthcare organizations should be sure to document the reasons for the deviation.

While it is critical for healthcare organizations to follow their internal procedures, beware that the reverse does not hold true—healthcare organizations are not excused from investigating complaints because the reporting party failed to follow internal procedures. For example: A healthcare organization’s written anti-harassment policy states that workers must use a complaint form to submit complaints. A hospital technician verbally complains to his supervisor that a physician touched him inappropriately but refuses to fill out a complaint form. The healthcare organization cannot refuse to investigate the hospital technician’s complaint because he would not fill out a complaint form per the written policy.

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