

Compliance Investigations: Looking Outside The Box

Health Ethics Trust
Compliance Investigations Course

D. Scott Jones, V.P. of Compliance, Chief Compliance and Privacy Officer



Care that makes a lifetime.

Compliance Investigations Outside The Box Goals



Compliance Investigations

- **Share Distinct, Universal...and Unusual Tactics For Successful Investigation**
- **Use Key Approaches to:**
 - **Be Present and Approachable**
 - **Communicate**
 - **Research**
 - **Identify Investigation Partners**
 - **Overcome Barriers**
 - **Expand Investigation Capabilities**
- **Master Investigations Outside the Box!**

Speaker bio

- **Healthcare Operations**

- Practice Administrator
- CAH size Hospital Administrator
- Hospital COO
- Large Multispecialty Medical Group COO / Compliance Officer
- **1996:** HHS OIG issues Healthcare Compliance Guidance
- **1998, 2000:** Harvard School of Public Health, Compliance Training
- **2000:** First Compliance Board Certification Class – HCCB
- **2000-2017:** VP / national companies, compliance, risk and patient safety, many states, all types Covered Entities and Providers
- **2017:** VP/Chief Compliance and Privacy Officer, Augusta Health

Speaker Disclaimer

- **D. Scott Jones, CHC, CHPC** has no financial conflicts to disclose.
- This presentation is not meant to offer medical, legal, accounting, regulatory compliance or reimbursement advice, and is not intended to establish a standard of care, for any particular situation. Please consult professionals in these areas if you have related concerns.
- The speaker is not promoting any service or product.
- Opinions stated are the speaker's, and not those of Augusta Health or its affiliates.

Be Aware of Your Compliance Landscape

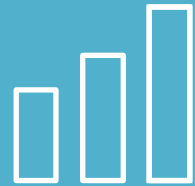


Augusta
Health

Care that makes a lifetime.

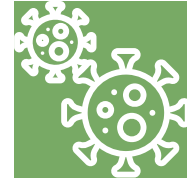
Augusta Health

- **Augusta Health**
- 255 Inpatient Beds
- 750,000 patient encounters annually,
- 430,000 outpatient visits; 60,000 ED visits; 70,000 UCC visits; 11,000 IP admissions
- \$60M Outpatient Pavilion ASC and Imaging Center under construction
- Clinically Integrated Network – Augusta Care Partners (ACP) Accountable Care Organization (ACO) MSSP
- Augusta Medical Group (AMG)
- 190+ employed physicians and APP's
 - 34 practice locations, 4 Urgent Care Centers (UCC's)



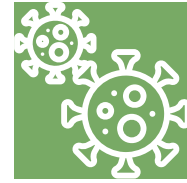
An Introduction To Investigations *Outside the Box*

INVESTIGATION Outside the Box.



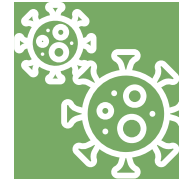
- **Investigation requires:**
- **Time**
 - **Do you want it Cheap, Fast, or Good?**
- **Dedicated Investigators and Auditors**
- **Capable Interviewers and Researchers**
- **Connections with departments with access to information**

INVESTIGATION Outside the Box.

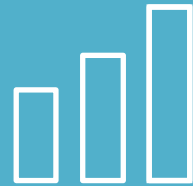


- **Investigation Partners**
 - **Information Technology (IT)**
 - **Revenue Cycle (RC)**
 - **Coding**
 - **Audit**
 - **Security**
 - **Health Information Management**
 - **Human Resources**
 - **Access to external audit, legal opinions**
 - **General Counsel**
 - **Policy and Process**
 - **Medical Staff Leadership**

INVESTIGATION.

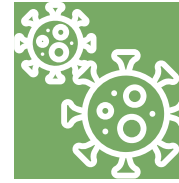


- **The Art and Science of Investigation:**
- ***Effective investigation requires you to Think Outside The Box.***
- ***Use all tools available –***
 - Electronic Medical Records (EMR) logs, time stamps
 - Billing records
 - E-Mail communications
 - Security Camera records
 - Interviews
 - Social Media postings
 - External auditors, experts, or legal opinions



Investigations
Outside the Box:
Presence - Approachability

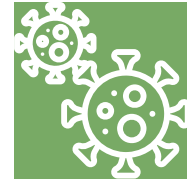
Investigative PRESENCE



- ***Be present, visible and engaged.***
- ***Get out of the office, and into your organization.***
- ***Practice being approachable.***
- ***Remember: Everything you say and do is scrutinized.***

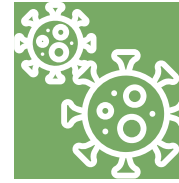
- When a team member comes to Compliance, they are probably having a bad day.
- When Compliance seeks you out, you are probably having a bad day.
- ***Either way, when you meet with Compliance, it's a bad day.***
- ***How do we overcome this perception?***

PRESENCE.



- **1:1 and Small Team Meetings ~ HIPAA PHI is an introduction**
- Ask department managers to invite you to team meetings
- Present actual, redacted HIPAA PHI case studies from PHI events
- Provide PHI Protection handouts and Compliance contact information
- Q&A Sessions

- Goal: 60% of Departments annually
- Actual: 60-70% departments, 60-70% of all employees



- **Compliance in Key Operations and Special Event Meetings:**

- Safety Huddle
- Key Leadership
- Senior Leadership
- Accreditation
- 340B Steering
- IT Steering
- HR & Compliance
- Medical Group & Compliance
- Revenue Integrity & Compliance
- Policy and Process Steering
- Utilization Review
- Audits & Denials
- Project Management / Planning

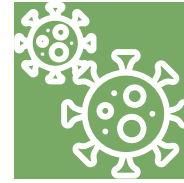
HICS

Complaint Response

DNV Accreditation

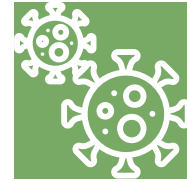
Survey Response

PRESENCE.

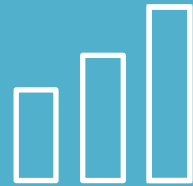


- **Compliance Guidance.**
- Any department may request research and guidance on compliance topics.
- Guidance provides research, regulatory cites, and written response in a specific format.
- Follow up addresses questions, identifies how guidance is used.

PRESENCE.



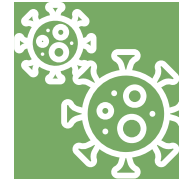
- **Why is this important to Investigations?**
- When they are uncertain - do team members come to you to ask Compliance questions?
- Do people report concerns to you?
- Do they call your Hotline?
- How often are you asked to give an opinion?
- Do your leaders know your guidance will be completely researched?
- Do team members know how to find you?



Investigations

Outside the Box:

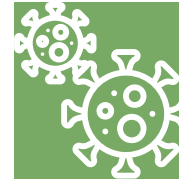
Research



RESEARCH.

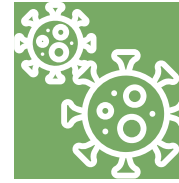
- *Research supports your Investigation findings and reports.*
- *Good Facts beat Bad Opinions.*
- **HHS Office of Inspector General (OIG)** <https://oig.hhs.gov/>
- Compliance Resources
- Compliance Guidance
- CIA's and Advisory Opinions
- Fraud Alerts, Bulletins, Guidance
- **OIG Work Plan**
- Exclusion Database
- Fraud Actions
- Federal Register postings and special Reports
- Downloadable Resources, Contacts, Strategic Plan

RESEARCH.



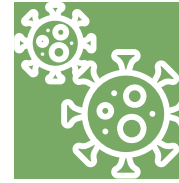
- *Knowing how to search CMS.Gov can make you look brilliant. It is your Compliance Database and Encyclopedia...*
- **CMS** <https://www.cms.gov/>
- **HIPAA and ACA**
 - Privacy and Security
 - HIPAA For Professionals – Topics and FAQs
 - Privacy Rule and Security Rule
- **Medicare – Medicaid Coordination**
 - Program Integrity
 - Medicaid Integrity Program
 - Regulations for all Provider Types
 - Instructions to Medicare Administrative Contractors (MACs)
 - **Final Rules**

RESEARCH.

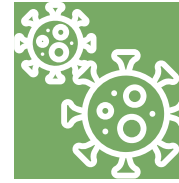


- **CMS** <https://www.cms.gov/>
- **Regulations & Guidance**
 - CLIA
 - EMTALA
- **Research, Statistics, Data & Systems**
 - Improper Payment Measurement Programs – CERT
 - Medicare Fee for Service Compliance Programs - Auditing – RAC
 - Consumer Assessment of Healthcare Providers and Systems – CAHPS
- **Medicare**
 - Beneficiary Notices Initiative – BNI
 - Medicare Administrative Contractors – MACs
 - Billing
 - Forms
 - Compliance and Audits

RESEARCH.

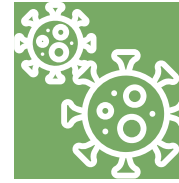


- *You may be able to predict the future if you know what the Recovery Audit Contractors (RACs) are up to....*
- **The CMS RAC Approved Topic List = What RAC auditors will look at next.**
- <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Approved-RAC-Topics>
- **Listed by issue number, name, review complexity, provider type, MAC Jurisdiction, date approved**
- **Current list ranges from 2017 to 2022**
- **Regular monthly additions and updates**

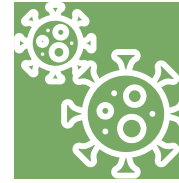


- *Use PEPPER for in-depth Compliance risk assessment*
- **CMS PEPPER Reports**
- **Program for Evaluating Payment Patterns Electronic Report**
- <https://pepper.cbrpepper.org/>
 - User's guide
 - Training / resources
 - Distribution – PEPPER report by provider type, release dates, portals for reports and quality data programs
 - **CMS.gov QualityNet** Includes Value Based Purchasing, Hospital Acquired Condition and Readmissions Reduction program info
- **PEPPER Success Stories** – information on how healthcare uses PEPPER for risk assessment, to **identify underpayments**, or monitor compliance risks
- <https://pepper.cbrpepper.org/About-PEPPER/Success-Stories>

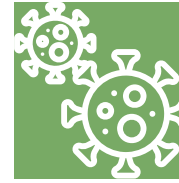
RESEARCH.



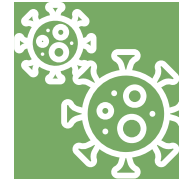
- *CMS uses your facility's claims submission data to trigger outlier audits. Want to know how they do it?*
- **CMS Division of Data Analysis**
- <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Data-Analysis>
 - **FATHOM** – First-Look Analysis Tool for Hospital Outlier Monitoring – MS Access application – hospital-specific data statistics provided to States
 - **CBR** – Comparative Billing Report – individual provider billing data
 - **Medical Review Specialty Studies** – StrategicHealthSolutions, LLC, review Part A and Part B claims



- *You can know what OIG, MACs and RACs are targeting!*
-
- **OIG Publicized Targets**
 - **OIG WORK PLAN** <https://oig.hhs.gov/reports-and-publications/workplan/index.asp>
 - **What's New Page** <https://oig.hhs.gov/newsroom/whats-new/index.asp>
 - **Regularly updated list of Investigation targets**
- **MAC Publicized Targets**
 - **Palmetto GBA Part A** <https://oig.hhs.gov/newsroom/whats-new/index.asp>
 - **Recovery Audit Contractor**
<https://www.palmettogba.com/palmetto/providers.nsf/Docs/Providers~JM%20Part%20B~Browse%20by%20Topic~Recovery%20Audit%20Contractor>
 - **CMS RAC Page**
 - <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/index>

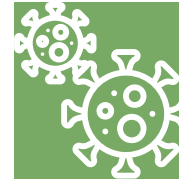


- *You can know what your providers produce and compare them to like providers in your area.*
- **Medicare **Provider Utilization and Payment Data****
 - <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/Physician-and-Other-Supplier>
 - **By Provider, Address, Organization, Entity Type, Address**
 - **Place of Service, Codes, number of services, beneficiaries**
 - **Average Medicare allowed amount, submitted charge, payment, standardized amount**

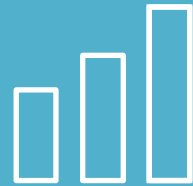


- **Learn from actual CMS **Payment....and Denials** Experience in your operation.**
- Audits and Denials Team / Revenue Cycle
- RAC, CERT, TPE Audit Team
- Non-audit Medicare Denials
- Yields data on individual outliers and groups of services under scrutiny and denial in your organization.
- Revenue Cycle Coding Team may also identify individual or groups of providers, or services, with documentation/coding concerns.

RESEARCH.



- Why is research an important part of investigation?
- Arms you with information on current and *future* risks
- Identifies what CMS/Medicaid/RACs/MACs will audit and investigate
- Details CMS audit and investigative techniques
- Identifies denials inside your organization
- Prepares your organization and you for the *future*.
- Backs up your findings and recommendations.
- **Research** gives knowledge and perception.

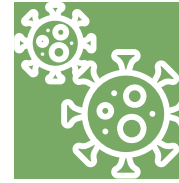


Investigations

Outside the Box:

Communication

Investigation COMMUNICATION.

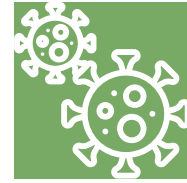


- *Become an expert listener and communicator.*
- *Watch how people say what they say.*
- *Learn public speaking skills.*
- *Practice writing for the audience.*

- ***It's not just what is said – it's how you say it.***

- *Human Communication Breakdown:*
- *Non-verbal body language = 60%*
- *Tone = 30%*
- *Spoken Words = 10%*

COMMUNICATE by Understanding.

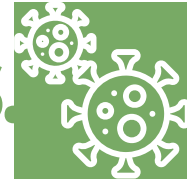


- **What motivates people? Listen, and they will tell you.**
- “I gave this **PHI** to the wrong patient. **Am I going to lose my job?**”
- “I could document patient care **better if we had a new EMR.**”
- “I was concerned that if we did not **restrain them**, the patient would **hurt themselves.**”
- “**I could see more patients** if my staff documented encounters for me.”
- “We provided the medical service. The **documentation is not as important as patient care.**”

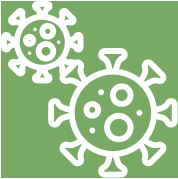
COMMUNICATE With Expression & Hands



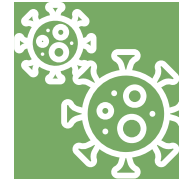
COMMUNICATE With Expression & Hands



COMMUNICATE With Gestures .

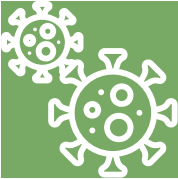


COMMUNICATE in Writing.

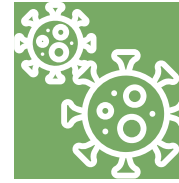


- **Who** is the **intended audience**?
- Write **plainly** and **clearly** – but explain everything.
- **Reference** laws, regulations, reports and related materials
- **Provide cites / internet cites** for any reference.
- Include **title pages** and **Table of Contents**.
- **Number all pages**.
- **Indent quotes or excerpts** to differentiate from the writer's material.
- An excellent resource: **Reporting Technical Information, 11th Edition**. *Houp, Pearsall, Tebeaux, Dragga*, ISBN: 9780195178791

COMMUNICATE. By Being Attentive.



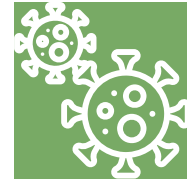
COMMUNICATE In Meetings.



- **8 Seconds to make an impression!**
 - **Make eye contact.** Engage with each person.
 - **Converse** rather than lecture.
 - **Watch speed...400, 600, or 800 WPM?**
 - **Don't speak too loudly** – or too softly.
 - Use **expression and hands** to **emphasize**.
 - **Remember the power of silence.** Pause....
 - **Emphasize the important** word or message.
 - **Close with a call to action!**
-
- **Questions?** Answer transparently – and don't let them derail your message.
 - Remember the power of saying, **“I don't have an answer but will _____.”**



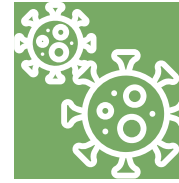
COMMUNICATE with Guidance.



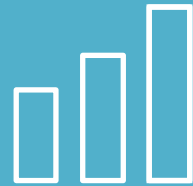
- Whenever asked for **guidance or interpretation**, put your comments **in writing** – even if you have already rendered an oral opinion.
- **Cite** the regulation or laws that lead to your opinion.
- **Title** the document as **Compliance Guidance**.
- **Explain** any **reasoning** that lead to the opinion.

- **REMEMBER State laws and regulations.** Any opinion or guidance should address **both** State and Federal requirements.

COMMUNICATION.



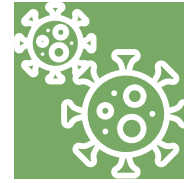
- Why is communication important to investigations?
- The goal of an investigation is to correct risk exposure.
- People make decisions about how capable and informed you are by how you communicate.
- Great communicators influence decision makers, break down silos, and cross barriers using information and persuasion.
- Communication can be physical, written, and verbal.
- You can use communication skills to read your audience and know what they are thinking.
- Effective Communication is essential to Investigations – and Everything you do.



Investigations

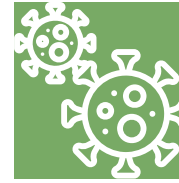
Outside the Box

INVESTIGATION #1.



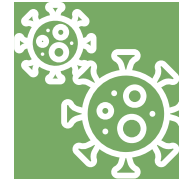
- Nurse reports they left a workstation unlocked, and another nurse created false documentation in their medical record entry.
- Review of EMR identifies improper care is documented under the reporting nurses' ID.
- Interviews do not identify sharing passwords or improper access.
- Interviews do identify friction between nurses.
- Visiting the site identifies a locked nursing station door...and a security camera in hallway.
- *Prove or disprove nurse's claim of improper access and documentation.*

INVESTIGATION #1.



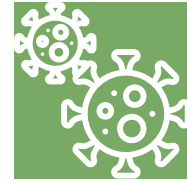
- *Prove or disprove nurse's claim of improper access and documentation.*
- Time stamped security camera footage outside the nursing station shows one nurse leaving the locked nursing station.
- The second nurse then enters the nursing station, and leaves several minutes later.
- During that time, entries are made in medical records for both nurses, and false documentation in the medical record in question.
- No other persons enter the nursing station during the documented time stamp.

INVESTIGATION #2.



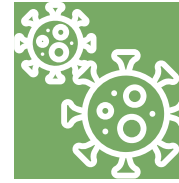
- A relator reports a non-clinical team member creates EMR documentation for a provider, who bills for a service.
- Medical Records documentation appears perfect.
- Interviews with team members, provider, team members does not identify issues.
- EMR Access audits do not identify two individuals accessing EMR simultaneously or in unusual patterns.
- Review of e-mail finds the team member sent documentation to the provider, that later appears in the medical record.
- *Prove or disprove the provider used the unqualified documentation to create a record.*

INVESTIGATION #2.



- *Prove or disprove the provider used the unqualified documentation to create a record.*
- Review time stamp and accession records in EMR.
- Determine how long it took to create documentation, including signature.
- Time stamp in EMR shows seconds to create a detailed, signed.
- Accession records show the provider did not open only the “sign” function.
- Detailed, extensive notes are identical to those e-mailed to provider.
- Conclusion: Accession and time stamp indicates provider copied documentation, opened EMR, pasted documentation, and signed.

INVESTIGATION – Outside the Box



- ***Excellent investigators are effective communicators with presence and approachability in the organization.***
- ***Research makes your findings relevant, immediate, and solid.***
- ***Connections in IT, Revenue Cycle, HIM, Coding, Audit, Security, and other departments will help you investigate successfully.***
- ***Deep investigation will require Electronic Medical Record system, billing, coding, e-mail, security backup, even social media access.***
- ***Investigation may call for external auditors or legal opinions.***
- ***Effective investigation requires you to Think Outside The Box.***



Questions?

Contact Information:



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