



Healthcare Investigations – Approach and Case Studies

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Lisa Wojeck, MS, JD, CFE, CISA, CHC



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Discussion Topics

- ▶ Defining investigations
- ▶ Understanding the importance of investigations
- ▶ The investigation process
- ▶ Importance of documenting and finalizing the investigation
- ▶ Case Studies



What is an investigation?

- ▶ The dictionary defines "investigation" as:
 - ▶ Formal analysis of an allegation to determine whether or not the allegation is substantiated

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Why is this topic important? The business perspective

- ▶ Address concerns
- ▶ Do the right thing
- ▶ Improve processes



Why is this topic important?

Federal regulations perspective

- ▶ Federal regulations include investigations as part of an effective Compliance Program
- ▶ Investigations may involve regulations, including but not limited to fraud and abuse regulations
 - ▶ The Anti-Kickback Statute (AKS) – federal statute that prohibits the exchange of any remuneration – which is defined broadly – for referrals for services payable by a federal program such as Medicare
 - ▶ The Physician Self-Referral Law (Stark Law) – federal law that prohibits a referral by a physician of a Medicare or Medicaid patient to any entity providing designated health services if the physician (or an immediate family member) has a financial relationship with that entity
 - ▶ Exclusion Authority – the Officer of the Inspector General has the authority to exclude individuals and entities from Federally funded health programs for a variety of reasons, including conviction for Medicare or Medicaid fraud
 - ▶ False Claims Act – federal law that imposes liability on persons and companies who defraud government programs



Why is this topic important?

Health Care Compliance Association

- ▶ Principle I / Obligations to the Employing Organization, R2.3: “**Health Care Compliance Professionals shall investigate** with appropriate due diligence all issues, information, reports, and/or conduct that relate to **actual or suspected misconduct**, whether past, current, or prospective.”



Why is this topic important?

Effect of results and relationships effected

- ▶ Example of relationships that may be effected:
 - ▶ Employees and contractors
 - ▶ Board Members
 - ▶ Customers
 - ▶ Vendors
 - ▶ Public
- ▶ The results may be the bases for:
 - ▶ Terminations
 - ▶ Remediation
 - ▶ Reimbursements
 - ▶ Litigation
 - ▶ Whistleblowers



Why is this topic important? What is a whistleblower?

- ▶ The term whistleblowing is a metaphor derived from a referee's use of a whistle to call a foul in a sporting event
- ▶ It refers to a disclosure made by member or former member of an organization about some practice within the organization
- ▶ Whistleblowing can be internal – to someone in higher authority in the organization or external – to outside persons or organizations such as the the government or news media



Why is this topic important? Who are whistleblowers?

- ▶ Sometimes they initiate an investigation
- ▶ Sometimes they evolve because their concern is not heard and an investigation does not take place
- ▶ Sometimes they evolve after an investigation
- ▶ Anyone can be a whistleblowers, e.g., staff, managers, physicians, CEOs, attorneys and compliance officers



Why is this topic important? Whistleblowers

- ▶ Whistleblowers:
 - ▶ Hear the mission statement
 - ▶ Believe believe the mission statement has been violated and they want it addressed
 - ▶ View whistle-blowing as an integral part of their role
 - ▶ Believe the organization will be responsive to their complaints
 - ▶ Do not see whistle blowing as an act of disloyalty, but the ultimate manifestation of employee loyalty to the organization
 - ▶ If there is no resolution inside the organization, they may become a qui tam whistleblower
 - ▶ **Could potentially result in treble damages and fines**
- ▶ The organization needs to investigate and attempt to substantiate the concern; if not, it may be considered reckless disregard.

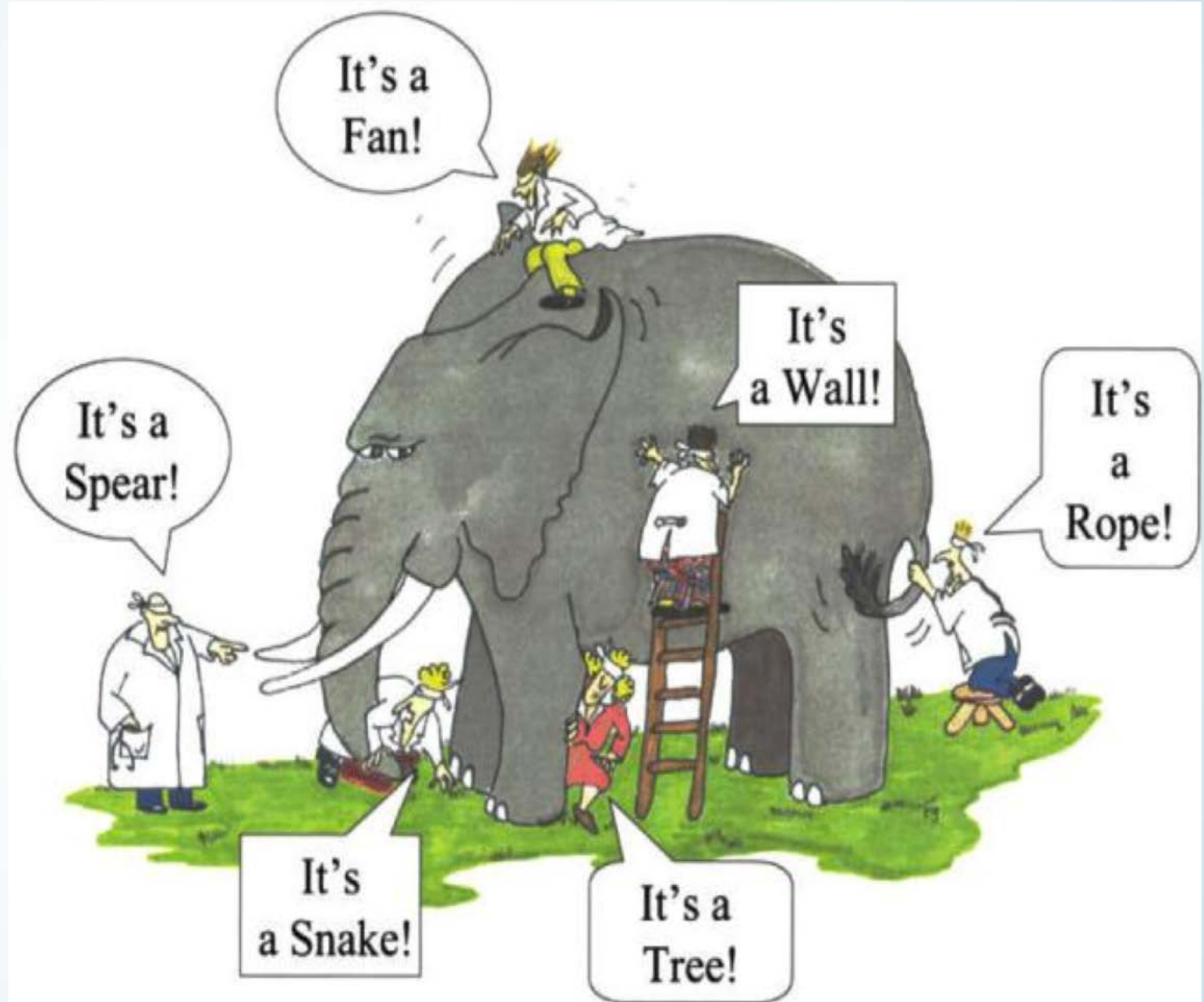


The investigation process: Initiation of an Investigation

- ▶ Hotline or helpline
 - ▶ Challenges of an anonymous call
- ▶ Complaints, e.g., from patients, family members
- ▶ Human Resources, e.g., employee satisfaction surveys, exit interviews
- ▶ Internal departments, e.g., Legal, Internal Audit, Physicians
- ▶ External consultants, accountants, and/or auditors
- ▶ Vendors
- ▶ Government reviews
- ▶ Internal and external communications, e.g., email, telephone, in person

The investigation process: The Initiator's Perspective

- <https://mykrishnaourkrishna.blogspot.com/2016/11/the-six-blind-men-elephant.html>





The investigation process: The Initiator's Perspective

- ▶ “The Six Blind Men and the Elephant” – folk tale from India; what does each blind man “see”/feel when they encounter an elephant. An elephant is:
 - ▶ Why are there six different stories?
 - ▶ Are any right?
 - ▶ Are any completely wrong?



The investigation process: Key considerations ...

- ▶ Some sources may seem questionable - they need to be taken seriously
- ▶ Some sources may speak contrary to respected leaders – they need to be heard
- ▶ Some conversations occur passing in hallways, on the way to meetings - they need to be carefully processed
- ▶ Listen; be approachable
- ▶ Don't stonewall
- ▶ Follow up



The investigation process:

- Understand the incoming information
- Define the issue(s)
- Identify the applicable rules and/or policies
- Apply the applicable rule and/or policies to the issue(s)
- Identify an investigation plan
 - Gather additional data and facts, e.g., reports, interviews
- Analyze additional data gathered
- Make a determination/conclusion
- Articulate recommendations
- Document summary and close the investigation



The investigation process: Identify the applicable rules and/or policies

- ▶ Includes but is not limited to:
 - ▶ Company Policies and Procedures
 - ▶ Anti-Kickback Statute
 - ▶ Physician Self-Referral Law (STARK)
 - ▶ Exclusions
 - ▶ False Claims Act
 - ▶ HIPAA Security and Privacy Laws
 - ▶ The Emergency Medical Treatment and Labor Act (EMTALA)
 - ▶ Occupational Safety and Health Administration
 - ▶ Food and Drug Administration
 - ▶ National Institute of Health Regulations
 - ▶ Code of Conduct
 - ▶ Conflict of Interest Policy
 - ▶ Documentation / Coding Standards



The investigation process: Examples of data gathering variables

- ▶ Software with artificial intelligence
- ▶ Ability to link together multiple data sources/pieces of software
- ▶ Ability to link multiple spreadsheets via a common data field/column
- ▶ Use of reports that have no context require assistance
 - ▶ No job title or job function identified – HR input is needed
 - ▶ No information as to whether the employee is on the care team – clinical input is needed
- ▶ An anonymous allegation with little detail and limited ability for follow up questions
- ▶ How meta data may be interpreted and used
- ▶ Resolving a concern/investigation for a person with an actual or strongly perceived mental health issue, e.g., delusions



The investigation process: Professionalism

- ▶ Be honest, fair, and diligent (HCCA Principle III, R3.1)
- ▶ Be fact based
- ▶ Test documentation
- ▶ Use discretion
- ▶ Prevent retaliation
- ▶ Maintain confidentiality (HCCA Principle, III R3.2)
- ▶ Document effectively and comprehensively as the investigation progresses
 - ▶ Ultimately the documentation needs to stand on its own and may be heavily scrutinized
- ▶ Identify corrective action plans that address the issue, including but not limited to training, policy revisions, and claims adjustments/repayments



The investigation process: Retaliation must be prevented

- ▶ Retaliation for initiating an investigation is not permitted
- ▶ Compliance Officers strive to ensure retaliation does not occur and is not permitted
- ▶ Examples of retaliation:
 - ▶ Removal from meetings
 - ▶ Decrease in job responsibilities
 - ▶ Poor performance review



The investigation process: Advisory opinions

- ▶ The Office of the Inspector General issues Advisory Opinions based on facts submitted
- ▶ Advisory Opinions are binding and may ONLY be relied upon by the requester
- ▶ Coordinate with in-house counsel and possibly outside counsel too



The importance of documenting and finalizing the investigation:

- ▶ Preserve the record
 - ▶ should there be turnover and/or memories fade and a whistleblower case presents years later, the documentation and final report will be relied upon
- ▶ Circle back to the investigation initiator:
 - ▶ If they are right, correct the issue and file a self-disclosure, if appropriate
 - ▶ If they are wrong, explain “why” and adjust their perception
 - ▶ Do not disclose privileged and confidential information; partner with counsel
 - ▶ Thank the initiator for raising the issue



Sample of areas ripe for investigation in health care

- ▶ Documentation, coding, and billing
- ▶ Location of services
- ▶ Dates of services
- ▶ Waiving of deductible and/or co-payments (COVID times are different)
- ▶ Incorrect diagnoses or procedures
- ▶ Overutilization of services
- ▶ False or unnecessary issuance of prescription drugs
- ▶ Physician nonmonetary compensation
- ▶ Fair market value compensation

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Sample of other areas ripe for investigation

- ▶ Payroll
- ▶ Vendor selection and payment process
- ▶ Cash drawers and deposits



Case Study 1

Hotline case: “I was fired.” – Initial Information

- ▶ Anonymous
 - ▶ Came to the hotline system via the hotline number
 - ▶ Alleged that he and several co-workers were being fired
 - ▶ Alleged he was being fired for questioning a billing practice and this was retaliation
-
- ▶ Discussion; what do you do with this information?



Case Study 1

Hotline case: “I was fired.” – Next Steps

- ▶ Discussions, e.g., Administrator, Leadership
- ▶ Documentation
- ▶ Timeline



Case Study 1

Hotline case: “I was fired.” – Debriefing

- ▶ Ongoing budget concerns
- ▶ Ongoing financial analysis
- ▶ Ongoing financial planning across System
- ▶ Discussions, work, and official approval to eliminate the Service Line
- ▶ Review of documentation
- ▶ Timeline and purpose did not align with caller's allegation
- ▶ Better communication and HR coordination needed



Case Study 2

Received 1099 – Initial Information

- ▶ Call from a college student
- ▶ Why am I receiving a 1099 from your company?
- ▶ I never received any money from the company named on the 1099...fix it

- ▶ Discussion; what do you do with this information?



Case Study 2

Received 1099 – Next Steps

- ▶ List and copies of endorsed checks and/or transfers (may implicate mail and/or wire fraud)
- ▶ Analyze endorsement
- ▶ Analyze the addresses on the checks
- ▶ Who initiated these? Who approved these?
- ▶ Interviews
- ▶ Gap in process and policy?
- ▶ Related to government payors?



Case Study 2

Received 1099 - Debriefing

- ▶ Material at copy machine
- ▶ Wrongdoer used social security number and name
- ▶ Fictitious employee never received any payments
- ▶ Forgery
- ▶ Wrongdoer was responsible for hiring contract employees, submitting the paperwork, and selecting addresses
- ▶ Mail Fraud in connection with a fraudulent paycheck scheme
 - ▶ Sentenced and served four months of incarceration followed by four months of home detention. In addition, she was ordered to repay the entity \$21,048.02
- ▶ Policies and procedures revisited



Case Study 3

Vendor Integrity – Initial Information

- ▶ Finance questioned the integrity of a vendor and invoices submitted
- ▶ Discussion; what do you do with this information?



Case Study 3

Vendor Integrity – Next Steps

- ▶ Copy of the vendor contracts
- ▶ Listing and copy of invoices
- ▶ Analyze, compare, link invoices/work
- ▶ Browse approved invoices for other vendors, compare controls in place
- ▶ Policies and Procedures, workflows, committee meeting minutes
- ▶ Related to government payors?



Case Study 3

Vendor Integrity – Debriefing

- ▶ No controls around purchasing. A person could have their own side company, be employed at the entity, “introduce” their side company as a potential vendor AND be a voting member of the vendor acceptance committee.
- ▶ Vendor – owned and operated by an employee and significant other
 - ▶ Submitted multiple invoices for the same work
- ▶ Employee’s significant other also personally submitted invoices for additional DUPLICATE work
- ▶ Carpet cleaning and repair, general office cleaning, filter and lightbulb replacements, painting
- ▶ Did not press charges
- ▶ Employee and direct supervisor terminated
- ▶ Policies and procedures revisited



Case Study 4

Family Member and PHI – Initial Information

- ▶ A nurse reported that her patient's visitor (patient's daughter-in-law) seemed to have very detailed information about her patient's care and also challenged the care provided.
- ▶ The patient was not incapacitated and was making her own health care decisions.
- ▶ Discussion; what do you do with this information?



Case Study 4

Family Member and PHI – Next Steps

- ▶ Wrongful access at place of care?
 - ▶ Unattended papers, overheard conversations?
- ▶ Access to the EMR (e.g., as an employee, contractor, consultant)
 - ▶ Business purpose?
 - ▶ Minimum necessary standard?



Case Study 4

Family Member and PHI – Debriefing

- ▶ Reasonable safeguards followed
- ▶ Daughter-in-law employed in the system
- ▶ Privacy monitoring system did not reflect employee access
- ▶ Interviewed the employee's supervisor
 - ▶ Employee former nurse practitioner
 - ▶ Employee worked in the Information Systems Department on the EMR system team
- ▶ EMR IS team had shared login credentials for certain work
- ▶ The shared login credentials accessed the patient's record
 - ▶ on multiple occasions
 - ▶ for extended periods of time
 - ▶ read detailed information about the patient
- ▶ Employee admitted wrongful access; employee and direct supervisor terminated
- ▶ Policies and procedures regarding shared passwords
- ▶ Breach Notification, self-disclosure



Case Study 5

Contract Review – Initial Information

- ▶ I'm reviewing my Department's contracts. We pay a lot of money to our sister entity for this. I don't know what it is for; I don't want to pay this, and believe the Department may be due a refund.

- ▶ Discussion; what do you do with this information?

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Case Study 5

Contract Review – Next Steps

- ▶ Receive document(s)
- ▶ All writings included? E.g., schedules, exhibits, addendums, amendments
- ▶ Each one signed?
- ▶ Sufficient detail? Must collaborate with appropriate partners, e.g., contract specialists, legal.
- ▶ May need to be reassigned to Legal



Case Study 5

Contract Review - Debriefing

- ▶ Prior leader left unsigned drafts
- ▶ New leader learning the organization
- ▶ The writings met requirements, e.g., a term of at least a year, and details including, location, time commitment, specific services, compensation
- ▶ Fair market value assessment in file
- ▶ Not based on volume or value of any patient referrals



Case Study 6

Questionable Overtime – Initial Information

- ▶ Finance and HR expressed concern that actual overtime amounts exceeded the budget.
- ▶ Discussion; what do you do with this information?



Case Study 6

Questionable Overtime – Next Steps

- ▶ Identify areas of concern
- ▶ Review a sample
 - ▶ Pursuant to policy and procedure, e.g., supervisor sign-off, not reporting overtime when on paid time off
- ▶ Compare overtime hours reported to other systems, e.g., badge access parking, building entrance, department entrance
- ▶ If clinical areas, does this spill over to government payor concerns?
- ▶ Interview employees; confirm results



Case Study 6

Questionable Overtime – Debriefing

- ▶ “Trusted supervisor” submitted time sheets
 - ▶ Not all overtime claimed was performed
 - ▶ Direct supervisor was not required to review and approve
- ▶ Overtime before and after standard work hours, lunchtime and weekends
- ▶ Parking activity did not match
 - ▶ Not in parking lot for the entire time or at all
- ▶ Not in clinical area; did not involve government payors
- ▶ Admitted needing money and reporting overtime not actually worked
- ▶ Did not press charges; employee terminated
- ▶ Policies and procedures

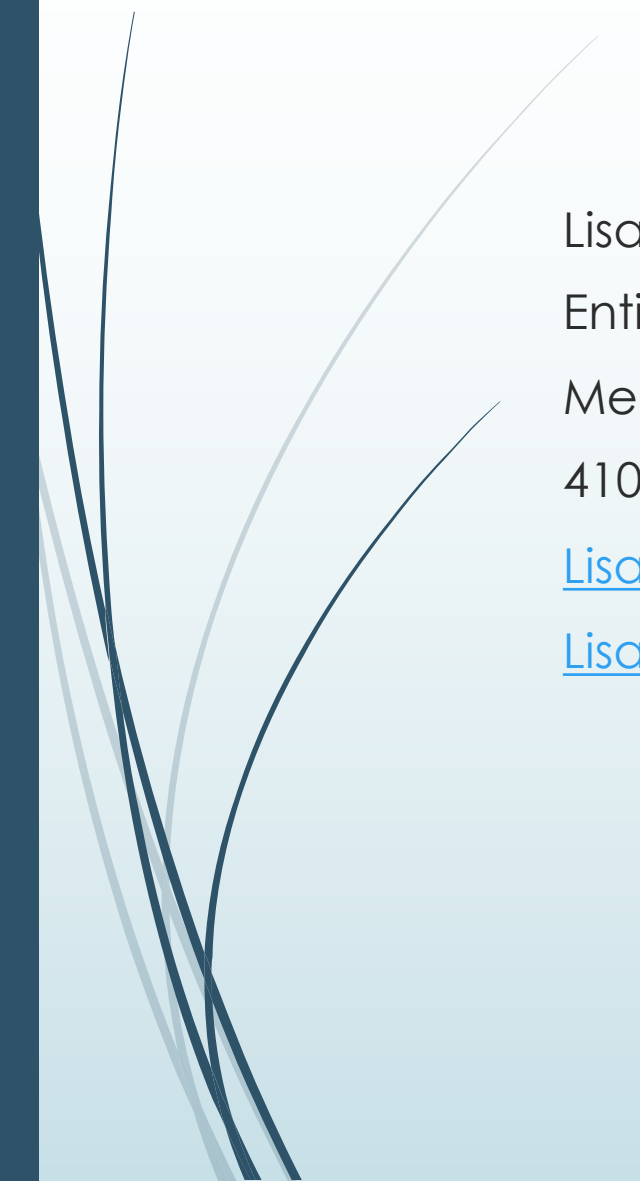


Resources:

- ▶ Encyclopedia of Bioethics (2014). www.encyclopedia.com
- ▶ McMillian, Michael (2012, Oct). Retaliation against Whistle-Blowers: No Good Deed Goes Unpunished. www.blogs.cfainstitute.org



Questions/Contact Information



Lisa Wojeck, MS, JD, CFE, CISA, CHC
Entity Compliance and Privacy Officer
MedStar Washington Hospital Center
410-443-5547

Lisa.Wojeck@MedStar.net

Lisawojeck@gmail.com