

Handling Internal Investigations

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Handling Internal Investigations

- Allegation intake
- Threshold issues
- Preparing for the investigation
- Conducting the investigation
- Concluding the investigation
- Disciplinary and corrective action
- Closing the investigation
- Tracking and reporting investigative activity

Handling Internal Investigations

- The practices and procedures for handling internal investigations need to be tailored to your particular company.
- The opinions expressed in this presentation do not necessarily represent the views of Endo Pharmaceuticals.

Allegation Intake

- Sources of allegations
 - Internal Reporting
 - Localized
 - Employees and managers
 - Centralized
 - Compliance Department
 - Other HQ functions
 - Hotline
 - Other sources
 - External reporting
- Training and communications regarding intake should emphasize
 - The critical importance of reporting
 - Unreported misconduct means uncontrolled risk
 - Timeliness
 - Capturing sufficient detail

Threshold Issues

- Allegations against senior management, Legal Department, Human Resources, Compliance
 - Conflict of interest
 - “Appearance” issues
- Reports of obvious, egregious illegal conduct
 - Protocol for contacts with law enforcement

Threshold Issues

- Is an investigation warranted?
- Who should conduct the investigation?
 - Governance issues
 - Compliance
 - Human Resources
 - Legal
 - Type of allegation
 - Outside counsel
 - A/C privilege
- Prioritizing the investigation
 - Risk to the company
 - External ramifications
- Defining the scope of the investigation

Preparing for the Investigation

- Notify stakeholders that investigation has been opened
 - Manager
 - Human Resources
 - Subject
- Identify and analyze relevant documents
 - General – relevant policies, rules, guidance, statutes, regulations
 - Specific
 - Training records
 - E-mail
 - Expense reports
 - Personnel files
 - Records from prior internal investigations
- Take time to consider other investigative avenues, beyond witness interviews
- Make an outline, organize your thoughts

Conducting the Investigation

- Goal is objective fact-finding

Interviews

- Who should be notified?
 - Manager
 - Human Resources
 - Legal
- Who should be present?
 - Have a witness with you
 - Don't conduct group interviews
- Review documents before speaking to witnesses
- Speak to witnesses before speaking to the subject
 - Interviewing the subject will generally be the last step
- In person vs. by phone or videoconference
- Interviewing witnesses outside the company

Conducting the Investigation

Interview Tips and Best Practices

- Follow a script for preliminaries and closing
- Take notes, and write up a summary of interview as soon as possible
 - Choose your language carefully
 - Mark it confidential
- Maintain control – you are in charge
- Maintain formality – stay in role
- Remember that goal is fact-finding
- Balance confidentiality and transparency
 - Provide info on process, next steps
 - Do not reveal confidential or sensitive information, e.g.
 - Source of allegation
 - What others have told you as part of the investigation

Conducting the Investigation

Questioning – Tips and Best Practices

- Ask questions even if you think you know the answer
- Ask about undisputed points
- Use your outline
- Use the documents you have gathered
- Move from the general to the specific
- Understand when to use leading questions vs. open-ended questions
- Keep questions simple, without qualifiers
- Focus on factual issues and interviewee's firsthand knowledge
 - Avoid speculation, hypotheticals, opinion, state of mind of others
- Think critically about answers containing assertions, assumptions, inferences
- Listen to answers, and follow-up
- If the interviewee is being non-responsive, ask the question again
- Review and clarify key points
- Allow the interviewee to volunteer information and ask questions
- Be firm but polite - don't interrupt or talk over the interviewee

Concluding the Investigation

- Conclusion of fact-finding
 - Figuring out when to stop
- Presenting factual conclusions to stakeholders
 - Manager
 - Human Resources
- Determining whether allegations are substantiated
 - Standard of proof
- Disclosure to the government

Disciplinary and Corrective Action

Investigation-specific considerations

- What did the subject do
 - Intent
 - Nature and severity of the misconduct
- What did the subject know, or what should s/he have known
 - Admissions
 - Exposure to relevant laws, rules and policies
- Aggravating and mitigating factors and circumstances
 - Disciplinary and performance record
 - Tenure with the company
 - Level of responsibility within the organization
 - Subject's conduct in connection with investigation
 - Management involvement/participation
- Risk of subsequent legal action

Disciplinary and Corrective Action

Over-arching considerations

- Proportionality
- Consistency
- Remediation
- Deterrence
 - Specific
 - General
- Prudential concerns
- Punishment

Disciplinary and Corrective Action

Options

- Counseling/coaching
- Training
- Verbal Warning
- Written Warning
- Loss of compensation
- Demotion or other employment action
- Suspension
- Resignation
- Termination
- Legal action

Closing the Investigation

- Notifications – conclusion of investigation, results
 - Subject
 - Manager
 - Human Resources
 - Legal Department
 - Employee who was source of allegation
 - Witnesses
- Disclosure to the government

Tracking & Reporting Investigations

- Tracking – need a system to gather and retain information on each investigation
 - Allegation source, type, date of receipt
 - Witnesses interviewed
 - Summary of investigation
 - Whether allegation was substantiated
 - Disciplinary or corrective action taken
- Reporting – investigative data, in various forms, communicated to stakeholders
 - Board of Directors
 - Senior management
 - Business units
 - All employees
- Data analytics
 - trends and patterns may show systemic gaps and risks



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Questions?