

How to Deal with a Government Investigation

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What happens if your practice becomes the target of an investigation?

The threat of law enforcement entering your practice armed with a subpoena is intimidating. Stress and fear often lead people to disclose more information than is required and to not think clearly during the process. But there are steps that need to be taken immediately. Educate yourself and your staff on the actions to be taken in the event an investigator produces a subpoena at the office:

1. *Call your attorney.* If you are not in, make sure someone in your office knows how to contact your attorney and contacts you immediately. Request permission to call your attorney before the search begins. If the officer refuses to delay the search, proceed with seeking immediate representation.
2. *Examine the warrant or subpoena.* Federal rules require you to receive a copy of the subpoena but also ask to see the underlying affidavit. These affidavits are sometimes protected (sealed) through court orders; if you are able to obtain a copy, it will give you an indication of the underlying intent of the investigation. Warrants and subpoenas may be issued to search and seize property containing evidence of a crime. This may include paper or electronic medical records, paper or electronic appointment books, business papers, computers, computer programs or other tangible objects on the practice premises. (Tip: Be sure you have a full off-site back-up of all your data and your practice management and electronic medical record programs.)
3. *Send all nonessential personnel home immediately.* If possible, send home all employees working in areas that will be searched but you will need some assistance in documenting officers' activities (see item 11).
4. *Forward your phone to the answering service.* Your employees are already rattled. Alleviate the risk of one of them leaking events to a caller.
5. *Print your appointment schedule.* Cancel the remainder of patient appointments for that day immediately – again, to reduce the risk of events leaking out. Make a realistic assessment of how long it may take you to get your computer system operational again and reschedule appointments appropriately.
6. *Back-up your computer software.* Request permission to make a backup of your computer software (not just data). If your request is refused, document the time and date of the refusal and the name of the officer refusing. Share this information with your attorney. Contact your software vendor(s) and/or IT vendor as soon as possible to determine what can be done to resume operations. (Tip: If possible, retain a server as a reserve off-site. This is a good idea not only for these types of situations but in the event of a server failure.)
7. *Keep an off-site back-up of computer data.* Backups should be done on a daily basis. The most current back-up should be stored off-site. Using an off-site backup service will provide you with a source of your data in the event all computers and backup tapes are seized. Although it may take a while for a full backup to be placed on a computer, you will still have access to the data. As mentioned in number 6, be sure to back up your software as well. If your software is cloud-based, find out how you will be able to provide access to the investigators and how you will be able to continue to function.
8. *Ask that employee interviews be delayed until your attorney arrives.* Investigators often use this time to interview employees. Employees will be shocked, unprepared and may offer incorrect

information. Employees have the right to refuse to be questioned and the right to set conditions before being interviewed, including having an attorney present. Your attorney will want to debrief employees after interviews or questioning, even if an attorney was present. This record of the scope of the interview or questioning is an important component to your defense.

9. *Designate a spokesperson.* Having more than one spokesperson may result in contradictory statements, confusion, and incorrect statements. If the investigation proceeds to prosecution those statements may be harmful to you.
10. *Meet with your employees.* Immediately pull your employees together, away from the investigators, and explain what is going on. Be sure to tell them the nature of the search and investigation, that attorneys will be provided for all employees and that they have the right to decline an interview with a law enforcement official until an attorney is present.
11. *Document what is being taken.* Designate an individual in each search area to inventory what is being removed. Make the inventory as detailed as possible and share it with your attorney.
12. *Photocopy essential documents before they are removed.* Request permission from the officers to copy these documents. If they refuse, note the time and date of the refusal, the name of the officer refusing the request, and the documents you were not allowed to copy. Share this information with your attorney.
13. *Document activities and conversations.* Make a record of any statements made by the officers. If officers consent, use a tape recorder. If not, prepare written notes. Note: You cannot use a tape recorder or other recording device (such as cell phones) without the officer's consent. Obtain a video camera or camera, with lots of film and/or batteries, and use them to provide additional documentation of the investigation. Photograph every item taken. A film showing the officer's conduct may be helpful at a hearing to suppress evidence.
14. *Document items seized but not specified in the warrant.* If the nature of the warrant or subpoena is broad, documents and items outside of the scope will probably be seized. Be specific!
15. *Cooperate. Do not try to conceal or destroy any documents.* Release information from your computers to the officers. Failure to assist may result in a charge of obstruction of justice. Do not volunteer any statements. Do not interfere with the officers. Do not use abusive language. Be courteous and professional.
16. *Make a list of essential documents or equipment.* Provide a list of those items essential to ongoing business to your attorney as soon as possible. They may be able to use this document to apply to the court for an order returning those essential items.
17. *Do not make any statements to the press.* Direct any inquiries to your attorney. Instruct your staff to do the same.
18. *Keep this list in a safe place so you'll know where to access it if the need arises.*

The bottom line is no one wants to go through an investigation. Educating yourself and your staff on what to do in the event of an investigation can help remove some of the sting out of the fear. Realistically, the sight of armed officers entering the practice is going to be intimidating. Make sure everyone in your office has the tools they need in the event of a fraud investigation.

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