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WHAT TO DO WHEN THE GOVERNMENT INVESTIGATOR ARRIVES

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Law-abiding citizens never expect to find themselves under questioning by a law enforcement official. However, with increasing regulation and stepped-up enforcement efforts at both the state and federal levels, health care providers are more likely than ever to find a government investigator at their door. Such visits are not social calls, and thus, courtesy is secondary to an informed decision about whether and when to speak to such an agent. When encountering an agent in a raid jacket or a badge-flashing G-man, you may inevitably be frightened, nervous, angry, or defiant; however, it is critical that you remain cognizant of your rights and responsibilities under the law. Here are some basic facts and rules that any health care provider and its employees should know:

- Try to relax. If they wanted to arrest you, they would have done it already.
- Request appropriate identification from the investigator.
- Government investigators have the right to contact you and to request an interview. Such contacts might occur at your place of business or they might occur during off-hours at home or otherwise off premises.
- Neither you nor your employees are required to speak to government investigators. They do not possess subpoena power or have other legal authority to compel you to speak with them or to submit to an interview. It is improper for investigators to resort to threats or intimidation, whether expressed or implied, to obtain an interview.
- Before speaking with a law enforcement official, remember that any statements that you make to a government investigator may have significant legal consequences. It is a normal human impulse to respond to people who wish to address you, especially when those people are law enforcement officials. However, if you are prosecuted or sued by the government, the statements you make can be used against you or your employer in court.
- You have the right to speak with government investigators as well as the right to decline to be interviewed. You also have the right to have counsel present during any interview, to confer with counsel at any time, and to terminate an interview at any time.

- It is strongly recommended that you contact competent legal counsel who is experienced in dealing with government investigators before speaking with an agent. You always have the right to postpone an interview. This applies whether or not you wish to speak to the investigator.
- If you choose to submit to an interview, tell the truth. State as fact only those matters you know to be fact; avoid guessing or speculating.
- If you do speak to a government investigator, take time after the interview to make complete and thorough notes about everything that occurred (*e.g.*, any statements the investigator made, the questions asked, and the answers you gave). This information will be invaluable to your counsel in determining the subject matter of the investigation.
- If you decline to speak with a government investigator, he or she may present you with a subpoena to appear before a grand jury. This does not mean that you have done something wrong. It simply means that you are compelled to appear before a grand jury.
- If you are served with a subpoena commanding your personal appearance before a grand jury, it is strongly urged that you contact competent legal counsel for advice concerning your rights and responsibilities.
- If it appears likely that a government investigator will seek to interview your employees, provide them with a memorandum prepared by counsel outlining their rights and responsibilities. [Note: A sample memorandum is attached.]

SAMPLE ADVISORY MEMORANDUM TO EMPLOYEES
REGARDING CONTACTS BY THE GOVERNMENT
(*e.g.*, FBI, HHS, DCIS, IRS, etc.)

It is our understanding that the [*law enforcement agency*] is conducting an investigation concerning [*general description of nature of investigation*]. This Advisory Memorandum is being circulated by [*the Company's*] Legal Department to alert employees to the fact that they may be contacted by government investigators seeking to interview them regarding the subject matter of the investigation, and to provide employees with general guidance regarding their rights, duties, and obligations with respect to any such contacts.

As an employee of [*the Company*], you should be aware of the following:

1. Government investigators have the right to contact you and to request an interview. Such contacts might well occur during off hours at home or off [*the Company's*] premises.
2. Government investigators do not, however, possess subpoena power or have other legal authority by which to compel you to speak with them or to submit to an interview. It is improper for investigators to resort to threats or intimidation, whether expressed or implied, in order to obtain an interview.
3. Even if the government investigator has a subpoena for you, the investigator does not have the legal authority to compel you to submit to an interview when the subpoena is served.
4. You should request appropriate identification from the investigator.
5. You have the right to speak with government investigators, as well as the right to decline to be interviewed. You also have the right to have counsel present during any interview, to confer with counsel in advance, and to terminate an interview at any time.
6. [*The Company*] has retained outside counsel to represent it in connection with the investigation.
7. [*The Company*] also has arranged for separate outside counsel to be available to provide advice to those employees who wish to consult with counsel. You also have the right to retain private counsel.
8. The role of separate counsel is to advise you as to the nature of the investigation, the purpose of the government interview, your rights and obligations in connection with such interview, whether it is in your interest to be interviewed, and the appropriate conditions for such interview.
9. Since the matters at issue occurred during your tenure as an employee, [*the Company*] agrees be responsible for advancing fees and related expenses for your legal representation in connection with the investigation.
10. If you choose to submit to an interview, you should tell the truth. You should state as fact only those matters you know to be fact; you should not guess or speculate.

11. [*The Company*] recommends that you consult with counsel prior to any interview; however, it is your sole decision whether or not to do so.
12. If you are contacted by government investigators, we request that you promptly notify [*lawyer's name and telephone number(s)*] in [*the Company's*] Legal Department or your supervisor.
13. It is your right to deal directly with government investigators without counsel or to confer with counsel prior to doing so. You also must be sensitive to your responsibilities and obligations with respect to [*the Company's*] proprietary information and classified information. You should not assume that investigators have proper clearance to discuss classified matters or programs. [*If the Company is a defense contractor, for example.*]