Conducting Effective Internal Investigations

Module Four: Writing the Report and Post-Investigation Considerations

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Module Overview

- Key components of a report (recommended)
- Style/audience/tone
- Disclosure of the report
- Best practices for document retention and use of the attorney-client privilege
- Notifications
- Final Decision
- Post-Decision Considerations
- Appeals
- Consultation with In-House Counsel
Key Components

- Executive Summary
- Allegations/Complaint
- Procedural History
  - Witnesses
  - Evidence
- Applicable Policies/Procedures (attach)

Key Components

- Evidentiary Standard (follow policy)
- Information Considered During the Investigation
  - Summarized by witness
  - What did people report?
- Undisputed Facts (can be resolved succinctly)
Key Components

• Factual Findings
  • Resolve KEY disputed facts
  • Resolve credibility issues
  • Show your work
  • Apply the correct standard of proof

Key Components: Factual Findings

• Put it together for the reader. Show your work.
• Example:
  • I find, by a preponderance of the evidence that the door to the laboratory was left unlocked by the Respondent on October 12, 2016 at 6:03 p.m. This was confirmed by Witness A and Witness B, who observed Respondent leaving with both hands full of chemicals at that time. This was further confirmed by the access log. I did not find Respondent’s explanation that they have never left a door unlocked to be credible. Moreover, the hall camera corroborated that Respondent’s hands were full.
**Key Components**

- **Conclusions (if that is your role)**
  - Based on the factual findings, was there a policy violation?
- **Sanctions (if that is your role)**
  - Based on the policy violation, what is the appropriate and consistent sanction?

**Tips When Drafting**

- Go back to your investigation plan.
- Remember what you are investigating.
- Look at the elements of each definition.
- Render factual findings that pertain to the elements of each definition.
- Do not make unnecessary factual findings.
Key Components

- Appeal Process
  - Describe
  - Note use of report in that process.
- Appendix (policy, witness summaries (if required), photos, etc.)

Style, Audience, & Tone

- Write for someone who knows NOTHING about the parties, the issues and the situation.
- No typos, spelling errors, assumptions, unexplained jargon.
- Ultimately writing for a reader later in the process.
Case Study Review

• What are the allegations?
• What are the undisputed facts?
  • Which ones are important?
• What are the disputed facts?
  • Which ones are important?

Disclosure of Report

• Depends on policy, applicable law, etc.
• Possibly redacted when disclosed. Not always!
• Internal (as part of process)
• External
  • Subpoena
  • Other legally required disclosure (state public records request)
Document Retention

• Follow your institution’s policy.
• If the policy is silent, be consistent between investigators.
• If you are the only investigator – be consistent with your own practice.
• If you deviate, document your reasoning.

Use of Attorney-Client Privilege

• Covers communications sought in furtherance of legal advice.
• Should be marked and maintained separately – not in the investigation file and thus accidentally produced.
• Your attorney can’t make the decision for you, but they can help spot holes, ask questions, or advise on process.
Notification

• Importance of notifying the parties
• How much information to provide?
• Who else should be notified?
• Any legally required notifications?

Final Decision

• What is the next step?
  • Does the report reach a conclusion?
  • Does it recommend sanctions/corrective action (if warranted)?
  • If not, who makes those decisions?
• Avoid a delay in process
  • Who ensures the next steps occur promptly?
Post-Decision Considerations

• Who receives a copy of the report/decision?
• Determining/implementing sanctions/corrective action/remedies
• Continued vigilance to avoid/address retaliation

Appeals

• Check your policy or process
• Notify of right to appeal
• What are the grounds for appeal?
• What is the standard for review?
Appeals

• Benefits of informal review even if no appeal rights
• Who should conduct the informal review?
• Notification of outcome

Consulting With Legal Counsel

• Understand their role
• Typically do not advise on substance of investigation
• May advise on procedure, notice and related issues
Course Conclusion

• Re-cap of Module 4
• Where we’ve been
• Road map for providing fair process

Questions?
Note

• The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

• The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

• If you desire legal advice for a particular situation, you should consult an attorney.