



Oct 13, 2017

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Dos and Dont's for Providers Under Investigation

What Does It Mean to Be Under Investigation?

In most states, investigations are confidential, and the fact that an individual is under investigation is not disseminated to the public. This means that an employer would only have notice that an employee is under investigation if the employee notified his or her employer, or if the investigator had reached out to the employer directly for assistance in the investigation.

However, in some states, like Kentucky, the fact that a provider is under investigation is part of the public record, and is detailed on the provider's online validation profile until the investigation has concluded, which can take several months.

Providers: Do's and Don'ts

Providers should first be mindful of whether their employment contract, hospital bylaws, and/or employer policies require reporting of an investigation into the provider's license to the employer. If so, providers should comply with their employer's policy or bylaws.

Even if an employer does not have a policy that requires reporting of an investigation, an employee may be best served by reporting the investigation to their employer. For example, many employers may discover an investigation via a public record posting, for example, such as the investigation notice placed on provider profiles in Kentucky. An employer may also ascertain that an investigation is ongoing as a result of other third-party notification, for example, by other co-workers who may be aware of the investigation. Ultimately, it is in the provider's best interest to control the flow of information, and ensure their employer learns about the investigation from the provider, rather than from a second-hand source.

For further tips on how providers should respond to an investigation themselves, check out my prior blog post, ["You've Been Investigated by the Department of Health. Now What?"](#)

Employers: Do's and Don'ts

Since investigations are confidential, employers should strongly consider implementing employment policies that require employees to report if the provider is under investigation to the employer within a certain time frame, for example, within ten (10) days of being notified of an investigation against that provider's license. Employers should also consider crafting an easy and confidential way for providers to report an investigation to incentivize employee transparency.

Although the Department of Health's investigation may take several months, an employer is not limited by the Department of Health's timeline. An employer should consider independently investigating the underlying incident, and take proactive steps to fix any issues related to workplace policies or norms, if applicable. If the employee made an error, the employer may want to consider requesting or requiring that the employee provider take proactive steps, such as attending continuing education for ethics, documentation, or prescribing, to ensure similar mistakes are not made in the future. Of course, if the employee's actions or errors warrant termination, this should be clearly documented, and handled appropriately.

Finally, the employer may want to consider hiring counsel to represent the facility if the Department of Health requests to interview multiple employees, or subpoenas patient records, work place policies, or other documents during their investigation. A Department of Health investigation into a singular employee could become broader in scope throughout the course of the investigation if the government agency investigating determines further investigation is warranted.

Conclusion

An investigation into a provider's license does not mean the provider has done anything wrong. However, careful communication between employers and providers about the status of an investigation, and collaborative solutions to address any errors or issues in a provider's practice are essential in mitigating the risks to both employer and employee of an adverse outcome, i.e., discipline to the provider and possibly others, because of a state regulatory board investigation. Feel free to contact me, [Alex Fisher](#), at afisher@fbtlaw.com or (615) 251-5594, if you need assistance in navigating a regulatory board investigation of a health care provider.

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