



The Physical Therapy Investigative Process

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As a former federal investigator, my background provided me with a systematic approach to investigations. When I was an agent, I had a crisis response manual at work, in my car and at my house. Without a plan of attack or a manual, I would have been lost in certain situations. A checklist can help you in the same way.

The worst thing that can happen is to have an investigation that is not done properly. The includes interviewing the wrong people, asking the wrong questions to people being interviewed, not pursuing proper records, not keeping records confidential and secure and doing nothing at all. If you don't do an investigation, it is going to hurt your agency and your firm.

Case management is the key, and it is done at several levels. While the investigator has to manage what he or she does, you have to be briefed as well. There also has to be a counterbalance between you, the investigator and the attorney. The relationship with your attorney is critical.

You also must know what prompts an investigation. It's vital to assess the goals and potential disadvantages of the investigation and to select the appropriate investigator. You have to identify potential witnesses and documents to be reviewed, prepare a strategy, establish files and records and review the investigation periodically.

Interviewing is probably the most critical aspect. Over 41 years at the job, I can probably name ten people who are good interviewers. Another ten are fairly good. But hundreds are terrible. A good investigator can tell within five to ten minutes whether someone is lying - and what they are lying about.

The basic process in Kentucky

First, we identify the source of the complaint and send it to a review committee, which is part of a larger board. The original complaints may come from a consumer, professional licensee, professional association or other state agency. It can come internally, from law enforcement, from insurance companies or from the state attorney's office or other state agencies.

Once at the review committee, it is assigned a case number, and we determine the violation and the evidence. The respondent is notified and has 20 days to reply. I don't do anything before those 20 days have expired. I want to see what the respondent says before I start scheduling interviews. Our recommendation then goes to the review committee which presents it to the board. We don't, by the way, put the therapist's name on our reports, so the board is evaluating violations, not people. That's critical, and it is very important. We get a settlement and agreement, and we publish our disciplinary outcome. About 48% of investigations end in some type of sanction.

Ten steps to an investigation

1. Determining if there is a violation...and if there is more than one

When you get a complaint, you must first ascertain if it indicates a violation. It is not always simple. You must consider any possible government intervention, because if a federal or state law enforcement agency gets involved, you may be dealing with adverse publicity, higher cost and increased liability. Each case is different. Each brings different scenarios and has different goals. I may be assigned a case about improper touching and one-third of the way into the investigation, I come up with fraudulent billing issues or other problems. My goal shifts. I have an additional violation. In fact, in the majority of cases, goals shift. In that instance, you talk to the executive director, involve the attorney and decide what action you are going to take next.

2. Doing a daily assessment.

You must assess your goal on a daily basis. You need to know what you want to achieve.

3. Assessing potential disadvantages.

Investigators can cost a lot of money. What will the investigation uncover? Where it is going to lead you? What is going to occur? What is going to change your direction? Control of the investigation is very critical because insurance companies and perhaps Medicare, a police department or another federal agency may be involved. Adverse publicity is the last thing you want; as media attention can be very damaging.

An investigation can also be disruptive to employees, when you go into a facility to set up interviews and pull records. You don't want to be demanding as you have to work with these people and the better you work with them, the more information you may receive. Internal stress to employees is one of the biggest disadvantages in investigation. Outside intervention is going to cause grief. When the police or FBI comes into the picture, they want all of the material you have gathered, and they are going to take it.

Communication is the key to success for an investigator. You will be dealing with a wide variety of people. You might have to talk to a person with a third-grade education, a high-rolling attorney, a police officer or elderly people who don't remember their names, let

alone being treated two hours ago. Your job is to get enough information from these people to determine where to go with your investigation.

4. Choosing the right investigator

Criteria should include knowledge of laws, interviewing skills, communicator skills, credibility, impartiality and note taking. The investigator must maintain confidentiality. Do you want a board employee or contract investigator? You should consider traits such as appearance, communication skills, integrity, security, job knowledge, motivation and primary performance – all established by federal agencies.

5. Developing witnesses and interviewing people

Make certain your investigator pays attention not only to what witnesses say, but how it is said. A witness may be trying to lead you away from the question. Anticipate the reputation and motivation of the witness. If the motivation is going to lead to lying, beware of witnesses offering misinformation or leading you astray.

Interview the witnesses before talking with the respondent. You want to know what the respondent's answer is going to be before you ask it. If you are in that position then you have done a good investigation; if the persons give you a false statement, you can produce statements or documents that prove them to be wrong. It's the position I would like to be in when I interview.

6. Identifying documents to be reviewed

Look at policy or procedure, appointment books, billing records, phone records, time cards, personal records, disciplinary records, insurance records and personal diaries. I wasn't getting anywhere with an investigation into an affair between a therapist and patient. In the interview, I finally asked her if kept a personal journal. She said she did, but she wouldn't let me see it, so I gave her a subpoena. The whole affair was described in the journal. You've got to think about what you want. Where do you want to go? What do you want to get? And how do you prove what you want to prove?

7. Preparing a strategy for investigation

When you interview people, what you are going to interview them about? What documents are you going to obtain? Which ones do you need to obtain first? Remember, when you start interviewing people and pulling records, people will begin talking. You must have a strategy to prevent your questions from revealing too much. Sometimes you want to ask questions that are off the subject matter to send the interviewee in a different direction. A key strategy that has always worked for me is getting witnesses to say, “Yes, yes, yes.” They will keep saying “Yes, yes, yes.” When I interview somebody, I know where they live, how many kids they have, what they drive and where they work. I start asking, “Do you still live in Baker Street? Do you still drive a SUV? Are you still married to Mary and have two kids?” They get in a pattern of answering questions and also believe you know everything about them. When you ask tough questions, they think you already know the answer. You set that pattern of interview. The key to your strategy is to not give up more information than you get. The biggest mistake investigators make is not developing a second list of questions based on what someone could say to you. Anticipate two or three answers to any question and how you might respond to each one.

8. Disposing of personal information

My own file is a duplicate of what’s in the office, and when I finish my investigation, I dispose of all my personal information. Your state might not allow that. It’s an issue you have to deal with your own state. I record key interviews, although most investigators do not. If you want to document somebody’s statement, call him back and say, “Here is what you told me, and here is what I am writing down. Is this true?” That’s always good for clarification as well.

Videotaping is a good idea because you get feedback in actions or movements, but more often than not, you will be doing telephone interviews if only because they are cost effective.

9. Dealing with risks

Always be critical of your results. Be certain you have covered all of the bases. I never accept what a witness tells me. Ever. Substantiate what that witness tells you with documentation or with another witness statement. You have to do that. Type your report quickly and keep a daily log of your investigation as you go along. I document what I did, report what people tell me and produce documents to go along with whatever support I have. It's all objective. I make no recommendations.

10. Dealing with hazards

The hazards of an investigation are obstacles that occur. The longer the time between the complaint and you doing something about it, the more difficult it is going to be to get good information. Prompt and responsive action is important. Never assume anything. Also, you can't promise confidentiality. It is public record. You can say you are keeping this as confidential as you can, but you can't promise the material is going to be completely confidential because it doesn't happen.

If you get involved in an investigation and find there are civil rights violations, discrimination, health and safety issues or drugs in the workplace; you have to report them. But once these violations or issue are reported, the investigator's time becomes that of another agency. You can lose control of what you are doing. That can be a hazard.

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