

## ***Policies and Procedures - Health Sciences Schools***

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| <b>SECTION:</b><br><b>COMPLIANCE</b>                             | <b>Approved</b><br>03/02/99   | <b>Effective</b><br>Date<br>04/01/99 | <b>Revised</b> |
| <b>CHAPTER:</b><br><b>GOVERNMENT INVESTIGATIONS</b>              | <b>Replaces Policy Dated:</b> |                                      |                |
| <b>POLICY:</b><br><b>RESPONDING TO GOVERNMENT INVESTIGATIONS</b> | <b>Retired:</b>               |                                      |                |
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### **I. PURPOSE**

Health care providers have increasingly become the subjects of government investigations concerning fraud and abuse. Creighton employees and agents within the Health Sciences Schools need to be aware of their rights and responsibilities when responding to government investigations. Government investigators may arrive unannounced at Creighton, its facilities or the homes of present or former employees seeking interviews and documentation. These investigators may represent the Department of Health and Human Services, the Office of the Inspector General, the FBI or a State Medicaid Fraud Control Unit.

The purpose of this policy is to establish a mechanism for the orderly response to government investigations to enable Creighton to protect its interests while cooperating with any government investigation to the extent required by law.

### **II. POLICY**

Creighton and its employees and agents shall cooperate with any authorized government investigation or audit. Creighton, through its authorized representatives, will assert all protections and privileges afforded it by law during any such investigation or audit.

### **III. SCOPE**

This policy applies to all employees and agents within the Health Sciences Schools.

### **IV. PROCEDURES**

#### **A. Government Request for Interview**

1. If a government official requests an interview, you have the right to:
  - a. Refuse to answer any questions.

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- b. Request that your legal counsel or a Creighton representative be present before answering any questions. (It is usually not in your best interests to talk to an agent or investigator without the presence of your attorney).
- c. Have the interview conducted during normal business hours at Creighton or any other location.
- d. Stop the interview at any time.
- e. Take notes during the interview.

You are not authorized to give Creighton documents (including documents you may have prepared at work) to the government unless authorized by Creighton General Counsel or pursuant to a valid subpoena.

You must notify your supervisor as soon as reasonably possible after a government official has approached you.

- 2. If approached by a government official, you should always be polite and should:
  - a. Obtain the name, agency, affiliation, business telephone number and address of all investigators (a business card should contain all of this information).
  - b. Ask the reason for the visit.
  - c. Ask if there is a subpoena, warrant, search affidavit or other court order to be served and request a copy of it.

If you agree to an interview, your first obligation is to notify your supervisor before any interview and to provide him/her with as much information about the interview after it has occurred. Make a memorandum of the interview - it may be the only accurate record of the conversation.

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B. A Government Search (by search warrant, subpoena, court order or search affidavit)

1. Ask the investigator for identification and check it.
  
2. Immediately contact the Administrator or his/her designee, or General Counsel; and if neither one is available, then the Corporate Compliance Officer. General Counsel should be notified as soon as possible. The Administrator or his/her designee shall follow the checklist for Department Administrators, Attachment "A". In most instances, General Counsel or his/her designee will be present during the search.
  
3. Request a copy of any search affidavit, subpoena, court order or search warrant and provide a copy to General Counsel.
  
4. Once there has been notice of an investigation, the destruction portion of any policy on record retention is suspended.
  
5. You have the right to consult with General Counsel before the search commences. Do not obstruct or interfere with the search. You do not have to speak to the investigators, but must provide the documents requested in the warrant, court order or other legal document.
  
6. If General Counsel or his/her designee is not available, the Administrator, or his/her designee, should try and contact the prosecutor to stop the search until General Counsel is available. If the prosecutor refuses to stop the search, try to arrange to have the search delayed to enable Creighton to obtain a hearing on the warrant. If the search is not stopped, then follow the checklist for General Counsel, Attachment "B".

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**V. ADMINISTRATION AND INTERPRETATIONS**

Questions regarding this policy may be addressed to General Counsel, the Compliance Officer, Department or Clinical Administrator, or Dean of your School.

**VI. AMENDMENTS OR TERMINATION OF THIS POLICY**

This policy may be amended or terminated at any time.

**ATTACHMENT "A"**

**CIVIL/CRIMINAL GOVERNMENT INVESTIGATIONS**

**CHECKLIST FOR DEPARTMENT ADMINISTRATORS  
OR OTHER DESIGNATED PERSONNEL**

- Contact General Counsel or Associate General Counsel (402) 280-5589, and if neither one is available, contact the Compliance Officer (402) 280-2107.
- Escort government agent to a private conference room or other location until General Counsel or his/her designee arrives.
- Ask each investigator for proper identification, including their business cards. List the name, address telephone number and agency of each government agent involved in the investigation, including the date and location and ask the lead investigator to sign it.
- Inform government officials that General Counsel has been contacted and wants to be present during the investigation/search. (If they are unwilling to wait for General Counsel follow the checklist for General Counsel)
- Request a copy of any search affidavit, subpoena, court order and/or warrant to provide to General Counsel.
- Close the location and send non-essential personnel home or to other sites. Make sure someone is available to download information from the hard drives and copy information onto disks.
- Designate someone to list all documents reviewed, copied or seized by the investigators and to take notes of the search, identifying areas searched, investigator's comments, questions, instructions, requests and actions.
- Try to negotiate an acceptable methodology to minimize disruptions and keep track of the process. Consider the sequence of the search, are copies acceptable instead of originals (if originals are taken - ability to access).

**ATTACHMENT "B"**

**CIVIL/CRIMINAL GOVERNMENT INVESTIGATIONS**

**CHECKLIST FOR GENERAL COUNSEL**

- Immediately proceed to the site of the investigation if possible. (If more than one site, then designate individuals to oversee the investigation at the other sites.)
- Verify government agents' credentials.
- Review and verify legal authority to conduct the search.
- Determine the purpose and the scope of the investigation and develop a search process to be followed, considering less disruptive to operations, including copying of or access to seized records.
- Explain to each employee his/her rights with respect to the government investigation.
  - Right to speak or decline to speak to the inspector(s)
  - Right to have an attorney or CU representative present
  - Warn not to destroy or hide documents or evidence
- Determine whether or not to be present during any employee interview by a government representative. (i.e. should employee be represented by separate counsel, due to potential conflict of interest).
- Determine whether or not to close the site and send non-essential personnel home for the duration of the search.
- Identify the limitations on, the premises to be searched and the property to be seized. If General Counsel is unavailable, monitor the search and note any search beyond the scope of the search warrant.
  - Never consent to an expansion of the search
  - Disputes regarding the scope must be brought to the attention of the prosecutor or the court to be settled. Do not prevent the investigators from searching areas they claim to have the right to search
  - Investigators have the right to seize evidence of crimes that is in "plain view" during their search even if it is not described in the warrant.
- Make sure someone has been assigned to take copious notes of the search, noting areas searched, investigators' comments, questions, instructions, requests and actions.
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- Make sure someone has been assigned to list all documents (floppies and hard drives) reviewed by investigators and copy, number and catalog documents (floppies and hard drive information) requested by government agents. If this is not possible, request an inventory from the agents of the documents seized.
  
- Request the lead investigator to note and date the time the search was completed as well as sign the inventory.