

What to do if regulators come knocking?

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What should you do if regulators knock on the door to your healthcare facility to execute a search warrant or administrative warrant?

Healthcare executives need to understand that law enforcement is increasingly relying on raids because they have proven highly effective at gathering documentary evidence – including electronic information such as e-mails – and at conducting witness interviews at a time when witnesses are not prepared.

Healthcare facilities have plans for a myriad of critical situations that may never occur. A plan for responding to a search warrant or administrative warrant should be one of them.

1. Know who to call if regulators come knocking. Acquaint yourself with lawyers who have proven track records in internal investigations – lawyers who can ably respond and advise your business, lawyers you can trust with very sensitive and important matters. You want to be able to access more than one lawyer – search warrants are often executed during non-business hours and you may want one lawyer to represent the entity and one or more attorneys to represent certain executives and employees. You do not have to engage these lawyers in advance, but you do need to know who you can call on at a moment's notice.

2. Educate your people. Now that you have selected your potential counsel, request that they give your company a brief training about how to appropriately respond to search warrants, administrative warrants, civil summons and notices, subpoenas, etc. Should you ask to see the warrant, to keep a copy, to request identification, to volunteer to show documents to regulators? How would you operate your business if law enforcement seizes your computers, including your entire network? If a receptionist is greeted by a regulator with an administrative warrant, who should he call first? Should there be written procedures regarding how executives and employees respond to search warrants, administrative warrants, subpoenas, and court summons, etc? What rights do your executives and employees have when asked questions by law enforcement? What are your obligations for ensuring employees' and patients' privacy rights? Do you have disclosure obligations to members within your company? To outside parties or agencies?

3. Label attorney-client communications clearly. Organize your business records so that attorney-client communications are clearly labeled and segregated. Regulators are not entitled to review attorney-client communications, except in very limited circumstances, and it will be easier for you to have maintained those records separately.

This is a just a starting point for your plan. Don't delay.

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