

Check List: Responding to Suspected Drug Theft

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You've discovered that someone has been stealing patient medications. What next?

1. First Steps:

- Ensure that the theft is reported internally through the right channels.
- Call the police.
- Contact the organization's attorney.
- Consider patient/resident safety. What do you need to do to protect them?
- Make appropriate Vulnerable Adults Act reports if patients/residents have been affected.
- Theft of controlled substance must be reported in writing to Drug Enforcement Administration Field Office within 24 hours. Reports may be made online through the DEA web site; use DEA Form 106.
- Promptly determine how to notify affected patients/residents or family members and make appropriate notifications.

2. Internal and Criminal Investigations:

- *Coordinate with Law Enforcement* – What can you do that won't interfere with their investigation? What can you do to help with their investigation?
- *Plan Your Internal Investigation*
 - ✓ Consider Who Will Conduct – Is there an appropriate person or persons within the organization, should you hire an outside investigator, or a combination of both? Because an investigation will likely involve a review of medication records, medical records, and employee interviews, the investigating team likely may consist of more than one person.
 - ✓ Consider Scope of Investigation
 - Goals (e.g., Who is the perpetrator? How did it happen? How can we prevent it from happening again? All of the above?)
 - Evidence to be reviewed (What documents do you have that may provide helpful information?)
 - Interviews
 - ✓ If law enforcement wants an opportunity to interview employees/other individuals first, consider what documents or other evidence can be gathered in the meantime.
- *Employee Interviews*
 - ✓ Encourage Confidentiality – Because rumors spreading may interfere with an effective investigation, ask employees not to talk about the investigation while it is pending.
 - ✓ Don't Promise Absolute Confidentiality – State that the organization is keeping the results of employee interviews as confidential as possible consistent with the needs of the organization to investigate and respond appropriately.
 - ✓ Don't pre-judge results.
 - ✓ Get all the facts.

- ✓ Ask open-ended questions (narrow as needed).
- ✓ Ask about witnesses/documents.
- ✓ Ask – Is there anything else you think we should know?
- ✓ Plan on follow-up.
- ✓ Remind the employee that retaliation against the employee for participating in the interview is absolutely prohibited. Tell them how to report any suspected retaliation.

3. Agency Reporting and Investigation: After discovery of drug theft, your organization will need to determine the reports that should be made to government agencies, such as licensing boards, the Minnesota Department of Health Office of Health Facility Complaints (OHFC), and/or the Minnesota Board of Pharmacy. The types of reports that must be made will vary depending on the facts of the case. Be prepared to aid in agency investigations and to share your own investigation results. Be aware of potential fines.

4. Be Mindful of Impact on Employees: A crime has been committed. The primary victims are the patient/residents who were affected, but your organization and innocent employees are also victims. The shock and betrayal of trust may have a profound impact on some employees, particularly if the person responsible for the drug diversion is not yet known. To help improve employee morale, you may want to consider team meetings with managers, offering EAP assistance, or other forms of support.

5. Plan PR/Communications Strategy: News of a drug diversion at one of your facilities might receive heavy press coverage, particularly if patients/residents were affected. Be prepared to respond to press inquiries and instruct employees to direct all press inquiries to the appropriate person within the organization.

6. If an Employee is Suspected, Be Aware of Employment Law Issues:

- *Drug Testing* – In Minnesota you can only conduct employee drug testing if you have a policy in place and even then, testing is only allowed in certain circumstances. Further, if an employee tests positive on a first test, they must be offered the opportunity to seek treatment. Because of these legal issues, don't rush to require drug testing. Consult with counsel and carefully consider whether drug testing is appropriate based upon the needs of the investigation.
- *Defamation* – Falsely or recklessly accusing an employee of a crime can lead to liability for defamation. Be cautious in statements made about employees who are suspected to be involved.
- *Employment Contract or At-Will Employment* – Determine whether the suspected employee is an at-will employee or has a contract. If the employee has a contract (i.e., is a member of a union or has an individual employment contract), ensure that the evidence of the employee's involvement in the drug theft meets the appropriate termination/discipline standard.
- *Retaliation* – Employees who participate in the investigation are protected from retaliation. Ensure that no retaliation is taking place. Encourage employees who participate in the investigation to report suspected retaliation.
- *Disability and Other Discrimination Issues* – Be mindful of obligation not to discriminate against employees as you investigate. Remember that drug and alcohol addiction is a disability. If an employee is suspected because of a known history of addiction or because the employee has a medical condition that might provide the employee with a reason to steal pain killers, consult with an attorney to ensure that the organization is not relying improperly on such information.
- *Invasion of Privacy* – Minnesota recognizes a tort for invasion of privacy. Consider the risks of such a claim when investigating and balance the risk against the investigative need. For example, searching employee purses is high-risk; searching work areas used by all employees is not high risk. Consult with an attorney.