



## What To Do When An Investigator Arrives

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Most law abiding health care providers never expect to find themselves under questioning by a board investigator or law enforcement official. However, with increasing regulation and stepped-up enforcement efforts by both state and federal governments, health care providers are more likely than ever to find a government agent at their door. These visits are not social calls, and, courtesy is secondary to making an informed and intelligent decision about whether to speak to such an agent and what to say. When encountering a Board investigator, a DEA agent in a raid jacket or a badge-flashing G-man, you may be frightened, nervous, angry, or defiant; however, it is critical that you remain cognizant of your rights and responsibilities under the law and your objectives. Here are some basic facts and rules that any health care provider and its employees should know:

1. Try to relax. If they wanted to arrest you, they would have done it when they first arrived.
2. Request appropriate identification from the investigator. Ask if they have a subpoena and for a copy.

Government investigators have the right to contact you and to request an interview. Such contacts might occur at your place of business or they might occur during off-hours at home or otherwise off premises.

3. Neither you nor your employees are required to speak to government investigators. They do not have legal authority to compel you to speak with them or to submit to an interview. It is improper for investigators to resort to threats or intimidation, whether expressed or implied, in order to obtain an interview.

Note, however, if a Board investigator is present, it is likely that the investigator will have a Board subpoena for records or even your license. You will need to comply with the subpoena. Licensees also have a statutory duty to cooperate with a Board investigation. If you are pressed to respond to Board investigator questions under such circumstances, it is usually best to say little and be highly circumspect.

4. Some subpoenas grant the government the right to immediately seize records, licenses or other items, but some provide a period of time to provide these things. Read the subpoena carefully and always ask for the right to copy anything that will taken that day.
5. Before speaking with a government investigator, remember that any statements that you make may have significant legal consequences. It is a normal impulse to respond to people who wish to address you, especially when those people are law enforcement officials. However, if you are prosecuted or sued by the government, the statements you make can be used against you or your employer in court. What you consider to be a handy explanation may prove to be an ill-advised statement. “I really am owed this money, I don’t know her, I was not present,” may prove to be the worst explanation.
6. You have the right to speak with government investigators, as well as the right to decline to be interviewed. You also have the right to have counsel present during any interview, to confer with counsel at any time, and to terminate an interview at any time.

It is strongly recommended that you immediately contact competent legal counsel before speaking with and investigator. Most Boards, either expressly or by established policy, acknowledge this right and will not interfere with any effort to call your lawyer to get advice.

7. If you choose to submit to an interview, tell the truth. State as fact only those matters you know to be fact; do not guess or speculate.
8. If you do speak to the government investigator, take time after the interview to make complete and thorough notes about everything that occurred (e.g., any statements the investigator made, the questions asked, and the answers you gave). Also, try to copy anything that may be taken under subpoena. This information will be invaluable to your counsel in determining the subject matter of the investigation and preparing a response to follow up government action.
9. If you decline to speak with the government investigator, you may receive a subpoena to appear before a grand jury or a Board subpoena to appear for an interview/interrogation. If you are served with a subpoena, it is strongly urged that you contact competent legal counsel for advice concerning your rights and responsibilities.
10. If it appears likely that a government investigator will seek to interview your employees, provide them with a memorandum prepared by counsel outlining their rights and responsibilities.