

When Things Go Sideways

Coordinating Medical Staff, HR, and Compliance During Physician Investigations

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What We'll Cover Today

<p>01 The Key Players Medical Staff, HR, Compliance — and the broader cross-functional team</p>	<p>02 Legal & Regulatory Guardrails HCQIA, Washington law, Stark, False Claims Act, and HIPAA</p>	<p>03 Where It Breaks Down Misalignment, privilege waiver, and coordination failures</p>
<p>04 Real-World Case Studies What goes wrong — and why — in actual investigations</p>	<p>05 Practical Strategies Tools for coordination, defensibility, and alignment</p>	

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The Three Key Players

<p>Medical Staff Leadership Clinical quality, peer review, privileging. Focus: Patient safety.</p>	<p>Human Resources Employment law, conduct, discipline. Focus: Risk mitigation.</p>
<p>Compliance Regulatory risk, reporting, billing integrity. Focus: Organizational integrity.</p>	

Each group is **"right" from its own perspective** — misalignment creates organizational risk. Effective investigations require **coordination across all three**.

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Other Departments Involved in Investigations

Clinical & Patient Safety

- Risk Management (adverse events, liability)
- Quality / Patient Safety (clinical outcomes)

Regulatory & Financial

- Internal Audit (billing, controls)
- Finance / Revenue Cycle (coding, reimbursement)
- Privacy / HIPAA (PHI, breaches)

Operational & Support

- IT / Security (access, cybersecurity)
- Legal (litigation, privilege)
- Security / Facilities (workplace incidents)
- Ethics / Corporate Integrity (conduct, conflicts)

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Investigations = Risk Management

Patient Safety

Clinical consequences that cannot be ignored

Legal Exposure

Employment claims, due process challenges

Regulatory Risk

Reporting obligations, audits, licensing boards

Reputation



Organizational credibility at stake

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Inconsistent processes + inconsistent outcomes + compounding risk

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Washington Legal Framework

RCW 70.41 – Hospital Licensing Law

Good-faith quality improvement review with proper procedure can qualify for immunity.

RCW 49.52 – Wrongful Discharge Act

Protects employees who report safety concerns from retaliation.

Peer Review Privilege

Peer review materials are protected, but employment records are not.

Peer Review vs. Employment Decisions

Keep the processes separate, documented, and aligned.

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Adverse actions can trigger NPDB reporting and audits.

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HCQIA: Protecting Those Who Do the Work

Federal Immunity Law
Protects hospitals, peer review bodies, committee members and staff, and witnesses who provide information — all from damages liability.

Not About Confidentiality
HCQIA does not protect confidentiality. That's peer review privilege — a separate, state-law protection.

Purpose
Encourages candid evaluation and supports patient safety decisions by removing the threat of damages suits against reviewers.

Bottom Line
Protects the reviewers, not the records.




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HCQIA and Coordinating Investigations

Immunity Rests on the Four Prongs
Strong immunity depends on meeting § 1112(a)'s standards: reasonable belief, reasonable effort to obtain facts, adequate notice and hearing, and reasonable belief the action was warranted. Good coordination makes each prong easier to prove.

What Makes the Presumption Easier to Rebut
Siloed investigations across peer review, credentialing, QI, and HR; inconsistent facts, unclear authority; procedural gaps — all give a challenging physician evidence to argue the process was not objectively reasonable.

⚠ Structure and consistency don't create immunity — they make it defensible.



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The HCQIA Immunity Test

For immunity from damages, a professional review action must be taken:


Reasonable Belief
In the reasonable belief the action furthers quality health care

Reasonable Effort
After a reasonable effort to obtain the facts

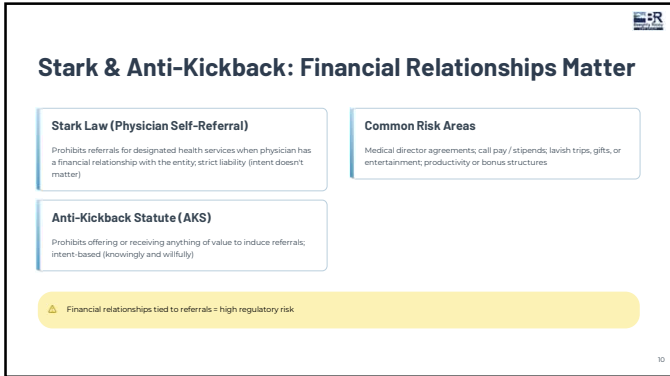
Adequate Notice & Hearing
Or other procedures fair to the physician under the circumstances

Warranted Action
In the reasonable belief the action was warranted by the facts

🔗 Meet all four → presumptive immunity from damages



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Stark & Anti-Kickback: Financial Relationships Matter

Stark Law (Physician Self-Referral)
Prohibits referrals for designated health services when physician has a financial relationship with the entity; strict liability (intent doesn't matter)

Common Risk Areas
Medical director agreements, call pay / stipends, lavish trips, gifts, or entertainment; productivity or bonus structures

Anti-Kickback Statute (AKS)
Prohibits offering or receiving anything of value to induce referrals; intent-based (knowingly and willfully)

⚠ Financial relationships tied to referrals = high regulatory risk

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False Claims Act: What Triggers Liability

Federal law banning false or fraudulent claims for government payment, including Medicare/Medicaid

Billing Violations
No service, upcoding, or wrong coding

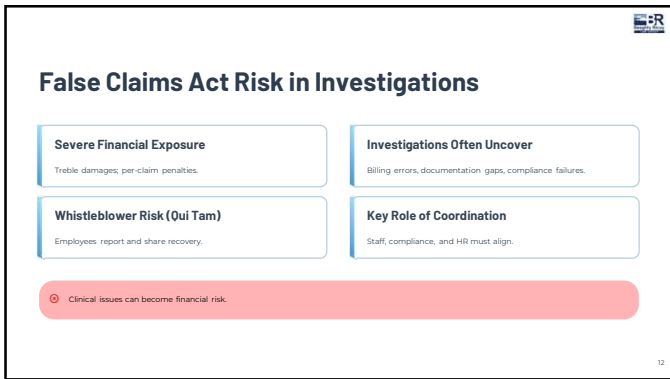
Unnecessary Services
Billing medically unnecessary procedures

False Certifications
Incorrect compliance attestations, like Stark or Anti-Kickback

Applies to **hospitals, providers, and organizations** can result from: **Intentional misconduct or reckless disregard**

⚠ If payment depends on inaccurate info, risk is high

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False Claims Act Risk in Investigations

Severe Financial Exposure
Trebble damages; per-claim penalties

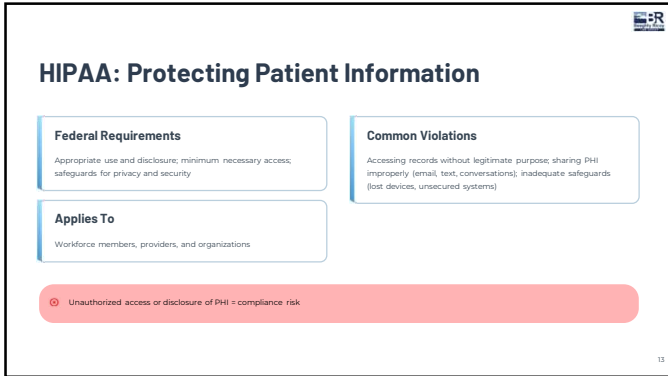
Investigations Often Uncover
Billing errors, documentation gaps, compliance failures

Whistleblower Risk (Qui Tam)
Employees report and share recovery

Key Role of Coordination
Staff, compliance, and HR must align

⚠ Clinical issues can become financial risk

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HIPAA: Protecting Patient Information

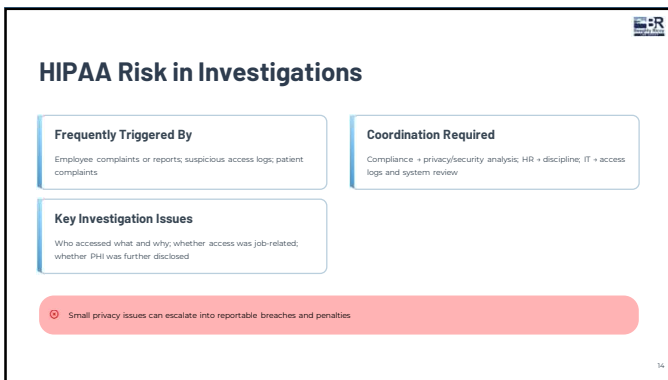
Federal Requirements
Appropriate use and disclosure; minimum necessary access; safeguards for privacy and security

Common Violations
Accessing records without legitimate purpose; sharing PHI improperly (email, text, conversations); inadequate safeguards (lost devices, unsecured systems)

Applies To
Workforce members, providers, and organizations

Unauthorized access or disclosure of PHI = compliance risk

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HIPAA Risk in Investigations


Frequently Triggered By
Employee complaints or reports; suspicious access logs; patient complaints

Coordination Required
Compliance + privacy/security analysis; HR + discipline; IT + access logs and system review

Key Investigation Issues
Who accessed what and why; whether access was job-related; whether PHI was further disclosed

Small privacy issues can escalate into reportable breaches and penalties

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Case Study: A Physician Investigation Goes Sideways


A clinical concern combined with a behavioral issue triggers parallel departmental responses — without coordination.

Initial Response
How should the organization respond first?

Who Leads?
Which function takes ownership — and why?

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Case Study: Key Decision Points

At each inflection point, coordination determines the outcome.

What Gets Communicated?
To whom, and in what form?

Where Are the Risks?
Identify exposure points at this early stage

☐ Structure applied early changes the outcome — reducing risk, improving defensibility, and protecting all parties.

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Real Case

This case study illustrates the critical intersection of peer review, employment law, and fraud reporting within a healthcare system, highlighting the severe consequences of misalignment.

The Setup
Dr. A, a surgeon, identified Dr. B's severe surgical errors. Medical Center rejected termination, only suspended Dr. B after another botched surgery. Dr. B resigned without NPDB reporting.

The Fraud Discovery
Dr. A then reviewed Dr. C, who was allegedly billing the federal government for surgeries not performed. Examples include fabricated diagnoses and unnecessary procedures. Estimated total fraud: tens of millions of dollars.

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Real Case: Reporting & Retaliation

The Reporting & Investigation
Dr. A reports concerns to Medical Center; assured action would be taken. Dr. A escalates with explicit language ("fraud," "malpractice," "harm"). Medical Center's investigation found no evidence of false billing. Dr. C voluntarily suspended, then resigned without NPDB reporting.

The Retaliation
Medical Center allegedly retaliated against Dr. A: involuntarily restricted practice privileges; removed from key committees; required peer review of past work without pay; subjected to excessive call and unpaid leave; forced resignation (120-day notice). After resignation: refused retention bonuses, underpaid wages, withheld accrued PTO.

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Real Case: Legal Exposure & Coordination Failures

The Legal Claims

- False Claims Act violation (31 U.S.C. § 3729) — federal fraud
- False Claims Act retaliation (31 U.S.C. § 3732)
- Medicaid Fraud False Claims Act violation (RCW 74.66.020)
- Medicaid Fraud False Claims Act retaliation (RCW 74.66.090)
- Wrongful wage withholding (RCW 49.52.050)

The Coordination Failures

- Medical Staff may not have acted on initial peer review findings (Dr. B)
- HR/Compliance may not have coordinated with Medical Staff on Dr. C investigation
- Investigation to found no fraud, but system ultimately settled a false claims act
- Retaliation was swift and severe
- Wage withholding compounded the retaliation

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Four Ways Misalignment Creates Exposure

Privilege Waiver Scenarios

Sharing peer review findings with HR without gatekeeping; privileged conclusions in employment files; HR in peer review meetings; combined documentation.

RCW 49.52 Violations

Retaliation against physicians reporting safety concerns; failure to follow bylaws; inconsistent treatment; adverse action without notice or response opportunity.

Due Process Failures Under RCW 70.41

Peer review not following medical staff bylaws; predetermined outcomes; no opportunity to be heard; inadequate clinical documentation.

The Compounding Risk

Lost privilege + employment law violation + due process failure = maximum exposure. Each department's failure amplifies the others. Coordination prevents all three.

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Where Roles Overlap – and Conflict

Each department operates under different rules and different priorities — with no built-in mechanism for alignment.

Fragmented Silos

Departments act independently on the same incident.

Different Processes

Competing priorities lead to inconsistent decisions.

Inconsistent Outcomes

Friction and legal exposure emerge at the overlap.


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What Actually Goes Wrong

Failures happen at the interfaces between departments, not within them.

- Parallel Investigations**
Different teams reach different conclusions.
- Inconsistent Messaging**
People hear conflicting directions.
- No Clear Ownership**
Responsibility keeps shifting.
- Misaligned Documentation**
Records conflict and weaken defense.




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Moving from Chaos to Coordination

Every investigation needs a clear lead.

- Design It**
Assign a lead function before action begins
- Structure It**
Clarify roles and accountability across all three functions
- Involve Legal Early**
Define scope, privilege, and structure upfront
- Communicate Deliberately**
Consistent, documented messaging throughout



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Legal & Regulatory Guardrails

Due Process Principles

- Consistent Treatment**
Fair, equitable process for all physicians
- Follow Bylaws**
Medical staff procedures must be honored
- Notice & Response**
Opportunity to be heard before action
- Avoid Arbitrariness**
Decisions must be documented and defensible



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Key Takeaways & Final Thoughts

Failures Occur at the Interfaces
Breakdowns happen **between** departments. Coordination must deliberately bridge these gaps.

Alignment Must Be Designed
It does not happen naturally. Without intentional structure, misalignment is the default.

Coordination Is Risk Management
Reduces legal exposure, supports fairness, and protects the organization, the physician, and the process.

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Questions & Discussion

Bring your real-world challenges — let's work through them together.

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