



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 52.12, Government Investigations

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) Operating Policy and Procedure (HSCEP OP) is to establish an appropriate response process in the event TTUHSC El Paso becomes the subject of a federal or state government investigation.

REVIEW: This HSCEP OP will be reviewed in October each odd-numbered year (ONY) by the institutional compliance officer and senior associate general counsel, with recommendations for revisions forwarded to the Institutional Compliance Committee.

POLICY/PROCEDURE:

I. General Background

Academic institutions, especially those that conduct federally funded research and provide patient care, have been the subject of government investigations by state and/or federal agencies related to allegations of illegal activity, fraud, waste and abuse. These agencies include, but are not limited to, the Texas Attorney General's Office, Texas Health and Human Services Commission (HHSC), the Department of Justice, Federal Bureau of Investigation, Department of Health and Human Services Office of Inspector General, Center for Medicare and Medicaid Services (CMS), Medicare Contractors (i.e., Novitas), Department of Transportation and the Environmental Protection Agency. This policy DOES NOT APPLY to audits or investigations conducted by the State Auditor's Office, or audits conducted within the course of a federal or state agency's routine and normal business operations (e.g., Medicare Recovery Audit Contractor audits).

Representatives from government agencies conducting an investigation may arrive unannounced at TTUHSC El Paso facilities or clinics or at a TTUHSC El Paso employee's home to conduct interviews or obtain documents. In the event of a government investigation, it is important that any TTUHSC El Paso employee respond appropriately and in accordance with this HSCEP OP to protect the interests of TTUHSC El Paso, its students and patients, while fully cooperating with the investigation.

II. Administrative Issues

A. Role of the Texas Tech University System Office of General Counsel

- 1) Privileged Communications. Clearly mark any documents (including e-mails) involving opinions or advice from the Office of General Counsel as "Confidential, Attorney-Client Privilege." Clearly mark any documents created at the request of the Office of General Counsel as "Confidential, Attorney Work Product". These documents are confidential and privileged and should be maintained in a separate paper and/or electronic file entitled "Confidential Attorney-Client Privileged Communications". An employee must not distribute privileged documents to or from the Office of General Counsel unless otherwise directed by the Office of General Counsel.
- 2) The Office of General Counsel provides legal services to the Texas Tech University System (TTU System) and its components, which includes TTUHSC El Paso. Its responsibility as in-house counsel is to advise the university and its

representatives and employees acting in their official capacities. However, the Office of General Counsel does not represent an individual employee acting outside the course and scope of his/her employment. For purposes of this HSCEP OP, an employee whose conduct violates this or any other TTU System or TTUHSC El Paso policy would not be considered to be acting within the course and scope of his/her employment.

- B. A new TTUHSC El Paso employee shall receive orientation on this policy and a copy of Attachment A, "Dealing with Government Investigations" so that he/she has a general understanding of his/her obligation when confronted with a government investigation.
- C. *Media Contacts.* A TTUHSC El Paso employee contacted by the media (newspaper, radio or television) shall direct the media to the TTUHSC El Paso Office of Communications and Marketing.

III. Response to Government Contacts and Searches

- A. Each school and department shall designate an individual to serve as the primary contact ("designee") with the TTU System Office of General Counsel in the event of an actual or perceived government investigation. The designee shall be a management level employee who can carry out instructions from legal counsel in those instances where legal counsel is not immediately available on-site during an investigation.
- B. When federal or state agents contact a TTUHSC El Paso employee at work or at home and requests information regarding TTUHSC El Paso or an employee's activities at TTUHSC El Paso, the employee must immediately contact his/her immediate supervisor and/or the Office of General Counsel. In all cases, the Office of General Counsel must be contacted as soon as possible.

OFFICE OF GENERAL COUNSEL CONTACT INFORMATION

El Paso: (915) 215-4561 or (915) 215-4556

- C. An employee shall not give permission to search TTUHSC El Paso property or provide TTUHSC El Paso documents. If the agents have a search warrant, refer to and follow the procedures outlined in paragraph 5 below. If the agents have a subpoena (other than for medical records related to malpractice litigation or Texas Medical Board matters), an employee shall follow the procedures outlined in paragraph 6 below.
- D. Any requests by government agents for documents or computer passwords must be in writing and shall be directed to the Office of General Counsel. Do NOT give your username or password to a government agent unless instructed to do so by the Office of General Counsel.

IV. Government Interviews of TTUHSC El Paso Employees

- A. Government agents may ask to speak with a TTUHSC El Paso employee related to an investigation. A TTUHSC El Paso employee may request that a member of the Office of General Counsel be present during an interview. A TTUHSC El Paso employee is not required to speak to government agents and can decline to be interviewed.
- B. A TTUHSC El Paso employee who agrees to an interview with government agents should be truthful and provide only specific information known to be factual, but not information based on conjecture, speculation or gossip. The government can use any statements against TTUHSC El Paso and/or the employee. A TTUHSC El Paso employee is entitled to have someone present during the interview and have the right to

have an attorney present. A TTUHSC El Paso employee shall immediately notify the Office of General Counsel when contacted by agents and/or if they agree to an interview.

- C. A TTUHSC El Paso employee shall NOT be retaliated against or otherwise be subject to discipline for consenting to an interview with government agents. However, TTUHSC El Paso retains the right to discipline any TTUHSC El Paso employee who provides false information or violates this or any other TTUHSC El Paso policies or TTU System *Regents' Rules*.
- D. If, during the course of an interview, a TTUHSC El Paso employee is asked to provide copies of documents or medical records, the employee must immediately direct the agents to the Office of General Counsel for further assistance.

V. Searches and Search Warrants

- A. A "search" occurs any time government agents or representatives enter TTUHSC El Paso-owned or leased premises and begins to look for documents or items, or ask questions. A search cannot be conducted legally without a valid search warrant. A valid search warrant must be issued by a Texas or federal court, indicate the exact location where the search is to be conducted and include a current date.
- B. Until someone from the Office of General Counsel is on-site or available by telephone, the school or department designee must oversee any search, using this policy and Attachment "A" as a resource. The designee should object, verbally and in writing if the warrant is not valid or the search occurs beyond the areas outlined in the warrant. The designee or an employee shall object if the agents take documents marked "Confidential, Attorney-Client" or "Confidential, Attorney Work Product". The designee or an employee shall list the documents taken and immediately notify the Office of General Counsel. If possible, a photocopy of documents taken should be made.
- C. Any employee is to be courteous and cooperative during any search. Should agents request that an employee consent to the search or sign documents, the employee shall immediately refer the matter to the Office of General Counsel. In all cases, however, if the employee has a reasonable belief that a warrant is not valid, or that agents are searching areas beyond those listed in the warrant, the employee should make known and document an objection. **THE EMPLOYEE SHOULD ALLOW THE SEARCH TO PROCEED AND NOT INTERFERE OR OBSTRUCT THE SEARCH.**

VI. Subpoenas and Other Investigative Documents

Subpoenas are issued by a court (or sometimes by a government agency, such as the Texas Medical Board). Often, subpoenas require the production of documents, but do not include authority to search the premises. The Office of General Counsel must be contacted if a TTUHSC El Paso employee receives a subpoena. The Office of General Counsel or its designee shall determine the validity of the subpoena and coordinate any responses.

VII. Right to Change Policy

TTUHSC El Paso reserves the right to interpret, change, modify, amend or rescind this policy in whole or in part at any time without the consent of the workforce, but may seek input, where appropriate.