
Latin America Healthcare Compliance Certification Program

Conducting an Internal Investigation

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Hypothetical Part 1

- Alejandra, a Regional Sales Manager for BigPharm's Argentina subsidiary, makes a compliance hotline report about one her reports, a Sales Representative, Massimo.
- Alejandra says she recently learned that Massimo used ARS 100,000 from the local marketing budget to sponsor a local football club. When Alejandra learned about this, she called Massimo and asked about the sponsorship.
- Massimo told her that the director of a local hospital that is part of Massimo's territory was on the board of the football club. During a recent visit to the hospital, the director told Massimo that he thought it would be a "good thing for BigPharm" if they sponsored the football club.
- Although a ARS 100,000 payment required Alejandra's approval, Massimo did not ask her to approve the sponsorship. Instead, he made four payments of ARS 25,000 each to the local football club. BigPharm's policies did not require Alejandra to sign off on her sales representatives' marketing expenditures if they were below ARS 30,000.
- The payments were approved by the local controller, and recorded in the Argentinian subsidiary's marketing expense account.
- Massimo told Alejandra that "we do this kind of thing all the time," and that he views it as "being a good corporate citizen." He also said that he had built a good relationship with the hospital director and that they often have dinner and that Massimo recently hosted the director and his wife for a weekend at his vacation house.

Planning

- Triage process
 - Level of risk / priority
- The Investigative team (independent / adequately skilled)
 - Who leads? Privilege?
 - Relevant company personnel involvement
 - External to the company – external counsel, forensic accountants, other specialists
- Document preservation
 - Preservation memos
 - Data holds
 - Collections and data platforms
- Communications planning (internal and external)
 - Management, board, auditors, shareholders / investors, insurers?
- Define the scope of the investigation
 - Prove and disprove theories
 - Written investigative plan
 - Flexibility due to changes or new findings
 - How much is too much? Not enough?
- What is the schedule and time frame
 - What should happen first?

Analysis

■ Document collection

- Starts with data request but largely depends on matters involved
- Knowing where the data is in a global organization and what data privacy and/or labor laws may affect the availability of information as well as the portability
- Hard copy documents – on-site / off-site, third party data
- Electronic documents - Computers, servers, mobile devices, chat sessions, text messages, back-up systems, etc.

■ Analyze information gathered

- Time lines
- Outlines
- Open questions

■ Forensic analysis

- Understand process and internal controls
- Review policies and procedures
- Identification of specific transactions / approvals / signatories
- Use of analytics (trends / outliers / etc.)

■ Ring fencing

- Identify responsibilities and tasks
- Other similar payments (payments below the ARS 30,000 limit, other payments related to local hospital / to the football club, other payments authorized by Massimo, etc.)

Hypothetical Part 2

- You schedule an interview with Massimo.
- You plan to give him an *Upjohn* warning, in which you tell him that you represent the company, not any individual, and that whatever information he shares with you will be shared with the company and could be disclosed to someone outside the company, such as a prosecutor.
- When you speak with the local country leader, he says he does not think you should give this warning because Massimo is “scared” and will not be inclined to be honest and open.

Conducting Interviews

■ Planning

- Objective(s)?
- Who should perform the interview? How many people?
- What is needed when interview is complete?
- Outlines for interviewees to synthesize analysis and facts
 - What needs to be confirmed?
 - What needs to be known?
- Use of exhibits and when should they be used?

■ Logistics

- Where?
- By whom?

■ Conduct the interview

- Language
- Use of closed and open ended questions
- Technique
- Confirm truths or confirm lies
- Document the interview

■ Reporting

Hypothetical Part 3

- You conduct the interview with Massimo.
- Massimo explains that the director of the local state-run hospital is the head of the committee that makes purchasing decisions for the hospital.
- Massimo understood that the director would look more favorably on BigPharm products if the company made a donation to sponsor the football club.
- Massimo also thought that sponsoring the club was a good way to market BigPharm's brand to the general public because the football team is very popular in the town.
- Massimo explains that he has become friendly with the director over the years he has spent promoting BigPharm's products in this territory. Massimo has dinner with the director once every other week. Massimo usually pays for these dinners, which are not fancy and typically cost less than ARS 1,000 per person.
- Massimo says that he invited the director and his wife to Massimo's vacation home because they are friends, and that Massimo frequently hosts his friends at his home.

Hypothetical Part 4

- You also conduct an interview with Alejandra.
- Alejandra explains that BigPharm was competing for a two-year tender at the director's hospital during the time when Massimo hosted the director and his wife at Massimo's vacation home.
- According to Alejandra, another sales rep told her that Massimo invited the director and his wife for a weekend at his vacation home after Massimo learned that a competitor had paid for the director and his wife to attend a medical congress in Paris and stayed for a few extra days after the conference ended.
- Alejandra explains that the other sales rep told him that Massimo had used some of his marketing budget to pay for train tickets for the director and his wife to travel to Massimo's vacation home, referring to the tickets as "promotional expenses."
- The other sales rep recently left BigPharm to join another company and is unavailable for an interview.

What can go wrong?

- Wrong tone from the top (adequate internal communication / adequate actions)
- New litigation / labor Lawsuit / etc. (prevent / react)
- Government investigation (prepare)