McLaren HEALTH CARE		Policy Title:	Responding to Government Official Visits - Search Warrants and Subpoenas
Effective Date:	April 1, 2004	**Policy Number:**	MHC_CC 0104
Review Date:	May 22, 2014	**Section:**	Compliance
Revised Date:	March 7, 2023	**Oversight Level:**	Corporate
Administrative Responsibility:	VP of Compliance/Subsidiary Compliance Officers		

1. Purpose

To outline the steps to be taken in response to any unannounced visits of government officials who may issue a search warrant and/or a subpoena.

2. Scope

2.1. All employees and contracted agents of McLaren Health Care ("MHC") and its wholly owned subsidiaries; and any other entity or organization in which MHC or an MHC subsidiary owns a direct or indirect equity interest of 50% or more.

2.2. Exclusions from Scope: This policy excludes routine subpoenas for clinical records, or personal testimony and documents for medical malpractice, Workers' Compensation, or other civil litigation and routine requests by local law enforcement officials for laboratory tests, in the conduct of a criminal investigation of a patient.

3. Definitions

3.1. A **Search Warrant** is a written document giving legal authorization to specific law enforcement officers to search a specified area and to seize specific material. To be valid, a search warrant must:

3.1.1. Describe the material that can be seized and the places that may be searched;

3.1.2. Be signed by, or on behalf of, a judge or magistrate with jurisdiction over the area to be searched.

3.2. A **Subpoena** is an official written demand for testimony or the disclosure of documents or other information. All subpoenas are enforceable in the U.S. District Court. There are two types of subpoenas:

3.2.1. Those by the Federal Grand Jury (FGJ) as a part of a criminal investigation; and

3.2.2. Administrative subpoenas issued by law enforcement or administrative agencies in furtherance of either a criminal or a civil investigation, except as excluded above.

4. Policy

4.1. It is the policy of MHC to cooperate with any governmental agency in the execution of a search warrant and/or subpoena within the bounds of the law. MHC also recognizes that it is not legally required to relinquish all rights of ownership, or provide access to objects and areas not defined in the search warrant. MHC wishes to exercise and preserve all rights afforded by the search warrant and subpoena processes.

4.2. A government agent presenting a search warrant or serving a subpoena is acting as an agent of a grand jury or conducting a government investigation, and any interference could be construed as obstruction of justice.

4.2.1. MHC workforce members shall not impede efforts to deliver a search warrant or subpoena.

4.2.2. Employees will remain courteous and professional when dealing with investigators or agents.

5. Procedure

5.1. If any department or individual within MHC receives a search warrant and/or a subpoena, the following steps shall be taken.

5.1.1. Cooperate with the agents. The highest-ranking employee within the department should act as the contact person until one of the individuals identified below arrives. Immediately contact the following individuals:

5.1.1.1. The subsidiary Compliance Officer;

5.1.1.2. The President/CEO or Administrator on Call (the subsidiary Compliance Officer and CEO are collectively referred to as “Compliance Representative”) will contact legal counsel on behalf of MHC or the involved subsidiary organization;

5.1.1.3. The MHC Corporate Vice President of Compliance; notify of the investigation and provide updates as the investigation progresses;

5.1.1.4. The MHC Corporate Vice President of Insurance/Risk Management.

5.1.2. In the event a subpoena is issued, the Compliance Representative will direct the issuer to any individual named in the subpoena or to the person occupying a named position (e.g. Director of Finance). No other information or discussion should be offered to the government representative. No one should submit to any form of questioning or interviewing at the time a subpoena is served.

5.1.2.1. Whoever accepts the service of the subpoena should note all information provided by the investigators. Once the subpoena has been served, no further action should be taken until direction is received from legal counsel.

5.1.2.2. The subpoena must immediately be delivered to appropriate senior management who must then notify legal counsel of the receipt of the subpoena and any information obtained from investigators.

5.1.2.3. Legal counsel must be immediately notified if the subpoena is a "forthwith" subpoena commanding an immediate appearance of delivery of document and records to a federal grand jury.

5.1.3. In the event a search warrant is issued, the subsidiary Compliance Representative will request to see the search warrant, identification from the agent in charge of executing the search warrant and the affidavit of probable cause (information submitted to the court in order to obtain the warrant), if available. Do not attempt to photocopy the credentials of an agent; it is a violation of federal law. The subsidiary Compliance Representative will review and copy the search warrant for the following:

5.1.3.1. Determine the specific areas or locations it covers;

5.1.3.2. Ensure that it is being executed during the hours indicated on the document;

5.1.3.3. Ensure that it has not expired; and

5.1.3.4. Ensure that it is signed by a judge. Be prepared to fax a copy of the search warrant to legal counsel. The Compliance Representative will advise regarding whether the search warrant should be faxed to legal counsel and the number the information should be faxed to. Faxing the information to legal counsel should in no way interfere or obstruct the execution of the search warrant.

5.1.4. The subsidiary Compliance Representative will immediately contact the Corporate Director of Labor and Employment Law to direct response to all labor and employment related investigations (See Appendix 7.1).

5.1.5. It is McLaren's policy to cooperate fully with the agents. It is absolutely critical that no employees interfere with the agents in any way during their search or prevent them from accessing anything listed in the search warrant. To do so could constitute obstruction of justice. Let the agents know that you are aiding them only to comply with the warrant and to minimize disruption to the hospital.

5.1.6. Employees must never alter, remove, or destroy permanent documents or records of MHC. All records are subject to the departmental or organizational retention guidelines and may be disposed of only in accordance with those guidelines. Once there has been notice of an investigation, the destruction portion of any policy on record retention is suspended. The Compliance Officer will send a notice to all involved parties, as needed, to notify them that an investigation in underway and any destruction under the current MHC retention policy should be suspended.

5.1.7. The investigating officer(s) will be confined to the areas where the records specified in the search warrant are located. The investigating officers will be given access to only those records, items and areas specified in the warrant. If information is requested that is not immediately available (e.g., access to electronic financial or other records), notify the agents regarding the steps that must be taken to get them access to the information covered in the search warrant. This may include contacting IT to set up access, obtaining records from offsite storage, etc. Notify the officer(s) that actions are being taken as quickly as possible to get them the documents that they are authorized to receive.

5.1.8. Privileged documents are those that were created under certain protections, either as the result of attorney-client privilege, peer review protections, or others. Files that are privileged or protected should be labeled as such. If the agent(s) request to take files that are labeled as privileged or protected, respectfully object to the search or seizure of those documents.

5.1.8.1. Inform agent that the documents are privileged and you are objecting to their search and seizure of the documents.

5.1.8.2. Ask agent if you can agree to a way to keep the information confidential pending a resolution to the objections. For example, ask if the privileged documents can be kept separate from the other files, in a sealed envelope, until the court has made a decision.

5.1.9. Depending on the nature and magnitude of the investigation, the subsidiary Compliance Representative, in conjunction with appropriate department directors, may discharge all non-essential personnel for the day. Personnel shall be instructed that absent a subpoena directed at each individual, that they are under no obligation to answer any questions asked by the investigating officer(s).

5.1.10. The subsidiary Compliance Representative shall remain with the investigating officer/agent at all times. Agents may ask employees questions during their search. Employees have the right to either talk to the agents or not talk to them. We must answer questions to the extent that is necessary to comply with the search warrant, such as the location of documents (or other questions wholly unrelated to the search, location of copying machines, coffee machine, lavatories, etc.). Employees have the right to consult with legal counsel when making the decision to have counsel present if they decide to talk to the agents.

5.1.11. Should the investigating agent attempt to enter unauthorized areas or search or review documents not specified in the warrant, the subsidiary Compliance Representative shall strongly and clearly object to the investigating agent's request and ask that they wait until legal counsel arrives. If the investigating agent ignores the objections, the subsidiary Compliance Representative shall continue to object throughout the investigating agent's review of the objected to material without interfering with the actions of the agent. The Compliance Officer/Representative

should carefully document the items that he or she objected to and the nature and extent of all objections.

5.1.12. The subsidiary Compliance Representative shall closely monitor the activity of the investigating agent. If there are multiple agents, each Compliance Representative should aid in assuring complete documentation of the following:

5.1.12.1. The investigating agent(s) should not remain alone but should be accompanied at all times by the Compliance Representative(s);

5.1.12.2. The investigating agent's activity should be closely observed and notes made of the items and areas searched, what they look at, to whom they talk, what questions they ask and the items seized;

5.1.12.3. List the names and positions of all the investigators and verify the list with the lead agent;

5.1.12.4. The Compliance Representative shall observe the investigating agent's search only, but shall not in any way impede, assist, explain or otherwise answer questions posed by the investigating agents; and

5.1.12.5. If the Compliance Representative is ordered to leave by an investigator, the Compliance Representative must contact the lead investigator. A person should only be ordered to move if they are in the way, not to avoid being observed. Do not provoke a confrontation with an agent.

5.1.13. Agents may take original documents. The Compliance Representative shall advise the agents about what material is required in order to allow the organization and Compliance Officer to carry out its business following the departure of the investigating agents. The Compliance Representative should request to make copies of documents or files that are being taken. The agent is not required to allow copies to be made and may refuse to do so. Try to obtain the investigating agent's permission to:

5.1.13.1. Make copies of all documents essential to the continued conduct of business prior to turning over the material to the investigating agent;

5.1.13.2. If computer files are requested as a part of the search, then copy those files prior to turning them over to the investigating agent; and

5.1.13.3. Copy any other material essential to the continued conduct of the business.

5.1.14. The Compliance Representative shall request from the investigating agent a copy of their inventory that they have created pursuant to the search and seizure.

5.1.15. If the agents are looking for a document housed in a place other than those specific places listed on the warrant, let the agents know that MHC will be happy to

comply once their search warrant has been updated. While you should never block access to any area, you do not need to give permission to search an area that is not listed on the warrant.

5.1.16. Following the investigating agent's departure from the premises, the subsidiary Compliance Representative will forward the inventory of items seized to the Compliance Officer so Administration and Legal Counsel may formulate a plan for debriefing any employees and other officials as soon as conveniently possible.

6. References

6.1. The Healthcare Compliance Professional's Guide to Policies and Procedures, HCPro, Inc., Copyright 2008

7. Appendix

7.1. [Removed]

7.2. Quick Reference Guide on Responding to Government Investigations, Subpoenas and Search Warrant

Approvals:

Corporate Compliance Committee: March 18, 2004; July 21, 2005; October 8, 2008, November 17, 2011, May 22, 2014, April 25, 2016, March 12, 2018, March 9, 2020, March 7, 2023

Signature on File
Gregory R. Lane
Executive VP and Chief Administrative Officer

March 7, 2023
Date

Previous Revisions: August 1, 2005, October 8, 2008

Supersedes Policy: Corporate and subsidiary versions of CC_0104, Responding to Search Warrants, August 1, 2005

QUICK REFERENCE GUIDE FOR RESPONDING TO A SEARCH WARRANT or SUBPOENA

1. Check the agents ID and look at the Search Warrant/Subpoena

2. Politely tell the agent who presents the document that you wish to call the Compliance Officer or Administrator and ask if they would wait until the individual arrives. (Asking does not mean they will wait, but you should ask).

3. Contact the subsidiary Compliance Officer immediately, if he/she is not available, contact the administrator on-call. For labor related issues, the Corporate Director of Labor and Employment Law should also be contacted.

4. If the agent will not wait until the individual arrives take them to the area designated on the search warrant. Answer questions asked by the agent, but do not volunteer additional information.

5. Meanwhile stop working if possible, try to stay calm, and keep your hands in clear sight. Do not conceal, destroy or alter any documents.

6. Do not interfere with the search or it may be viewed as obstruction of justice.

7. Law enforcement officials have the right to destroy property to execute the warrant.

8. **You are not obligated to talk with an investigator or grant an interview unless subpoenaed. It is your choice.** MHC will provide an attorney for you if the investigation is related to your employment at MHC and/or a subsidiary.

9. If you choose not to talk with an investigator, politely indicate that you would like to speak to an attorney before answering any questions.

10. If you choose to speak to an investigator without an attorney, tell the truth. Avoid making speculations or guesses. Simple statements that seem harmless at this time may be used as evidence.

11. Some employees may be asked to assist in the search, others may be sent home or to other areas, if possible. If you are sent home provide the supervisor with a telephone number where you may be reached.

12. Do not discuss the warrant with media, friends, family, or co-workers because you may become a witness. You don't know who is listening to your conversations.