NELSON HARDIMAN
HEALTHCARE LAWYERS

Client Alert: What To Do If The FBI Comes Knocking

In light of the recent raids on addiction treatment facilities in Southern California, and the crackdown on unethical practices by addiction treatment facility operators in the state, every treatment facility should be prepared to respond if served with a search warrant. The following are the basic principles that should govern your response to the presentation of a search warrant at any of your facilities.

What is a search warrant?

A search warrant is issued by a judicial official (a judge or magistrate) after an affidavit of 'probable cause' has been presented to that official by law enforcement. Based on the affidavit, the judicial official has found probable cause to believe that a crime has been committed and that evidence of the crime will be found within the premises proposed to be searched.

What are your rights?

The Fourth Amendment to the US Constitution protects US citizens, including organizations, from unreasonable search and seizures. You should know that the test of whether a search or seizure was reasonable, or supported by reasonable probable cause, is never tested or evaluated while law enforcement is on your door step. Those are issues that will be handled by counsel after the fact. Your obligation at the moment law enforcement serves the search warrant is to cooperate by letting them conduct what they believe is a reasonable search of the premises pursuant to the terms of the warrant.

What steps should we take when law enforcement serves the search warrant?

1. **Ask to see credentials and a copy of the warrant.** Identify the lead officer or prosecutor. Ask to see his/her credentials, and to be provided with his/her business card and a copy of the search warrant. Immediately call counsel.
2. **Do not consent to the search, but do not obstruct the officers from entering the premises and conducting the search.** If you are asked to consent to any aspect of the search, do not consent. Organizations have no obligations to consent to any aspect of a search. Law enforcement are authorized to conduct a search only if (a) they have a warrant **or** (b) if the party consents to the search. Your consent would arguably broaden the parameters of any search, and undo the ability to complain later that the warrant was issued improperly, since the search will now be conduct pursuant to consent rather than under a warrant. So just say "no" you do not consent to the search and then allow the search.
3. **Request a delay until counsel arrives.** Request that as a courtesy the officers delay initiating their search in order for you to contact counsel. (This request will likely be denied, but it is important to ask at the outset.) If law enforcement deny the request, let them proceed with the search.
4. **Request that counsel be present at any interviews.** Corporations in California have the right to have their counsel present during any *interview* with employees. Assert the request to have the company's counsel present at any interviews.
5. **Observe and document the search**. Instruct designated employees to observe the search and take notes concerning what is searched and seized. During the search, you will be asked where certain items can be found. Write down all such questions—they contain valuable information about the government's prior sources of information and possible investigative focus. Review the warrant carefully to identify the precise premises to be searched. The officers are not entitled to search any areas not specified in the warrant. If they do, inform the lead officer of your objection and take detailed notes (or photographs) of the officers' improper conduct.

6. **Communicate with employees, read them the company's policy on cooperation with law enforcement, and send home non-essential personnel.** Tell employees that law enforcement is conducting a search of the premises and that they are to stay out of the officers' way. You may send non-essential employees home. We recommend reading or handing a statement out to your employees regarding your policy. *Contact your legal counsel to help you prepare an appropriate statement.*
7. **Ask for an inventory at the conclusion of the search.** You are entitled to an inventory of all items seized. Request as detailed an inventory as practical.

What can we do to prepare for a search warrant?

Every company can help prepare itself for the execution of a search warrant by doing the following:

1. **Designate a senior manager, perhaps the corporate compliance officer, as the regulatory affairs crisis manager. This individual and other appropriate company officials should be responsible for coordinating your response to a search warrant.**
2. **The designated officer(s) should also be instructed in advance to contact an attorney immediately should a search warrant be presented at the facility.** There is no substitute for having an attorney experienced in criminal law matters respond on the premises, or speak with the searching officers by telephone, in order to appropriately assert a your rights without the negative implications that may follow if company personnel do so.
3. **Keep privileged documents (*g*., attorney-client) segregated and clearly marked as such.** Otherwise, they are likely to be seized along with other non-privileged documents.
4. **Keep, and periodically update, a duplicate set of any essential business records at an off-site Searching officers will take original documents, copies of which may not be made available during the pendency of the investigation, which can last many months.**
5. **As part of your compliance training and education program, include at least a short segment on search warrants so that all corporate officers and facility managers know what to expect if the unexpected happens.**

If you have questions about what to do if your facility is served with a search warrant you should contact Kathryn Edgerton (**kedgerton@nelsonhardiman.com**), Harry Nelson (**hnelson@nelsonhardiman.com**), and the Nelson Hardiman team for additional information.

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