



DMHAS Provider Training Investigations and Interviewing

Office of Program Integrity & Accountability
Office of Investigations

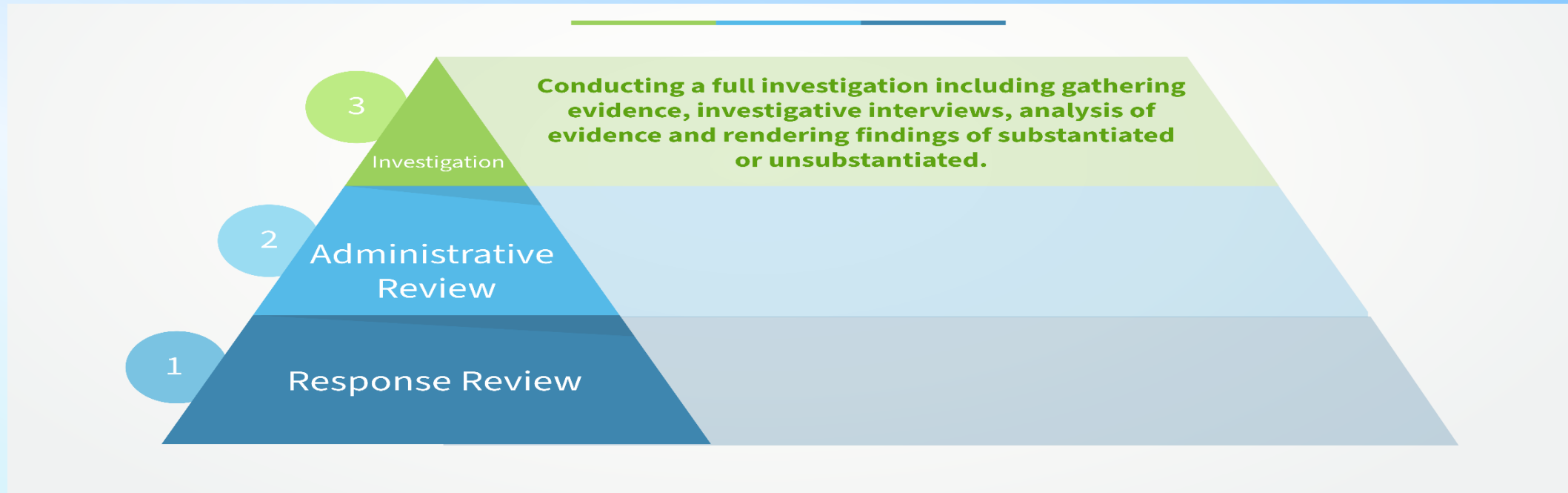
2024

Investigation Training Objectives

- Basics of every investigation
- Reviewing the Incident Report and developing Investigation Plan
- Preparing for the interview
- Interview techniques

Tier 3-Investigation

- An Investigation is the most in-depth level of review
- The steps to conduct a thorough investigation will be reviewed in the next part of the training



Office of Investigations (OI) Role

- Per the coding grid, only the most serious incident codes are routed to OI for investigation
- Provider agency should still conduct their own internal investigation, even if OI is investigating
- Per the regulations, the Provider agency needs to provide any information requested by OI (including HIPAA protected information about consumers)
- The information provided is kept confidential as part of OI's investigation
- At the end of the OI investigation, the Provider agency will receive a findings letter

Why Do We Investigate?

- To ensure the health, safety and well-being of individuals served by DMHAS and to protect individuals from abuse, neglect and exploitation
- Individuals served by DMHAS are vulnerable to mistreatment
- To establish a finding based upon preponderance of evidence
- To identify systemic concerns and mitigate risk

The Basics of Every Investigation

- Gathering basic information through interviews, physical & documentary evidence to answer the questions of:
 - ✓ Who
 - ✓ What
 - ✓ Where
 - ✓ When
 - ✓ Why
 - ✓ How
- Ongoing & thorough analysis of information/ evidence/facts gathered
- Identifying/summarizing & final analysis of information/evidence/facts to render an investigative finding (substantiated or unsubstantiated)
- Summarizing information/evidence/facts into a concise report, rooted in fact & evidence

Investigative Findings

- Based on a preponderance of evidence standard
- Preponderance of evidence means there is evidence sufficient to generate a belief that the conclusion is likely and more probable than not
- Greater weight of credible evidence (at least 51%); tipping of scales
- Does not necessarily mean the largest amount of data or the largest number of witnesses. Focus is on quality of evidence. Is there evidence to corroborate the allegation?

Review the Incident Report

- Are there any immediate safety concerns? If so, address immediately. Agency is responsible for providing protective actions to ensure individual's safety
- Is there evidence that must be immediately secured (photographs, documents, videotape)?
- Were photographs taken? If not, should they be? (physical injury)

Review the Incident Report (cont.)

- Who are the alleged victims, alleged perpetrators, identified eye-witnesses, collateral contacts
- Identify the location of the incident/allegation
- When did the alleged incident/allegation(s) reportedly occur
- How is the incident coded; what exactly are all the allegations - based on the identified codes/narrative

Review the Incident Report (cont.)

- Does the individual have a guardian (verify)? If so, were all identified guardians notified of incident
- Was law enforcement notified? If not, should they be?
- If law enforcement is involved/investigating, is agency clear to investigate?
- Criminal investigation takes precedence over civil investigation

Review the Incident Report (cont.)

- If law enforcement is investigating, ask if the agency can proceed with portions of the investigation, for example, gathering documentation, but not interviewing
- The agency will need to continue to follow up with law enforcement to obtain updates on the criminal investigation and see when the agency can proceed with portions of their investigation
- Do not wait for law enforcement to contact you, the agency needs to be proactive and contact them

Develop an Investigation Plan

- Identify all allegations. List them out
- Ensure you understand each allegation
- List all individuals who need to be interviewed. Remember that everyone who may have information may not be listed on the incident report
- Schedule interviews as soon as possible

Develop an Investigation Plan (cont.)

- Prepare for each interview by determining initial questions, group questions by topics
- Identify documentation & evidence that needs to be collected
- Obtain most recent documentation and/or documentation related to the time of incident

Visit Incident Scene

- Visit the scene as applicable as soon as possible
- For many investigations, viewing the scene of the incident/allegation can aid in understanding what occurred & may provide important evidence.
- Drawing diagrams of scene can also be helpful
- Actually seeing a physical location can assist in determining whether an explanation is or isn't plausible.

Visit Incident Scene (cont.)

- Safety factors contributing to the incident/allegation can also be identified. Viewing the scene can be used to test witness accounts
- For some investigations, taking measurements or photographs at the scene to determine proximity or distance may provide critical piece of evidence
- Viewing precisely where an individual purportedly hurt himself/herself can help determine whether the explanation for the injury is plausible

Ruling Out Neglect

- During the course of the investigation, determine whether neglect was a factor in the incident or rule out neglect
- When reviewing what happened in an incident, was the AV neglected? Should the AP have done something differently?
- Did the AV receive the care they needed? If not, why? Who is responsible?

Ruling Out Neglect (cont.)

- Suicidal ideations/attempts-Was the AV expressing suicidal ideations leading up to the suicide attempt? Was care sought for the AV in response to the ideations? If not, why?
- If AV had relevant treatment plans, were they followed? Why not?
- Was the AV seen as often as they were supposed to be? Why not?

Preparing for Interviews

- If an alleged perpetrator is going to be suspended or terminated from employment, it is best practice to interview them and obtain their written statement prior to the employment action
- Ensure you understand each allegation
- Determine questions that need to be asked and answered
- Group questions by topic. Address one allegation at a time
- Have documentary and video evidence available

Preparing for Interviews (cont.)

- If an interviewee is being untruthful, you may want to present the evidence and ask them to explain why what they are saying does not match the evidence
- It may be helpful to interview the reporter and alleged victim first
- Reporter and alleged victim can describe what happened, then you can utilize that information when interviewing other witnesses and the alleged perpetrator

Set the Room

- Ensure the interview room is private and you will not be interrupted
- Set up the chairs facing each other, with no barrier between them
- For safety purposes, always position yourself closest to the exit
- Interviewer controls the interview room, direct interviewee where to sit

Being Aware of Your Body Language

- In addition to observing the interviewee's body language, it is very important to be aware of your own body language
- Your body language can influence the interview
- Sit with open posture, facing interviewee, with no barriers in between
- Maintain eye contact, don't get buried in taking notes
- If you react strongly or shocked when someone is describing what they did to an individual, this can make the interviewee shut down

Conducting Interviews

- Purpose for interviewing may be different (alleged perpetrator vs. identified witness vs. individuals receiving services)
- When interviewing individuals receiving services, take into consideration their level of communication, allay any fears they may have in speaking with you and approach the interview with sensitivity and empathy
- Investigative interviews assist in obtaining & validating key details/information/facts

Conducting Interviews (cont.)

- People can explain why things occur - documents may not
- When interviewing the alleged victim, ensure the individual feels comfortable, safe and supported during the interview
- Determine the best time to interview: Medications may effect orientation. Someone may experience less symptoms at a certain time of day or in a certain environment due to external stimuli

Conducting Interviews (cont.)

- The person's diagnosis may determine interviewing techniques: Personality Disorders (Borderline PD, Narcissistic PD, etc.), baseline of always experiencing auditory hallucinations, responding to internal stimuli, experiencing withdrawal, etc.
- Ensure individual knows that they are not in any trouble. Be mindful that an individual with a legal status may be hesitant to speak to an investigator
- Explain that you are not with law enforcement and this is not a criminal investigation

Conducting Interviews (cont.)

- If the individual does not want to talk with you when you first attempt to interview them, ask if you could come back tomorrow and speak with them
- Make multiple attempts to interview the individual
- Document your attempts to interview in the Investigation Report interview
- If the individual has difficulty recalling information, use alternate approaches to identify the alleged perpetrator and possible witnesses

Conducting Interviews (cont.)

- Testimonial evidence may be the only way to establish a preponderance of evidence and determine a finding
- Begin each interview with an open mind
- Explain your role & responsibilities
- Inform interviewee that everything discussed in the interview must remain confidential
- Advise the individual why he/she is being interviewed

Conducting Interviews (cont.)

- Identify ground rules/procedure/expectations
- Initiate conversation/small talk to establish rapport
- Move on to baseline questions –explain you want his/her full account, in his/her own words
- Begin with simple, easy to answer questions & address one fact at a time
- Avoid using internal jargon. Avoid leading questions

Conducting Interviews (cont.)

- Encourage attempts to remember
- Not bound to accept the first answer provided
- Limit closed-ended questions that can be answered with only a yes/no
- Ask open- ended questions. (i.e. “Tell me what happened”)
- Ask questions several times in a variety of ways

Conducting Interviews (cont.)

- Categorize questions into groups about one particular issue or topic, then move on to the next issue/topic
- Ask the individual to provide information via a timeline- starting from the beginning/hours prior to incident. Ask what happened before, during and after the incident
- Ask them to point out the details of who, what, where, when, why & how
- If applicable, have them demonstrate/show you their actions, actions of others

Conducting Interviews (cont.)

- Ask the individual for details- sometimes it's details that help determine true facts
 - Describe in detail when they heard/saw. Determine degree of force: On a scale of 1 to 5 how hard was the alleged victim struck?
 - Was the alleged victim struck with open hand, closed fist, kicked, struck with object
 - Where was individual struck? Upper right inner arm, lower left outer leg, etc.
 - Describe in detail what injury looked like (size, shape, redness, bruising, bleeding, etc.)

Conducting Interviews

Alleged Perpetrator

- Ask questions aimed at answering why something happened, why something was said, why he/she did/did not do something, etc.
- Ask for and consider alternative explanations
- Ensure that you follow-up on any alternate explanations that were given
- Ensure that you ask how else this could have happened
- Ask the alleged perpetrator why people would say that he/she abused/neglected/exploited the individual

Conducting Interviews

Alleged Perpetrator (cont.)

- Ask AP if it's possible he/she hurt, didn't do something, exploited, etc., the person or if he/she *accidentally/unintentionally* did something to hurt the person, etc.
- Ask how it's possible others say they saw or heard something (if applicable)
- If there is video evidence, towards the end of the interview, review the video and ask the AP to explain their actions in the video

Conducting Interviews

Alleged Perpetrator (cont.)

- If there are photographs of an injury, show the photographs and ask the AP how the person ended up with that injury
- Specifically confront the AP with the allegation (i.e. Did you hit Mr. Jones?)
- Allow the individual time to answer
- Use silence to promote a reaction or additional information. Interviewer should strive to not break silence, wait for interviewee to answer

Conducting Interviews (cont.)

- Listen for inaccuracies and inconsistencies in information being provided- if detected, explain that a previously given answer contradicts what is now being said. Ask the individual to clarify and/or explain why
- Inconsistencies may warrant need for follow-up interviews. Conduct second interviews to clarify inconsistencies
- Keep in mind individual & cultural differences
- Words may not mean same thing to everyone

Conducting Interviews (cont.)

- Practice active listening
 - Nod to show you are listening
 - Reflect back what interviewee states (i.e. what I'm hearing you say is...)
 - Saying okay or yes to encourage interviewee to keep talking
- Before concluding the interview make sure that you understand everything the interviewee stated
- Ask about others who may have information/knowledge relevant to the investigation and why they would have information/knowledge

Conducting Interviews (cont.)

- At the end of the interview, ask if there are any text messages/posts about the incident
- At the end of the interview, ask individual if there is anything else they want you to know, want to disclose, if they have questions, etc. Ask several times during the interview
- When possible, write up interview summaries soon after conducting your interviews

Written Statement

- At the end of the interview, ask the alleged perpetrator to write a written statement that covers everything discussed during the interview
- Encourage interviewee to write a thorough statement by saying it is their opportunity to put everything in their own words
- Read the written statement prior to letting the interviewee leave the interview room
- If there are inconsistencies between what they said in their interview and the written statement, ask them to explain the inconsistencies

Detecting Deception

- Observe non-verbal body language
- **Possible** indications of deception (none of these are definite, but they are clues for the interviewer to pay attention to)
 - Body language changes from what was observed when asking the easy questions
 - Displays blocking behavior
 - Crossing arms in front of body
 - Turning body away from interviewer
 - Placing hand over mouth
 - Increased sweating
 - Increased rate of speech
 - Fidgeting in chair
 - Touching head/hair/face

Detecting Deception (cont.)

- **Possible** indications of deception (cont.)
 - Compression of lips
 - Answering no, but shaking head yes
 - Answering a question with a question (Q-Did you strike Mr. Jones? A-Did I strike him?)
 - Answering with, “yup” or “nope,” rather than yes/no
 - Hostile/defensive when speaking
- Is the interviewee being deceptive due to fear?
 - Did anyone tell you not to talk to me?
 - Did anyone tell you what you should/shouldn't say to me?
 - Did anyone threaten something bad will happen to you if you talk to me?
 - Are you fearful of the alleged perpetrator?

Analysis

- It is important to analyze each piece of evidence throughout the course of the investigation
- How does the information support or not support the allegation/event?
- Tie the facts of the case to the elements of the allegation/event
- Ensure the information is clear

Analysis (cont.)

- Identify conflicting or missing information. Ensure all discrepancies are addressed
- The analysis of information should occur throughout the investigation to determine what evidence supports or does not support the allegation
- The analysis determines if there is enough evidence to substantiate the allegation or if the evidence supports an unsubstantiated finding

Findings

- The findings state whether each allegation is substantiated or unsubstantiated
- List the evidence (testimonial, physical, documentary) that supports the finding
- The reader needs to be able to understand what evidence was gathered to meet the preponderance of evidence standard
- When writing up the findings, there is template standard language available to assist in presenting the findings

Findings-Allegations

- Based upon a preponderance of the [testimonial/documentary/physical/video] evidence obtained, the allegation that [Mr./Ms. First and Last Name] was [abused/neglected/exploited] by [Agency/Facility name] [staff title] [Mr./Ms. First and Last Name], is [substantiated/unsubstantiated].
- Based upon a preponderance of the testimonial, documentary and physical evidence obtained, the allegation that Mr. John Doe was physically abused by Valley Behavioral Health Counselor, Mr. James Smith, is substantiated.

Findings-Allegations

- Specifically, on xx/xx/xx, [insert summary of findings.] Summarize specifically what the investigation determined occurred (not the initial allegation) and include whether or not what the AP did resulted in an injury to the AV. Specifically describe the injury and what treatment was required.
 - Specifically, on 10/02/24, Mr. Doe was experiencing a behavioral episode. While attempting to initiate a restraint, Mr. Smith forcefully grabbed Mr. Doe by both arms and threw him to the ground. Mr. Smith then straddled Mr. Doe on the ground. Mr. Doe attempted to swing at Mr. Smith. Mr. Smith then punched Mr. Doe in the left eye and left side of his face three times. Mr. Doe was transported to the emergency room and evaluated. As a result of the abuse, Mr. Doe sustained a black left eye and significant swelling and bruising to his left eye and left cheek.

Findings-Allegations

- Note-If the allegation is unsubstantiated, then summarize what was alleged and state why it was unsubstantiated.
- Specifically, on 10/02/24, Mr. Doe was experiencing a behavioral episode. Mr. Doe alleged that Mr. Smith forcefully grabbed him, threw him to the ground and punched him in the face. There was a lack of corroborating evidence. Mr. Doe later recanted the allegation and the eye witness denied this occurred.

Findings-Allegations

The findings are based upon the following:

- *Bullet out the evidence that supports the findings (sub'd or unsub'd)*
- *Summarize testimonial evidence. List what each interviewee stated that supports the findings:*
 - When interviewed, Ms. Jessica Jones, Valley Behavioral Health Counselor, stated that she was working during the incident. She observed Mr. Doe having a behavioral episode, yelling loudly and pacing around. Then she observed Mr. Smith grab Mr. Doe by both arms and then throw him to the ground. Ms. Jones stated that she attempted to intervene, but Mr. Smith loudly stated, "I got it!" Ms. Jones stated that she then saw Mr. Doe try to hit Mr. Smith. She stated, "Before I knew it, James (Mr. Smith) started punching John (Mr. Doe) in the face!" Ms. Jones stated that she yelled for Mr. Smith to stop. Ms. Jones was asked how many times Mr. Smith hit Mr. Doe and she replied, "Three times." When asked on a scale of 1-5 how hard Mr. Smith struck Mr. Doe, she replied, "Hard, it was a five." Ms. Jones stated that after she yelled for Ms. Smith to stop, he got up off of Mr. Doe and she told him to go outside and take a break. Ms. Smith stated that she assessed Mr. Doe and gave him an ice pack and then called 911 for him to go to the emergency room for evaluation.

Findings-Allegations

- *Summarize testimonial evidence. List what each interviewee stated that supports the findings:*
 - When interviewed, the alleged victim, Mr. John Doe, stated that on the date of the incident he was having a difficult day. He became upset and was yelling and pacing around the program. Mr. Doe stated that Mr. Smith told him to stop yelling and go sit down. Mr. Doe did not like the way Mr. Smith spoke to him and told him (Mr. Smith) to leave him (Mr. Doe) alone. Mr. Doe stated that Mr. Smith then came over and grabbed both of his arms. That made Mr. Doe even more upset. He stated, “That wasn’t needed, he should have just left me be.” Mr. Doe stated that before he knew it, Mr. Smith, “Grabbed me up and threw me to the ground! I was shocked!” Mr. Doe stated he began struggling to get away from Mr. Smith and attempted to swing at Mr. Smith but did not make contact. Mr. Doe stated, “Then he just started punching me right in my face!” Mr. Doe was asked how many times Mr. Smith hit him and he said, “I think it was three or four times.” Mr. Doe was asked on a scale of 1-5 how hard Mr. Smith punched him and he stated, “Five! He hit me real hard, it really hurt, I had a black eye and bruising all on my face.” Mr. Doe stated that Ms. Jones sent Mr. Doe outside and called the ambulance.

Findings-Allegations

- *Summarize testimonial evidence. List what each interviewee stated that supports the findings:*
 - When interviewed, Mr. Smith stated that he was working on the date of the incident. Mr. Smith stated that Mr. Doe was angry and yelling and pacing around the program. Mr. Smith stated that he was trying to get Mr. Doe to calm down and told him he should go relax and sit down. Mr. Smith stated that Mr. Doe attempted to attack him, so he had to restrain him. (Investigator's note: The eye witness and alleged victim did not corroborate that Mr. Doe attempted to attack Mr. Smith.)
 - Mr. Smith stated, "Because he went to attack me, I had to restrain him." Mr. Smith was asked to describe what he did. He replied, "I applied a restraint, by holding both of his arms at his side, but then we were tussling around and fell to the ground." Mr. Smith was asked if he threw Mr. Doe to the ground, he replied, "No, he was fighting against me and we fell." (Investigator's note: Both the alleged victim and eye witness stated that Mr. Smith threw Mr. Doe to the ground.)
 - Mr. Smith was asked what happened next and he replied, "He swung on me, so I had to get ahold of his wrists." Mr. Smith was asked if he punched Mr. Doe. He replied, "Did I punch him? Nah, I was just trying to restrain him."
 - Mr. Smith was asked why others would say that he punched Mr. Doe and he replied, "I don't know. They didn't see what actually happened."
 - Mr. Smith was asked if he was trained on Mr. Smith's treatment plan and he replied, "I guess so, there's a lot of papers to review." Mr. Smith was asked if he was trained on the "Restraint Use and Procedures" policy and he replied, "Probably, they go over so much stuff when they hire you. I'm not sure what it said."

Findings-Allegations

- *List the physical evidence that supports the findings:*
 - The photographs taken of Mr. Smith's injuries depict bruising of the left orbital socket. The bruising is dark purple, the entire eye area is bruised. The left eyelid is partially swollen shut. The second photograph depicts bruising to Mr. Smith's left cheek area underneath the left eye and near the corner of the left eye. The cheek area is swollen and red and purple in color.

Findings-Allegations

- *List the documentary evidence that supports the findings:*
 - According to the hospital discharge summary, Mr. Doe received x-rays of his left eye and face, which were negative for fractures. Mr. Doe was diagnosed with left orbital contusions and multiple facial contusions. He was released back to the program.
 - According to Mr. Doe's treatment plan, if he is having a difficult time, staff are supposed to calmly ask Mr. Doe what is bothering him, actively listen and suggest coping strategies to help him to deal with his emotions. Mr. Smith did not follow Mr. Doe's treatment plan.
 - According to the Valley Behavioral Health procedure titled "Restraint Uses and Procedures," if an individual is experiencing aggressive behavior, verbal de-escalation techniques should first be employed, followed by the use of blocking pads and hands-on restraints should only be employed after all other options have been exhausted. Mr. Smith failed to follow the procedure and did not attempt any of the hands-off de-escalation techniques. Additionally, the technique Ms. Smith utilized to restrain Mr. Doe is not an approved restraint technique in the "Restrain Uses and Procedures" policy.
 - According to Mr. Smith's training records, Mr. Smith was trained on Mr. Doe's treatment plan on 08/05/24 and was trained on the Restraint Uses and Procedures on 07/14/24.

Findings-Summary

- Begin the findings with the “Based upon...” language to clearly state the findings
- Next, utilize “Specifically...” to state either specifically what the investigation determined occurred (for substantiated allegations) or state what was alleged to have occurred (for unsubstantiated allegations)
- State, “The findings are based upon the following....” then bullet out all of the testimonial, documentary and physical evidence that supports the findings
- Ensure that you present findings for *each code*

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Questions?