

MAIMONIDES MEDICAL CENTER

CODE: COMP-010 (Revised)

DATE: March 23, 2017

ORIGINALLY ISSUED: March 22, 2007

SUBJECT: PROTECTION AGAINST RETALIATION AND INTIMIDATION

I. POLICY

A. A key element of Maimonides Medical Center (the "Medical Center") Corporate Compliance Program is the ability of employees to express problems, concerns or opinions without fear of intimidation, retaliation or reprisal. At the same time, employees have an affirmative duty to report issues or concerns that come to their attention through the appropriate Medical Center channels. Failure to do so can result in disciplinary action up to and including termination. Employees are protected from intimidation or retaliation in any form and by anyone connected with the Medical Center for reporting issues and concerns in good faith and on a timely basis.

B. For the purpose of this policy the term "Medical Center" shall also include Maimonides Research and Development Foundation, MMC Holding of Brooklyn, Inc.; Maimonides Health Resources, Inc., and its subsidiaries and any other affiliated companies in which the Medical Center or they have a controlling interest. This policy shall also apply to the Medical Staff including the voluntary staff but disciplinary action for the voluntary medical staff shall be handled in accordance with the Medical Staff By-Laws.

C. This policy applies to all persons including but not limited to trustees, directors, officers, employees or volunteers who report in good faith suspected violations of law, policy or other improper conduct.

II. RESPONSIBILITIES

A. Managers should maintain an environment whereby employees feel comfortable raising issues or asking questions. Managers should also take appropriate steps to address concerns that are raised and communicate the results of corrective action whenever possible or appropriate.

- ▶ Every employee must understand that retaliation or intimidation in response to an issue or concern will not be tolerated. Reports of retaliation or intimidation will be investigated thoroughly and addressed expeditiously with appropriate disciplinary action, up to and including termination of employment.

- ▶ Employees will be advised of the Medical Center's Non-Retaliation and Non-Intimidation Policy at the time of employment, during Corporate Compliance training and at annual employee training.

B. The Compliance Officer will administer this policy and will report to the Audit & Legal Committee concerning the administration of this policy. The Compliance Officer shall investigate allegations of retaliation and/or intimidation and coordinate with the Senior Vice President for Human Resources, as appropriate.

III. PROCEDURES

- A. It is forbidden for any employee or any agent (vendor, consultant) to harass or intimidate or retaliate against any employee, trustee, director, officer or volunteer who, in good faith, has reported a suspected violation of the law or Medical Center policies. Not only is it against Medical Center policy to intimidate or retaliate against those who report concerns, it is also illegal under both state and federal law. Any employee who violates this non-retaliation and non-intimidation policy may be subject to discipline, up to and including termination of employment. Of course, employees who report violations of law are not immune from adverse employment action unrelated to the report. Any such adverse action, however, will be taken in conjunction with, and under the guidance of, the Human Resources Department.
- B. The New York Non Profit Revitalization Act, Section 715-b provides that no director, officer, employee or volunteer who in good faith reports any action or suspected action taken by or within the Medical Center or its subsidiaries or affiliates that is illegal, fraudulent or in violation of any adopted policy of the Medical Center or that subsidiary or affiliate shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.
- C. New York Labor Law §740 and §741 provides that an employer shall not take any retaliatory personnel action against an employee because the employee:
- discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud or which the employee reasonably believes constitutes improper quality of care
 - provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
 - objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation
 - objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

- D. New York Social Services law 363-d requires the Medical Center to have a policy of non-intimidation and non-retaliation for good faith participation in the Medical Center's compliance program, including but not limited to reporting potential issues, investigating issues, self evaluation, audits and remedial actions and reporting to appropriate officials as provided in the NYS Labor Law as described in III B.
- E. The federal Patient Safety & Quality Improvement Act of 2005 provides that an employer may not take adverse employment action against an individual based on the fact that the individual in good faith reported information either to a provider with the intent of having such information reported to a Patient Safety Organization or directly to a Patient Safety Organization.
- F. The federal False Claims Act ("FCA") provides a right of relief to any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts in furtherance of an action under the FCA or other efforts to stop a violation of the FCA. The available relief includes reinstatement with the same seniority, double the amount of back pay plus interest, and special damages including litigation costs and attorneys fees. The New York State False Claims Act ("NY FCA") provides substantially similar rights to employees, contractors, and agents who take lawful action in furtherance of an action under the NY FCA.
- G. Section 1558 of the Patient Protection and Affordable Care Act ("PPACA") amended the Fair Labor Standards Act of 1938 ("FLSA") to prohibit any employer from discharging or in any manner discriminating against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee):
- received a premium tax credit or subsidy for a health plan;
 - provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of Title I of PPACA which, among other things, sets forth rules for the operation of health insurance exchanges and imposes certain mandates on employers with respect to providing health coverage;
 - testified or is about to testify in a proceeding concerning such violation;

- assisted or participated, or is about to assist or participate, in such a proceeding; or
 - objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of Title I of PPACA, or any order, rule, regulation, standard, or ban under Title I of PPACA.
- H. A number of federal laws enforced by the EEOC, as well as the New York State Human Rights Law and New York City Human Rights Law, make it unlawful for an employer to discriminate against an individual with respect to hiring, compensation, terms and conditions of employment because of actual or perceived race, color, religion, creed, age, sex, , national origin, alienage, citizenship status, culture, language, socioeconomic status, marital status, partnership status, familial status, caregiver status, parental status, domestic violence victim status, military status, veteran status, genetic information, sexual orientation, gender, gender identity gender expression, gender non-conformance or transgender status, physical or mental disability or other legally protected classification. These laws prohibit retaliation against individuals who oppose unlawful discrimination or who file or participate in an employment discrimination proceeding. Depending on the particular law, employees may be entitled to compensation damages including back pay and front pay, reinstatement, and punitive damages and attorney fees (NYC HRL).
- I. Employees should inform Human Resources or the Compliance Officer regarding any allegation and/or incidents of retaliation or intimidation. Employees may also report by using the toll free Compliance Helpline 1-800-585-7970. Using the Compliance Helpline enables anonymous reporting.
- J. Reported incidents of retaliation or intimidation will be investigated promptly and thoroughly by the Compliance Officer with the assistance of Human Resources as appropriate. The Compliance Officer will report investigations of allegations of retaliation or intimidation to the Audit and Legal Committee of the Board.
- K. To the extent possible, confidentiality will be preserved. However, the investigation may result in the identity of the complainant becoming known.
- L. If legal, fraud or abuse issues arise, the Office of General Counsel should be contacted immediately.
- M. Any resulting disciplinary action will be done in conjunction with the Human Resources Department or in the case of voluntary medical staff, with Medical staff leadership.

- N. The Compliance Officer will provide periodic reports on allegations of retaliation or intimidation to the Compliance Committee.
- O. Where other policies (i.e., HR-39) have specific processes for addressing retaliation complaints, the procedures set forth in those policies shall prevail over the process in this policy.
- P. A copy of this policy shall be distributed to all trustees, directors, officers, employees and volunteers who provide substantial services to the Medical Center or the relevant affiliated company.

IV. CONTROLS

The Compliance Officer and the Executive Vice President for Legal Affairs shall ensure compliance with this policy.

Kenneth D. Gibbs
President & CEO

REFERENCES: Corporate Compliance Code of Conduct; HR-39 Sexual Harassment Policy, New York State Labor Law §740, 741, New York State Social Services Law §363-d, 18NYCRR 521.1 (January 14, 2009), Patient Safety and Quality Improvement Act of 2005, 73FR70731 (November 21, 2008) Section 3.206(b)(2) 73FR70774-55, RES.15 Research Misconduct Policy, 31 U.S.C. § 3730(h), New York State Finance Law § 191, The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 § 1558 (2010).; New York Non Profit Revitalization Act (2013); New York Not-For-Profit Corporation Law §715-b; Compliance Program Review Guidance issued by Medicaid Office of Inspector General (October 2016)

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ORIGINATING DEPARTMENT: Legal Department