

**ERIE COUNTY MEDICAL CENTER CORPORATION
POLICY AND PROCEDURE**

Policy Title: Non-Retaliation and Non-Intimidation	Policy # CORP-O12
Policy Type (choose one by inserting <u>X</u>) <u>x</u> Administrative <u>x</u> Clinical Practice	Prepared by: Nadine Mund, Director of Corporate Compliance
Reference: Labor Law § 741 Labor Law § 740 ECMCC Compliance Program Health Care Fraud Under Article 177 of the New York Penal Law New York State Social Services Law § 145-b: False Statements Federal False Claims Act, 31 USC § 3729 -3733 New York State False Claims Act, State Finance Law, Article 13 State Finance Law § 191 Part 521, Title 18 NYCRR Civil Service Law § 75b Executive Law §55(1) Public Authorities Law §2986	Applies to: Entire Organization

Replaces the following P&P(s), if applicable:

Effective Date	8/1/2013					
Review Date						
Revision Date	3/1/2015	9/2018				

I. POLICY PURPOSE

- a. The purpose of this policy is to afford certain protections to individuals who in good faith report violations. It also provides guidance by which employees can express problems, concerns, and opinions without fear of retaliation, intimidation or reprisal, as well as providing supervisors with appropriate guidelines for addressing problems and concerns raised by employees. Human Resources policies provide a similar procedure that also allows employees to express problems, concerns or opinions about conduct or performance issues (HR-025).
- b. It is the belief of ECMC that positive employee relations and morale can be best achieved and maintained in a working environment that promotes ongoing open communication between supervisors and employees. This includes open and

candid discussions of employee problems and concerns. We recognize that one of the requirements of the US Sentencing Commission, "Guidelines for Organizations" is that an organization evidences a policy of non-retaliation/non-intimidation for employees who report violations of law, regulations, policies, ethics and the Code of Conduct. Additionally, the NYS Office of Medicaid Inspector General (OMIG) stipulates that every organization have a policy of non-retaliation and non-intimidation for the reporting of code of conduct, ethical violations or compliance matters.

II. DEFINITIONS:

- a. Good faith: Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.
- b. Whistleblower: Any ECMC employee, board member or contracted employee who in good faith discloses information concerning wrongdoing by another employee or concerning the business of ECMC itself.
- c. Wrongdoing: Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority engaged in by any employee, board member or contracted employee that relates to ECMC.

III. POLICY STATEMENT

- a. It is ECMCC policy to take all necessary steps to refrain from intimidating, threatening, coercing, discriminating against or taking any other retaliatory action against any employee or individual for the exercise of any right under, or for participation in any process established by applicable law, regulation, or existing policies and procedures. See also HR-025.
- b. All ECMC employees, including supervisors and managers, have the affirmative duty for promptly reporting actual or potential wrongdoing, including an actual or potential violation of law, regulation, policy, procedure or the Code of Conduct.
- c. An "open-door policy" shall be maintained at all levels of management for employees to report problems and concerns and shall be acted upon in an appropriate manner. If the problem is not satisfactorily resolved, the employee may proceed up the supervisory chain or higher level. The "Compliance Hotline" is designed to permit any employee to call, anonymously or in confidence, to report problems and concerns or to seek clarification of compliance related issues.
- d. Employees who, in good faith, report a potential violation of law, regulation, policy, procedure, Public Authority's Code of Ethics, the Code of Conduct, or other instances of potential wrongdoing within ECMC will not be subjected to retaliation, retribution or harassment. No supervisor, manager or employee is permitted to engage in retaliation, retribution or any form of harassment against an employee for reporting a compliance related concern. Any supervisor, manager or employee who conducts or condones retribution, retaliation, or harassment in any way will be subject to discipline, up to and including discharge.

- e. ECMCC shall not permit retaliation against employees, individuals, or others for:
 - i. Exercising any right under, or participating in, any process established by federal, state, Public Authority or local law, regulations, or policy;
 - ii. Filing a complaint with ECMC and/or the Department of Health and Human Services or other government agency;
 - iii. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing;
 - iv. Opposing in good faith any act or practice made unlawful by federal, state or local law, regulation, or policy, provided that the manner of the opposition is reasonable and does not itself violate law.
- f. All necessary procedures will be followed to protect against any retaliation toward any employee or individual for exercising their rights or participating in any process pursuant to internal policies, applicable law, and/or regulation.
- g. Employees cannot exempt themselves from the consequences of wrongdoing by reporting their own wrongdoing, although self-reporting may be taken into account in determining the appropriate course of action.

IV. PROCEDURE

- a. All managers and employees must understand that any incident where retaliation or reprisal can be related to an employee raising/reporting a problem, either at the organization level or through the compliance program, will not be tolerated. Reports of this nature must be investigated thoroughly and expeditiously, with appropriate disciplinary actions taken, up to and including termination of employment.
- b. Employee responsibilities
 - i. Knowledge of misconduct, wrongdoing, unethical activities including actual or potential violations of law, regulation, policy, procedure, or the Code of Conduct must be immediately reported by employees to:
 - 1. Immediate supervisor,
 - 2. Department manager,
 - 3. Compliance office (898-4595),
 - 4. Compliance hotline (898-5555), or
 - 5. Quantros.
 - ii. Failure to report or concealing knowledge of a potential violation may result in administrative actions being taken, up to, and including termination.
- c. Supervisor/Manager Responsibilities
 - i. All managers and supervisors must take aggressive measures to assure their staff that the organization truly encourages the reporting of problems and that employees will not "get into trouble" for doing so.
 - ii. All supervisors and managers must promote an "open door" attitude about employee problems and concerns at all times and receive all employee concerns, problems and opinions and explore with the employee suggestions for resolving the issue.
 - iii. Compliance must be informed of all concerns and problems raised by employees that fall within their area of responsibility.

- iv. The confidentiality of employee concerns and problems must be respected and protected at all times, insofar as legal and practical, informing only those personnel who have a need to know.
- d. Compliance Responsibilities
 - i. The ECMCC Director of Corporate Compliance will be responsible for the investigation and follow-up of any reported retaliation against an employee, working closer with Human Resources.
 - ii. The Director of Corporate Compliance will report the results of an investigation into suspected retaliation to the Senior Leadership, Compliance Committee, Board of Directors Compliance Committee or if deemed appropriate JCOPE or Authorities Budget Office.

Approved by: _____ Date _____
Thomas Quatroche Jr., PhD.
President

_____ Date _____
Andrew L. Davis,
Chief Operating Officer

ECMCC has developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations from these policies and procedures may be warranted in actual practice based upon individual patient characteristics and clinical judgment in unique care circumstances.