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Applicability Erie County
Medical Center
References CORP-012

Non-Retaliation and Non-Intimidation

I. Policy Purpose

- a. The purpose of this document is to establish a policy for Erie County Medical Center Corporation ("ECMCC") prohibiting intimidation of and/or retaliation against any Individual -- including patients, residents, and other recipients of services -- who reports or may report a compliance issue and/or who participate in good faith in ECMCC's Compliance Program. It also provides supervisors with appropriate guidelines for addressing problems and concerns raised by Individuals. Good faith participation in the Compliance Program includes, but is not limited to, reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in §§740 and 741 of the New York Labor Law. Retaliation against or intimidation of any individual is prohibited by ECMCC's Code of Conduct, and ECMCC's Detecting and Preventing Fraud, Waste, Abuse, and Misconduct Policy. Additionally, Human Resources provide a similar procedure that also allows employees to express problems, concerns or opinions about conduct or performance issues (Harassment-8164644).

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. It also includes when an Individual reasonably believes activity is in violation of any law, rule or regulation or poses a substantial and specific danger to the public health or safety.
- b. **Individual:** Any individual, patient, current or former employees, without any explicit limitation in time, as well as senior administrators, managers, contractors, governing body, volunteers,

students and corporate officers.

- c. **Intimidation:** Any act to manipulate an Individual or intentionally cause feelings of fear or inadequacy.
- d. **Retaliation:** Any adverse action against an Individual because of the individual's good faith report of a compliance concern or participation in a compliance investigation. This also includes actions or threats to take actions that would discriminate against an employee or former employee or adversely impact a former employee's current or future employment; and contacting or threatening to contact immigration authorities.
- e. **Whistleblower:** Any Individual who in good faith discloses information concerning wrongdoing by another employee or concerning the business of ECMCC itself.
- f. **Wrongdoing:** Any unlawful activity, policy, or practice including but not limited to alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, sexual harassment, tax evasion, intentional reporting of false or misleading information, or abuse of authority engaged in by any employee, agent, officer or contractor that relates to ECMCC.

III. Policy Statement

- a. ECMCC policy and its Code of Conduct prohibit intimidating, threatening, coercing, discriminating against or taking any other retaliatory action against any Individual for the exercise of any right under, or for participation in any process established by applicable law, regulation, or existing policies and procedures. Such retaliatory actions are further prohibited for any Individual who in good faith reports potential compliance issues, including allegations of fraud, waste, or abuse.
- b. Specifically, but non-exhaustively, ECMCC shall not permit retaliation against any Individuals for:
 - 1. Exercising any right under, or participating in, any process established by federal, state, or local law, regulations, or policy;
 - a. In accordance with OSHA COVID-19 ETS, this includes an Individual's right to participate in the mitigation of the spread of COVID-19 in the workplace;
 - 2. Filing a complaint with ECMCC and/or the Department of Health and Human Services or other government agency relating to Wrongdoing;
 - 3. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing;
 - 4. 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; and
 - 5. Disclosing or threatening to disclose to a supervisor or public body an activity, policy or practice that:
 - a. The Individual reasonably believes is in violation of any law, rule, or regulation, or
 - b. The Individual reasonably believes poses a substantial and specific danger to the public health or safety.

- c. All ECMCC Individuals have an affirmative duty to promptly report actual, or potential wrongdoing, including an actual or potential violation of law, regulation, policy, procedure or the Code of Conduct to their immediate supervisor, department manager, the Compliance Officer (716-898-6439 or dlnesbitt@ecmc.edu), via Case Call, or the Compliance/HIPAA Anonymous Hotline (1-855-222-0758). Failure to report or concealing knowledge of a potential violation may result in administrative actions being taken, up to, and including termination.
- d. 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. Individuals may also report potential Wrongdoing directly to the Compliance department as further set forth in Section IV.
- e. Individuals who, in good faith, report potential Wrongdoing within ECMCC will not be subjected to retaliation, retribution or intimidation. No supervisor, manager or employee is permitted to engage in retaliation, retribution or any form of intimidation against an employee for reporting a compliance related concern, including, but not limited to reporting COVID-19 related hazard. Any supervisor, manager or employee who conducts or condones retribution, retaliation, or intimidation in any way will be subject to discipline, up to and including discharge. Individuals who, in good faith, report a potential violation of the above laws are protected by this policy, the Federal False Claims Act, the Whistleblower Protection Act, and numerous other various state and federal laws.
- f. All necessary procedures will be followed to protect against any retaliation toward any Individual for whistleblowing and exercising their rights or participating in any process pursuant to internal policies, applicable law, and/or regulation.
- g. Individuals 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 or discipline.

IV. Procedure

- a. Any individual who believes that they have been subject to intimidation and/or retaliation for good faith participation in ECMCC's Compliance Program must immediately report such intimidation and/or retaliation to the AVP of Compliance, either in person at the Corporate Compliance Office, 462 Grider, 3rd floor, via telephone to the Corporate Compliance Office at (716) 898-6439 or via e-mail to dlnesbitt@ecmc.edu, or by making a report to the confidential and anonymous Compliance & HIPAA Hotline at (855) 222-0758.
- b. Reports of intimidation and/or retaliation relating to good faith participation in ECMCC's Compliance Program include, but are not limited to: reporting potential compliance issues to appropriate personnel; participating in investigation of potential compliance issues; self-evaluations; audits; remedial actions; reporting instances of intimidation or retaliation; and reporting potential fraud, waste or abuse to the appropriate State or Federal entities. Such reports will be investigated by ECMCC's Compliance Officer or designee. Upon conclusion of the investigation, the Compliance Officer will make a report and recommendation for discipline, where appropriate, to the VP of Human Resources or their designee according to the discipline policy.
- c. All managers and employees must understand that any incident where retaliation or reprisal

can be related to an individual 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.

d. 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.

e. Compliance Responsibilities

- i. The Compliance Officer will be responsible for the investigation and follow-up of any reported retaliation against an Individual, working in collaboration with Human Resources and/or Administration.
- ii. The Compliance Officer will report the results of an investigation into suspected retaliation to senior leadership, ECMCC's Compliance Committee, the ECMCC Board Audit and Compliance Committee, or, if deemed appropriate, COELIG or other applicable state or federal authorities.
- iii. Compliance will be responsible to report potential fraud, waste or abuse to the appropriate State or Federal entities.

f. Reporting and Enforcement

1. All violations of this policy shall be reported to the appropriate manager/supervisor/director or to the Office of Corporate Compliance (716-898-6439) for appropriate resolution of the matter.
2. The Compliance & HIPAA Hotline is available 24 hours a day, seven days a week at (855) 222-0758 and is accessible to all Individuals and allows for questions regarding compliance issues to be asked and for compliance issues to be reported.
3. Reports of potential fraud, waste and abuse and compliance issues also may be made directly to the Compliance Officer in person, in writing, via email, or by telephone. All reports received by Corporate Compliance are investigated and resolved to the fullest extent possible.
4. The confidentiality of persons reporting compliance issues shall be maintained unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by Medicaid Fraud Control Unit, Office of Medicaid Inspector General or law enforcement, or disclosure is required during a legal proceeding, and such

persons shall be protected under the required provider’s policy for non-intimidation and non-retaliation.

5. Violations of this policy will be subject to disciplinary action as outlined in the Human Resources Policy and Procedure Manual and in the Bylaws, Rules and Regulations of the Medical Staff and/or an Individual’s contract with ECMCC.

Reference:

OMIG Compliance Program Guidance, Title 18 NYCRR, Part 521 Fraud, Waste and Abuse Prevention (March 28, 2023)

NYS Labor Law § 741

NYS Labor Law § 740 updated 1/26/2022

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 Reform Act

Whistleblower Protection Enhancement Act-November 2012

Executive Law §55(1)

18 NYCRR §521-1.4(2)(vii)

Occupational Safety and Health Act (OSH Act), Section 11(c) 29 U.S.C. §660(c)

Public Authorities Law §2986

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.

Approval Signatures

Step Description	Approver	Date
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	Pending

Applicability

Erie County Medical Center

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