

Artesia General Hospital 

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Owner: Cyndi Buck: Director of Medical Records

Area: Compliance

References: Hospital-Wide Administrative

Non-Retaliation/Whistleblower Under False Claims Act

PURPOSE:

To provide guidance for reporting and investigation of allegations of suspected improper activities.

Definitions

- A. **Improper Activities:** An improper activity is any activity by an agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.
- B. **Protected Disclosure:** A protected disclosure is any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- C. **Illegal Order:** An illegal order is any directive to violate or assist in violating an applicable federal, state, or local law, rule or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.
- D. **Whistleblower:** A person or entity making a protected disclosure is commonly referred to as a whistleblower. Whistleblowers may be hospital employees, applicants for employment, students, patients, vendors, contractors or the general public. The whistleblower's role is a reporting party. They are neither investigators nor finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.
- E. **Compliance Officer (CO):** The person designated by AGH as the official with primary responsibility to receive reports of allegations of suspected improper activities.

Policy

A. Reporting Allegations of Suspected Improper Activities:

1. Filing a Report

- a. Any person may report allegations of suspected improper activities. Knowledge or suspicion of improper activities may originate from personnel, staff or administrators carrying out their assigned duties, internal or external auditors, law enforcement, regulatory agencies, and customers, patients, vendors, students or other third parties. Allegations of suspected improper activities may also be reported anonymously.
- b. Reports of allegations of suspected improper activities are encouraged to be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual rather than speculative or conclusory, and contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.
- c. Normally, a report by a Hospital employee of allegations of a suspected improper activity should be made to the reporting employee's immediate supervisor. However, in the interest of confidentiality, when there is a potential conflict of interest or for other reasons, such reports may be made to the CO directly. The Compliance Office can be contacted directly by phone or through an anonymous hotline at **1-855-735-3009**.
- d. When a person reports allegations of suspected improper activities to an appropriate authority the report is known as a protected disclosure. The rights of AGH employees and applicants for employment when making a protected disclosure are covered from retaliation.

B. Reporting to the CO

1. Managers, administrators and employees in supervisory roles who receive a report alleging suspected improper activities shall ensure that the matter is promptly reported to the CO. Such employees are charged with exercising appropriate judgment in determining which matters can be reviewed under their authority and which matters must be referred to the CO. Consulting with supervisors, the CO is encouraged and the exercise of judgment should err on the side of upward reporting. Oral reports should normally be documented by the supervisor by a written transcription of the oral report, and internal communications regarding allegations of improper activities should normally be in writing.
2. Managers, administrators and employees in supervisory roles shall report to the CO any allegations of suspected improper activities – whether received as a protected disclosure, reported by their subordinates in the ordinary course of performing their duties, or discovered in the course of performing their own duties – when any of the following conditions are met:
 - a. The matter is the result of a significant internal control or policy;
 - b. The matter is likely to receive media or other public attention;
 - c. The matter involves the misuse of Hospital resources or creates exposure to a liability in potentially significant amounts;
 - d. The matter involves allegations or events that have a significant possibility of being the result of criminal act (e.g., disappearance of cash);
 - e. The matter involves a significant threat to the health and safety of employees and/or the public;
or
 - f. The matter is judged to be significant or sensitive for other reasons.

Investigating Alleged Improper Activities

- A. A number of departments within AGH have responsibility for routinely conducting investigations of certain

types of allegations of improper activities, and have dedicated resources and expertise for such purposes. These include Compliance, Internal Audits, Human Resources and Administration.

- B. The CO will conduct the investigation into allegations of improper conduct.
- C. The Compliance Committee's responsibilities shall include:
 - 1. Assisting the CO in assuring that the proper investigative channels are utilized according to appropriate expertise and jurisdiction
 - 2. Assuring that all appropriate administrative and senior officials are apprised of the allegations as necessary;
 - 3. Assuring appropriate reporting occurs to the CO, CFO, to funding and regulatory agencies, whistleblowers and others as necessary or provided by this policy;
 - 4. Assisting the CO in ensuring appropriate resources and expertise are brought to bear to cause the timely and thorough review of reports of allegations of suspected improper activities;
 - 5. Ensuring that there are no conflicts of interest on the part of any party involved in specific investigations;
 - 6. Coordinating and facilitating communications across investigative channels as necessary to ensure comprehensive attention to all facets of the matter;
 - 7. Assisting the CO in monitoring significant elements and progress of investigations to ensure that allegations are timely and thoroughly addressed; and
 - 8. Coordinating and facilitating in an advisory capacity the corrective and remedial action that may be initiated in accordance with applicable faculty or staff conduct and disciplinary procedures.
- D. Each department with investigative authority shall carry out investigative activities in accordance with appropriate laws and established procedures within its discipline, and regulatory policies and guidelines.
- E. The purpose and authority of the Compliance Committee shall not be construed as to limit or halt investigations undertaken with proper authority granted by law or policy to any Hospital authority. Nor is the Committee empowered to initiate investigations without an adequate basis. Rather, the Committee's purpose is to provide guidance, advice and/or coordination for investigative activities as requested by the CO and to facilitate communications among appropriate parties as requested by the CO.
- F. All employees of AGH have a duty to cooperate with investigations initiated under this policy.
- G. Consistent with applicable personnel policies, an employee may be placed on an administrative leave or an investigatory leave, as appropriate, when it is determined by AGH that such a leave would serve the best interests of the employee, the Hospital or both. Such a leave is not to be interpreted as an accusation or a conclusion of guilt or innocence of any individual including the person on leave. Human Resources Office shall be consulted regarding any plan to place an employee on such leave.

Responsibilities

- A. The CO shall be responsible for the establishment and maintenance of procedures that comply with this policy and the associated administrative guidelines.
- B. The CO shall oversee the establishment of mechanisms to ensure compliance with the reporting requirements of this policy. Principal among these are the local channels for assuring that reports of allegations of suspected improper activities – which may be orally and/or informally communicated to numerous administrators and staff employees in supervisory roles - are brought to the attention of the

CO.

- C. The CO is responsible for determining the need for consultation with the Compliance Committee, subject matter experts when initiating an investigation. The CO shall convene the Committee on a scheduled basis and on an ad hoc basis as necessary to assist in promptly addressing allegations, and shall keep the Committee apprised of the progress and status of investigations, as appropriate. Procedures guiding the initiation of investigations should not impede prompt action by the CO or investigators when warranted.
- D. The CO has the responsibility for ensuring that independent, unbiased and competent investigative resources are used to conduct investigations of suspected improper activity. The CO should take into consideration the specific expertise and availability of dedicated investigation resources possessed by departments such as Human Resources and Finance. If criminal activity is detected, law enforcement should be consulted and the CO should work with law enforcement in support of the police investigation.

Roles, Rights and Responsibilities of Whistleblowers, Investigation Participants, Subjects and Investigators

A. Whistleblowers

1. Whistleblowers provide initial information related to a reasonable belief that an improper activity has occurred. The motivation of a whistleblower is irrelevant to the consideration of the validity of the allegations. However, the intentional filing of a false report, whether orally or in writing is itself considered an improper activity which AGH has the right to act upon.
2. Whistleblowers shall refrain from obtaining evidence for which they do not have a right of access. Such improper access may itself be considered an improper activity.
3. Whistleblowers have a responsibility to be candid with the CO or others to whom they make a report of alleged improper activities and shall set forth all known information regarding any reported allegations. Persons making a report of alleged improper activities should be prepared to be interviewed by the CO.
4. Anonymous whistleblowers must provide sufficient corroborating evidence to justify the commencement of an investigation. An investigation of unspecified wrongdoing or broad allegations will not be undertaken without verifiable evidentiary support. Because the CO is unable to interview anonymous whistleblowers, it may be more difficult to evaluate the credibility of the allegations and therefore, less likely to cause an investigation to be initiated.
5. Whistleblowers are not to act on their own in conducting any investigative activities, nor do they have a right to participate in any investigative activities other than as requested by the CO.
6. Protection of a whistleblower's identity will be maintained to the extent possible within the legitimate needs of law and the investigation. Should a whistleblower self-disclose his or her identity, AGH will no longer be obligated to maintain such confidence.
7. A whistleblower's right to protection from retaliation does not extend immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.
8. Whistleblowers have a right to be informed of the disposition of their disclosure absent overriding legal or public interest reasons.

B. Investigation Participants

1. AGH employees who are interviewed, asked to provide information or otherwise participate in an

investigation have a duty to fully cooperate with AGH authorized investigators.

2. Participants should refrain from discussing or disclosing the investigation or their testimony with anyone not connected to the investigation. In no case should the participant discuss with the investigation subject the nature of evidence requested or provided or testimony given to the CO unless agreed to by the CO.
3. Requests for confidentiality by participants will be honored to the extent possible within the legitimate needs of law and the investigation.
4. Participants are entitled to protection from retaliation for having participated in an investigation.

C. Investigation Subjects

1. A subject is a person who is the focus of investigative fact finding either by virtue of an allegation made or evidence gathered during the course of an investigation. The decision to conduct an investigation is not an accusation; it is to be treated as a neutral fact finding process. The outcome of the investigation may or may not support a conclusion that an improper act was committed and, if so, by whom.
2. The identity of a subject should be maintained in confidence to the extent possible given the legitimate needs of law and the investigation.
3. Subjects should normally be informed of the allegations at the outset of a formal investigation and have opportunities for input during the investigation.
4. Subjects have a duty to cooperate with investigators to the extent that their cooperation will not compromise self-incrimination protections under state or federal law.
5. Subjects have a right to consult with a person or persons of their choice. This may involve representation, including legal representation.
6. Subjects have a responsibility not to interfere with the investigation and to adhere to admonitions from investigators in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached or intimidated.
7. Unless there are compelling reasons to the contrary, subjects should be given the opportunity to respond to material points of evidence contained in an investigation report.
8. No allegation of wrongdoing against a subject shall be considered sustained unless at a minimum, a preponderance of the evidence supports the allegations.
9. Subjects have a right to be informed of the outcome of the investigation. If allegations are not sustained, the subject should be consulted as whether public disclosure of the investigation results would be in the best interest of AGH and the subject.
10. Any disciplinary or corrective action initiated against the subject as a result of an investigation pursuant to this policy shall adhere to Human Recourses conduct and disciplinary procedures.

Additional Required Communication

- A. If an investigation leads AGH officials to conclude that a crime has probably been committed, the results of the investigation shall be reported to the District Attorney or other appropriate law enforcement agency. The CO is the conduit for communications with law enforcement agencies unless the Compliance Committee in a particular situation determines a different communications strategy.
- B. If an investigation leads AGH to conclude that a Licensed Staff member has engaged in conduct that may

be a violation of their License Code of Conduct, the results of the investigation shall be reported to appropriate Licensing governing bodies in accordance with the applicable procedures for conduct and the administration of discipline. Any charges of staff misconduct brought as a result of an investigation under this policy shall comply with established staff conduct procedures.

Retaliation or Interference Protection

- A. A retaliation complaint (grievance plus sworn statement) may be filed (a) under the grievance or complaint resolution procedures, (b) with the CO, or (c) with the employee's supervisor. Threshold requirements for filing a retaliation complaint are described below. Employees who elect to file a grievance unaccompanied by a sworn statement made under penalty of perjury that its contents are true or are believed to be true are not covered by the retaliation provisions of the Whistleblower Protection Act.
- B. The retaliation complaint filed with the supervisor or CO must set forth in sufficient detail the necessary facts including dates and names of relevant persons. The complaint must contain facts supporting the filing thresholds as set forth below, the alleged retaliatory act(s), and the effects on the complainant of the alleged retaliatory acts. The CO may require the complainant to amend the complaint to provide sufficient detail. If the complainant does not amend the complaint to correct the insufficiencies identified by the CO within a reasonable timeframe, as established in procedures, the complaint may be dismissed by the CO.
- C. In order for a retaliation complaint to be accepted, the complainant must allege that:
 - a. He or she filed a report or made a protected disclosure alleging improper activities pursuant to current AGH policy; or
 - b. He or she was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper activities; or
 - c. He or she refused to obey an illegal order.
- D. The CO may consult with the Compliance Committee in determining whether the alleged disclosure is protect disclosure, and in determining whether an alleged order was an illegal order if the complaint is otherwise eligible for review.

Administrative Proceedings

- A. An arbitrator or The Compliance Committee that hears a retaliation complaint shall be instructed that once the complainant demonstrates by a preponderance of the evidence that he or she engaged in activity protected by the AGH Whistleblower Policy and that such activity was a contributing factor in the alleged retaliation, the burden of proof shall be on the supervisor, manager, or AGH to demonstrate by clear and convincing evidence that the alleged retaliatory action would have occurred independent of the employee's engagement in a protect disclosure of refusal of an illegal order. If the complaint is investigated by a factfinder, the factfinder shall find facts concerning the burden of proof so that the CO is able to make this determination. If AGH fails to meet this burden, the employee or applicant for employment shall have a completed affirmative defense to the adverse action which was the subject of the complaint.
- B. A manager or supervisor is not prevented from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any employee or applicant for employment if the manager or supervisor reasonable believe any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

- C. Before finding are reached, the CO shall provide a copy of the complaint and any documents on which the CO intends to rely in reaching findings to the person accused of interference or retaliation. That person shall be provided the opportunity, within locally established time limits, to respond to the complaint and to file a written statement with the CO will make part of the record submitted to the Compliance Committee.
- D. When it is alleged that the CO interfered or took the retaliatory action, the Chief Executive Officer shall appoint an RCO (Replacement Compliance Officer) to undertake the investigation consistent with the provisions set within this policy. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chief Executive Officer and the Compliance Committee. The RCO's findings shall be presented within 120 days from the date on which the complaint was assigned to the RCO unless an extensions granted by the CEO.
- E. The CO or RCO through the appropriate channel, determines the appropriate corrective action, if any, which will be initiated against the AGH employee who is found to have retaliated against or interfered with an employee's or applicant's right to make a protected disclosure or to refuse an illegal order. Such action shall be in accordance with the applicable personnel policy or collective bargaining agreement.

Appeal

An employee may appeal the decision only on the basis that the complaint was ineligible for processing because it was untimely filed and/or the complaint did not qualify for review under the scope of this policy to the Chief Executive Officer – if the complainant is a current employee or applicant for a staff or management position

REFERENCE(S):

1. See Compliance Policy – Anti-Kickback, Stark, and False Claims Act 919-8
 - 42 USC § 1320a-7b
 - 42 USC § 1395nn
 - 31 USC §§ 3729-3733
 - 31 USC § 3730(h)

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
Board of Governors, Chair	Kenneth Clayton [EJ]	06/2023
Policies Administrator	Jackie Cantrell: Director of Quality	06/2023
CFO Approval	Cory Yates: CFO	06/2023
Policy Owner	Cyndi Buck: Director of Med Records	06/2023