

**THE CHILDREN'S MERCY HOSPITAL  
ADMINISTRATIVE POLICY**

**TITLE:** Non-Retaliation: Prohibition from Reprisal Policy

**NUMBER:**

**EFFECTIVE:** 12/2006

**REVISION DATE:** 07/2010, 09/2014

**REVIEWED WITH NO CHANGES:** 11/2013, 12/2016

**RETIRED:**

**PURPOSE:**

To provide an avenue for any person to raise ethical, moral, legal, or financial concerns and reassurance that he/she will be protected from retaliation for reporting issues in good faith and encourage timely and accurate reporting of compliance concerns. Also to outline the protections afforded to individuals when reporting gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including competition for or negotiation of a contract) or grant.

**SCOPE:** Children's Mercy Hospital, Children's Mercy South Hospital and Children's Mercy Clinics.

**ACCOUNTABILITIES/RESPONSIBILITIES:** Corporate Compliance

**POLICY STATEMENT:**

To encourage Hospital staff to report compliance concerns and provides information on their rights under state and federal law, which protect the Hospital staff from retaliation for reporting such activities in good faith. The Hospital Compliance Plan in concert with specific state and federal laws prohibits employers from retaliating against any Hospital staff who reports a compliance concern in good faith, either to the Compliance Department or an external oversight agency.

**I. Hospital Staff Responsibility to Report Compliance Concerns**

Per the Hospital Compliance Plan, all Hospital staff are responsible for active participation in the good faith reporting of identified compliance concerns. This provides the Compliance Department the opportunity to investigate the concern and work toward a resolution.

**II. Reporters Right to Non-Retaliation**

The Hospital will not intimidate, threaten, coerce, discriminate against, terminate or take any retaliatory action against any patient, parent, employee, medical staff member, organization or group who acts in good faith by:

- A. Disclosing information about a situation he/she believes is inappropriate or potentially illegal;

- B. Providing information about or testifying against the alleged offending individual or the Hospital;
- C. Objecting to or refusing to participate in any activity he/she believes is in violation of federal or state law, Hospital policy or other requirements;
- D. Reporting concerns about patient care or patient safety;
- E. Involvement in any committee or peer review process;
- F. Filing a valid or legitimate report or complaint or an incident report, internal to the organization or an external complaint; or
- G. Reporting any Joint Commission regulatory concern.

### **III. Types of Possible Retaliation**

The following types of activities are examples of what may be considered possible retaliation:

- A. The employee has been assigned to undesirable shifts (change from work shift prior to reporting of incident)
- B. Blacklisting
- C. Damaging financial credit as a direct result of reporting the incident
- D. Demotion
- E. Denying of overtime or promotion
- F. Disallowing benefits
- G. Disciplinary actions
- H. Failing to hire or rehire
- I. Firing or layoff
- J. Intimidation
- K. Transfers (Lateral Transfers without reduction in pay or benefits may result in lack of prestige, influence, or opportunity. Conversely, denial of lateral transfers may be an adverse employment action.)
- L. Reassignment of work
- M. Reducing hours or pay

### **IV. Reporting Retaliation**

If any Hospital staff member feels he/she is being retaliated against because of his/her reporting a compliance concern, he/she should immediately report the retaliation activities to the Compliance Department. Such reports can be made: in person, in writing or by calling the Compliance Department or anonymously by calling the Compliance Hotline (816-460-1000).

### **V. Compliance Department Investigation and Follow Up**

- A. During the investigation of reported compliance concerns where retaliation may occur, the Compliance Department will:
  1. Remind all involved parties of the prohibitions of retaliation against the Reporter and witnesses.
  2. Remind the Reporter and witnesses that they are encouraged to notify Compliance immediately if they feel retaliation is occurring.

3. Follow up with the Reporter and witnesses within 3 months of the investigation and inquire if they have experienced any retaliation activities.
- B. If a compliance concern is determined to be reported in good faith but unfounded or does not meet the compliance case criteria, the Compliance Department will investigate all reported allegations of retaliation per the investigative and resolution process outlined in the Corporate Compliance Plan.
  - C. If needed, the Compliance Department will work with Human Resources, Hospital Administration and Legal Affairs to ensure Reporter and witnesses are not adversely affected by reporting compliance concerns in good faith.

## **VI. Prohibition of Reprisal of Federal Contracts, Grants or Funds**

In addition to the above, an employee, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or Federal Agency information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract, grant, a gross waste of Federal Funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including competition for or negotiation of a contract) or grant.

### **A. Investigation of Complaints**

1. **Submission of Complaint.** A person who believes that the person has been subjected to a reprisal as stated above:
  - a. May submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation, or
  - b. Has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.
2. **Inspector General Action**  
 Determination or submission of report on findings, the Inspector general shall make a determination that the complaint is frivolous, fails to allege a violation or has addressed in another Federal or State judicial or administrative proceeding initiated by the complaint or submit a report within 180 days after receiving the complaint.
3. **Extension of time.** If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

**4. Prohibition on Disclosure**

- a. The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is:
  - i. made with the consent of the person alleging the reprisal;
  - ii. made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or
  - iii. necessary to conduct an investigation of the alleged reprisal.

**5. Time Limitation**

A complaint may not be brought under this subsection more than three (3) years after the date on which the alleged reprisal took place.

**B. Remedy and Enforcement Authority**

- 1. **In General.** Not later than 30 days after receiving an Inspector General report), the head of the executive agency concerned shall determine whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected the complainant to a reprisal prohibited by and shall either issue an order denying relief or shall take one or more of the following actions:
  - a. Order the contractor or grantee to take affirmative action to abate the reprisal.
  - b. Order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
  - c. Order the contractor or grantee to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

**2. Exhaustion of Remedies**

If the head of an executive agency issues an order denying relief or has not issued an order within 210 days after the submission of a complaint, or in the case of an extension of time, not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor or grantee to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either

party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two (2) years after the date on which remedies are deemed to have been exhausted.

**3. Admissibility of Evidence**

An Inspector General determination and an agency head order denying relief shall be admissible in evidence in any de novo action at law or equity.

**4. Enforcement of Orders**

Whenever a person fails to comply with an order issued, the head of the executive agency concerned shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the executive agency.

**6. Judicial Review**

Any person adversely affected or aggrieved by an order issued under may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the executive agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an executive agency, unless a stay is specifically entered by the court.

**7. Burdens of Proof**

The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an executive agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

**DEFINITIONS:**

**EXTERNAL OVERSIGHT AGENCY** is any governmental or accreditation agency that is responsible for oversight of health care programs or certification.

**FEDERAL AGENCY** is defined as (1) A member of Congress or representative of a Committee of Congress, (2) An Inspector General, (3) The Government Accountability Office, (4) A Federal employee responsible for contract or grant oversight or management at the relevant agency, (5) an authorized official of the Department of Justice or other law enforcement agency, (6) a court or grand jury, and (7) a management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

**GOOD FAITH REPORTING** occurs when a Hospital staff member reports to a supervisor, manager, Compliance Department representative or external oversight agency his/her belief that the Hospital or its staff have or are participating in unethical or unlawful activities. Such belief must be absent of any other agenda that might taint the employee's perspective of the activity such as current disciplinary action, etc.

**HOSPITAL STAFF** is an employee, Medical Staff member, allied health professional, or volunteer providing regular and ongoing on-site services of Children's Mercy Hospital. KCMO school teachers, FSD (formerly DFS) personnel, contractors and other persons who are not employed by the Hospital are not Hospital staff members.

**REPORTER** is an individual who reports the compliance concern. This individual can be a patient, parent, employee, medical staff member, organization or group.

**WHISTLE BLOWING** is the exposure of fraud and abuse by an employee regarding their employer.

**EXCEPTIONS:** Requests for exceptions should be directed to the VP of Audit and Compliance.

**RELATED POLICIES:**

[Corporate Compliance Plan](#)

[Code of Conduct](#)

[Grievance Policy](#)

[Conduct and Discipline](#)

**RELATED FORMS:**

**REFERENCES:**

**REGULATIONS:**

[False Claims Act \(1863, revised 1986\)](#)

[Deficit Reduction Act of 2005](#)

[OIG Hospital Compliance Guidance](#)

41 USC 4712 Reprisal for Disclosure of Certain Information

**POLICY CONTENT OWNER:**

Mikki Massey, Privacy Officer, Corporate Compliance

**ADMINISTRATIVE COUNCIL SPONSOR:**

Kim Brown, VP, Audit and Compliance

**REVIEWED BY:**

**REVIEW PERIOD:** 3 years unless required more frequently by regulatory or accreditation requirements.

**APPROVED:**

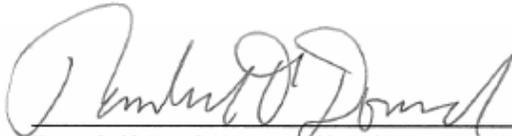
Medical Staff Executive Committee  
Administrative Council

9/3/2014  
9/3/2014

**FINAL APPROVAL:**

  
\_\_\_\_\_  
Kathy Perryman, MD  
Medical Staff President

12/8/16  
Date

  
\_\_\_\_\_  
Randall L. O'Donnell, Ph.D.  
President/Chief Executive Officer

12/12/2016  
Date