



UNIVERSITY POLICY

SUBJECT: CORPORATE COMPLIANCE AND PRIVACY **TITLE:** REPORTING COMPLIANCE AND ETHICS CONCERNS

CODING: 00-01-15-55:00 **ADOPTED:** 01/16/07 **AMENDED:** 01/28/08

LAST REVIEWED: 01/28/08

I. PURPOSE

The University of Medicine and Dentistry of New Jersey (UMDNJ) is committed to the prevention and detection of any fraud, waste, and abuse within the University related to all health care programs, including Federal and State healthcare programs; to the highest possible standards of ethical and legal business conduct; and to the proposition that employees should be free to express concerns to management or to report wrongful conduct without fear of reprisal. It is the responsibility of all trustees, officers, and employees of UMDNJ to report actual or suspected wrongful conduct, in good faith. Such reports shall be accepted willingly; kept confidential, to the extent possible, in conformance with applicable laws, regulations and other procedures; and addressed promptly and appropriately. Consistent with UMDNJ's commitment, this policy formalizes and enhances existing procedures for reporting allegations of misconduct and ensures that UMDNJ is in compliance with the false claims provisions of the Federal Deficit Reduction Act.

II. ACCOUNTABILITY

Under the direction of the President, the Executive Vice President for Academic and Clinical Affairs, the Senior Vice Presidents, the Executive Vice President and UMDNJ Chief of Staff, the Senior Vice President & General Counsel and the Vice President/Chief Ethics & Compliance Officer shall ensure compliance with this policy. The Deans, Vice Presidents, President/CEOs of the Healthcare Units, and UMDNJ Hospital Medical Director shall implement this policy.

III. APPLICABILITY

This policy shall apply to all trustees, officers, faculty, house staff, volunteers, students (including postdoctoral fellows), attending physicians, UMDNJ staff members, and contractors or agents of UMDNJ when performing functions under the authority of or acting on behalf of UMDNJ.

IV. DEFINITIONS

- A. **Wrongful Conduct:** Any activity undertaken by UMDNJ or by an employee in the performance of the employee's official duties or in the scope of his or her employment, that violates any UMDNJ policy or violates any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft or misuse of UMDNJ property or services, fraud, or willful omission to perform duty, except for research misconduct, which is addressed in the University Policy on Research Misconduct.
- B. **Whistleblower:** Individual who reports wrongful conduct, as defined above.
- C. **False Claims:** The False Claims Act, 31 U.S.C. § 3729 et seq., provides for liability for triple damages and a penalty from \$5,500 to \$11,000 per claim for anyone who knowingly submits or causes the submission of a false or fraudulent claim to the United States.

- D. Protected Disclosure: Any communication that discloses or demonstrates an intent to disclose information that may evidence either (1) any instance of wrongful conduct 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. Protected disclosures shall be presumed to have been made in good faith.
- E. Good faith: As applied to a whistleblower or a witness, shall mean having a belief in the truth of one's allegation, which a reasonable person in the complainant's or witness's position would have, based on the information known to the complainant or witness at the time and made without malice or consideration of personal benefit. An allegation is not in good faith or is made in bad faith if the complainant knew or had reason to know it was false, or if the allegation was made with reckless disregard for or willful ignorance of information that would negate the allegation. Where an employee is found not to have acted in good faith at the time of making of a report of wrongful conduct or an allegation of retaliation, appropriate discipline, up to and including termination, may be imposed on that employee.
- F. Adverse Employment Action: Adverse employment action includes, but is not limited to, demotion or other reduction of job duties, paid or unpaid administrative leave, termination, layoff, budgetary or organizational reduction in force, transfer to a lesser position, denial of promotions, denial of benefits, threats, harassment, denial of compensation, other significant adverse changes in terms or conditions of employment, or any manner of discrimination against an employee in the terms and conditions of employment as a result of an employee's report of wrongful conduct.
- G. Retaliation: Inappropriate or unwarranted adverse employment actions, harassment, intimidation or discrimination threatened or imposed on an employee that is directly related to that employee having made a protected disclosure or having refused to obey an illegal order or an order that violates any UMDNJ policy.
- H. Ethics Help Line: A confidential and independent mechanism for making reports of wrongful conduct to or making other communications, seeking ethics or compliance guidance from, the Office of Ethics and Compliance (OEC). The Ethics Help line is available 24 hours a day/7 days a week, via a toll free phone number, 800-215-9664 or via a secure Internet web link. The Help Line accommodates 150 languages and special handling for challenged callers.
- I. Contractor or agent: Includes any contractor, subcontractor, agent, or other person which or who, on behalf of UMDNJ furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

V. REFERENCE

Research Misconduct 00-01-20-60:00

VI. POLICY

A. Reporting of Compliance and Ethics Concerns

UMDNJ will establish effective and confidential means for individuals to report allegations or concerns that include actual or suspected violations of law, violations of any UMDNJ policies or procedures, or any other type of wrongful conduct. Individuals will be permitted to make such reports anonymously if they so desire, and their anonymity will be protected as permitted by law.

“Whistleblowers” will be protected from all forms of retaliation, harassment, intimidation or discrimination. Any employee found to have retaliated against another employee who reported actual or suspected wrongful conduct shall be subject to appropriate disciplinary action, up to and including termination.

B. False Claims

The entire UMDNJ workforce (including members of the board of trustees, officers, faculty, house staff, postdoctoral fellows, attending physicians and staff members of UMDNJ) and all contractors and agents of UMDNJ, when performing functions under the authority of or acting on behalf of UMDNJ, shall comply with all applicable Federal and New Jersey State anti-fraud and false claims laws and regulations. UMDNJ has instituted various procedures to ensure compliance with these laws and to assist UMDNJ in preventing fraud, waste and abuse in Federal health care programs.

1. UMDNJ and its individual employees and contractors and agents are prohibited from knowingly presenting or causing to be presented a false or fraudulent claim for payment to a Federal government health care program, i.e. Medicare, and from knowingly making, using or causing to be made a false record or statement to get a false or fraudulent claim paid by the Federal government.
2. Knowledge of false claims can be proven if the individual or entity:
 - a. has actual knowledge of the information;
 - b. acts in deliberate ignorance of the truth or falsity of the information; or
 - c. acts in reckless disregard of the truth or falsity of the information.

A specific intent to defraud is not required to prove a violation.

An individual or entity found guilty of violating Federal or State false claims laws may be liable for a civil penalty of up to \$11,000 for each violation, plus three times the amount of actual damages the government sustained as a result of the conduct. In addition, violation of false claims laws can provide the basis to subject an individual or entity to exclusion from participation in Federal health care programs, such as Medicare and Medicaid.

3. New Jersey Insurance Fraud Prevention Act

This law makes it unlawful to present, assist, conspire or urge another person to make any written or oral statement in connection with a claim for payment or other benefit pursuant to an insurance policy knowing the statement contains false or misleading information concerning any fact or thing material to the claim.

This law also makes it illegal to conceal or knowingly fail to disclose the occurrence of an event which affects any person's initial or continued right to entitlement to any insurance benefit or payment or the amount of any benefit or payment to which the person is entitled.

A violation of the New Jersey Insurance Fraud Prevention Act can subject an individual or an entity to civil damages equal to three times the amount of damages; penalties of \$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for each subsequent offense; and a surcharge paid to the State of \$1,000 or five percent (5%) of an out-of-court settlement.

In addition, the New Jersey Insurance Fraud Prevention Act authorizes the Attorney General to pursue additional criminal penalties.

4. Qui Tam Provisions

Private individuals may bring civil actions for violations of False Claims laws on behalf of the government and are entitled to receive a percentage of monies collected. This

action is known as a “qui tam” action. An individual bringing these claims is known as a relator or a whistleblower, and is granted protection under the law.

Relators may file lawsuits against individuals and/or entities that defraud the government by filing false or fraudulent Medicaid or other health care claims. The Federal or State government may investigate the relator’s allegations and intervene and take over the prosecution of the action. If the government does not intervene, the relator has the right to conduct the action.

- a. In cases where the government has intervened, the relator is entitled to between 15 and 25 percent of any recovery of the damages and penalties; and
- b. In cases where there was no intervention, the relator is entitled to between 25 and 30 percent of any recoveries of damages and penalties.

5. Relator Protections

Any relator who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of reporting violations of the False Claims Act will be entitled to reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorney’s fees and costs.

C. Enforcement and Whistleblower Protection:

1. Reporting and Investigating Retaliation Allegations:

Any whistleblower believing to be experiencing retaliation should report the facts supporting the allegations of retaliation to any of the following individuals or entities:

- a. the Vice President/Chief Ethics & Compliance Officer;
- b. the Ethics Liaison Officer;
- c. the Compliance Officer for the respective school or business unit;
- d. the Locally Designated Official for the respective school or business unit, appointed by the Dean, Vice President, or President/CEO of the school or business unit, whose name and contact information must be kept current with the Vice President/Chief Ethics & Compliance Officer; or
- e. the Audit Committee of the Board of Trustees, via a secure Internet web-link.

2. The person to whom the complaint is made will immediately notify the Office of Ethics and Compliance for investigation. The Vice President/Chief Ethics & Compliance Officer, in consultation with the Senior Vice President & General Counsel, will determine the appropriate investigative action, which may include internally investigating the retaliation allegation or referring the matter to external investigators, if necessary.

All retaliation investigations will occur under the direction of the Vice President/Chief Ethics & Compliance Officer and the Senior Vice President & General Counsel and will be conducted as sensitively and expeditiously as possible. Due consideration will also be given to existing grievance procedures under applicable collective bargaining agreements. The whistleblower will be promptly notified of the results of the investigation at its conclusion.

3. Should an investigation lead the appropriate UMDNJ authority to conclude that retaliation has been substantiated, the individual(s) responsible for committing the

retaliation, in addition to any civil or criminal proceedings, shall be subject to disciplinary action up to and including termination.

4. Monitoring and tracking of whistleblower complaints will occur via a secure Office of Ethics & Compliance database compilation of the names of employees who can be considered whistleblowers, the names of other employees with information about the whistleblower allegations and the names of employees who are the targets or subjects of the whistleblower allegations.
5. There shall continue to exist a committee, now formally known as the Disciplinary Review Committee, which shall review proposed serious adverse employment actions to be taken against UMDNJ employees, whether for disciplinary or other reasons. Such "serious adverse employment actions" shall include termination; paid or unpaid administrative leave; demotion or other reduction of job responsibilities; reduction or elimination of management responsibilities; budgetary or organizational reductions in force or other significant changes in terms or conditions of employment.

The membership of the Disciplinary Review Committee (DRC) shall consist of:

- a. The Vice President/Chief Ethics & Compliance Officer, or a designee, who shall serve as chair of the DRC;
- b. The Associate Vice President, Workplace Diversity;
- c. The Senior Vice President & General Counsel's designee with responsibility for labor relations or employment matters;
- d. The Vice President, Human Resources or designees responsible for labor relations and general human resources matters; and
- e. The Executive Vice President, Academic & Clinical Affairs, as required.

The DRC shall conduct weekly meetings to review all requests for serious adverse employment action prior to such serious action being taken. The committee shall review all appropriate documentation and other information, including information about employee reports of wrongful conduct from the database of the Office of Ethics & Compliance and from the Federal Monitor, to the extent possible, regarding employees who may be the subjects of the serious adverse employment action to determine the appropriateness of such action. Among the issues the DRC will consider is whether any reports of retaliation have been made or whether the proposed serious adverse employment action has the potential to be considered an act of retaliation. Where the proposed action is disciplinary, after an appropriate review, the DRC will determine: (i) whether the proposed serious adverse employment action can be carried out, (ii) whether a greater or lesser form of discipline will be imposed or (iii) whether no discipline is warranted.

In extraordinary or emergency situations where an employee puts the safety and health of any UMDNJ employee at risk or threatens the continued effective management or operations of the University, both the Vice President/Chief Ethics & Compliance Officer and the Senior Vice President & General Counsel, in consultation with appropriate school or business unit management and the Vice President, Human Resources, shall immediately place that employee on paid or unpaid administrative leave, pending a review by the DRC at its next weekly meeting.

The Vice President/Chief Ethics & Compliance Officer will provide periodic reports on the number of all reported allegations of whistleblower retaliation; the results of all retaliation investigations; and, if necessary, the results of DRC determinations at designated meetings of the Audit Committee of the UMDNJ Board of Trustees.

Requirements:

1. As part of its commitment to ethical and legal conduct, UMDNJ has established and will maintain effective lines of communication for employees' use in raising ethics, compliance and other concerns with the assurance that such concerns will be promptly reviewed; investigated, if necessary; and resolved, with timely and appropriate feedback to the reporting employee.
2. UMDNJ expects its employees to report any allegations of wrongful conduct by any UMDNJ employee or agent to the attention of any of the following:
 - a. the appropriate manager or department head;
 - b. the Office of Human Resources;
 - c. the Office of Affirmative Action/Equal Employment Opportunity;
 - d. the Vice President/Chief Ethics and Compliance Officer, or any designees within the Office of Ethics and Compliance, via the Ethics and Compliance website or the Ethics Help Line (800-215-9664) ; or
 - e. the Audit Committee of UMDNJ's Board of Trustees, via a secure Internet weblink; or
 - f. the appropriate regulatory authorities, including the Federal Monitor or the Office of the U.S. Attorney for the District of New Jersey, if appropriate.

UMDNJ will treat the reported information it receives in a confidential manner, to the extent possible, and will vigorously pursue and investigate all reports of wrongful conduct. All reports under this section will be immediately forwarded to the Vice President/Chief Ethics & Compliance Officer, who will maintain a database for tracking all such reports. The Vice President/Chief Ethics & Compliance Officer will determine the appropriate course of investigative action.

3. All staff, faculty and other employees of UMDNJ are responsible for creating and enhancing a workplace atmosphere that encourages employees to report their concerns, free of intimidation or harassment. UMDNJ will not tolerate any acts of retaliation against employees who report acts of wrongful conduct. The procedures outlined below under the subheading "Enforcement and Whistleblower Protection" will apply to any acts of retaliation committed against any employee making a good faith report of actual or suspected wrongful conduct.

Responsibilities:

All employees have a responsibility to ensure that their activities on behalf of UMDNJ, and those of their colleagues, comply with all applicable laws and UMDNJ policies.

1. All trustees, officers, employees, contractors and agents of UMDNJ must:
 - a. comply with all relevant Federal and State laws, and UMDNJ policies;
 - b. familiarize themselves with laws, regulations or UMDNJ policies that affect their workplace activities;
 - c. report any actual or suspected violations of laws, regulations or UMDNJ policies;

- d. if aware of the preparation or submission of a false claims or report, or reasonably suspect any other potential fraud, waste or abuse in relation to any health care program, including Federal and State health care programs, report such information to his/her supervisor and to the UMDNJ Office of Ethics and Compliance.
 - e. consult with the Office of Ethics and Compliance for guidance if they are uncertain as to what is appropriate or compliant conduct in a given situation; and
 - f. implement the practices learned in training provided by UMDNJ.
2. Employees may make reports anonymously. The identity of employees who report actual or suspected wrongful conduct, if known, will be kept confidential, to the extent possible, in conformance with applicable laws, regulations and other procedures, during the investigation and resolution of issues related to any allegations of wrongful conduct, and thereafter.
 3. All investigations will occur under the direction of the Vice President/Chief Ethics & Compliance Officer or the Senior Vice President & General Counsel, and will be conducted as sensitively, confidentially and expeditiously as possible. Due consideration will also be given to existing grievance procedures under applicable collective bargaining agreements.
 4. Training and Awareness:

It is the responsibility of the Deans, Vice Presidents, President/CEOs of the Healthcare Units, and UMDNJ Hospital Medical Director to ensure that all Unit Heads are educated and understand the rights and responsibilities of all employees in reporting wrongful conduct or suspected wrongful conduct.

It is the responsibility of all Unit Heads to maintain an ethical working climate. Every Unit Head must:

- a. explain to their respective employees the importance of complying with this policy;
- b. encourage discussion of business practice standards and situations;
- c. respond promptly and properly to concerns raised by employees; and
- d. protect employees against reprisals and retaliation when the employees report, in good faith, actions they believe are a violation or suspected violation of law, UMDNJ policy or procedure, or any other type of wrongful conduct.

The Office of Ethics and Compliance will include education on these rights and responsibilities in the annual University-wide mandatory compliance education course. Successful completion of this course by the UMDNJ workforce is mandatory and a condition of employment. In addition, the OEC will conduct an ongoing awareness campaign across the enterprise of the rights and responsibilities of the entire UMDNJ workforce concerning the reporting of compliance concerns.

5. The Office of Ethics and Compliance will ensure that:
 - a. All employees are provided with this policy, and that the policy will always be available online.
 - b. Information related to the Deficit Reduction Act will be incorporated into the UMDNJ Faculty Handbook.

- c. Information related to the Deficit Reduction Act will be incorporated into the UMDNJ Staff Handbook.
 - d. Information related to the Deficit Reduction Act will be provided to all newly hired employees.
 - e. Compliance education will be provided annually to the UMDNJ workforce, and included in the education will be information regarding the Deficit Reduction Act.
6. The Department of Purchasing Services will:
- a. Provide information regarding the role and responsibilities of contractors and agents relating to the Deficit Reduction Act to all contractors and agents of UMDNJ.
 - b. Supply all appropriate contractors and agents with this policy.

VII. Sanction

Failure to comply with this policy may result in sanctions up to, and including, termination.

By Direction of the President:

Vice President/Chief Ethics & Compliance Officer