

## **Policy on Access, Review, Use and Disclosure of Personal Health Information (PHI)**

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### **I. References**

Patient confidentiality is of primary importance, as outlined in *The Health Information Portability and Accountability Act [HIPAA]*. Personal health information (PHI) is defined by HIPAA as any information about an individual in oral or recorded form, where the information identifies an individual or for which there is a reasonable basis to believe it can be used to identify the individual. Any and all depictions or descriptions of patients must comply with HIPAA. This policy covers the actions of residents and fellows who violate the policies and procedures regarding use or disclosure of personal health information (PHI) and outlines three levels of violations with corresponding sanctions for the respective level that provides trainees with due process in accordance with Section IV.D.1.b) of the ACGME Institutional Requirements.

### **II. Purpose**

Residents and Fellows (“trainees”) are expected to meet and adhere to all academic, clinical, and professional standards set forth in institutional policies, in ACGME requirements and in Tulane University School of Medicine residency program and departmental policies and procedures. All professionals have a collective duty to assure appropriate behavior, particularly as it pertains to professional behavior. Unprofessional behavior during work or outside of work may be investigated if it is brought to the attention of the Program Director of a residency or fellowship program and/or Designated Institutional Official and may be integrated into the Clinical Competency Committee’s assessment of the trainee’s professionalism core competency.

### **III. Definitions**

Resident/Fellow: an individual enrolled in a residency or fellowship Program. For purposes of this Policy and the School of Medicine’s additional GME Policies, “resident” also includes individuals enrolled in a fellowship (subspecialty) program sponsored by the School of Medicine who has completed a residency program in a related specialty (“fellow”). Residents are members of Tulane University and the School of Medicine’s workforce and are collectively referred to as “trainees.”

Training Program/training program: an ACGME-accredited residency or fellowship program sponsored by Tulane University School of Medicine.

Program Director: refers to the director of a Residency or Fellowship Program.

DIO: the Designated Institutional Official who has the authority and responsibility for all Tulane University School of Medicine residency programs. The DIO at the School of Medicine also has the title of Associate Dean of Graduate Medical Education.

Administrative Personnel/GME Administration (each a GME Administrator): Program

Directors, Program Coordinators, Department Chairs, Clinical Site Directors, and Chief Academic Officers, as applicable.

Clinical Competency Committee (CCC): a required body comprising three or more members of the teaching faculty that is advisory to the Program Director and reviews the progress of all residents/fellows in the residency or fellowship program.

Probation: a formal level of discipline in which the trainee may still engage in the residency program within the confines of a Corrective Action Plan.

Corrective Action Plan: a written plan to improve performance that includes a description of deficiencies, documentation, and written feedback on identified deficiencies, a timeline for addressing identified deficiencies, performance requirements, and consequences for facility to successfully meet performance requirements.

Remediation: the process of improving trainee performance to meet applicable academic standards, requirements, policies, or procedures.

Suspension: a formal level of discipline in which the trainee is temporarily restricted from participating in clinical, didactic or research activities associated with the training program.

Dismissal: the act of ending a trainee's participation in a residency or fellowship program prior to the trainee's successful completion of the course of training.

Termination: the act of severing employment prior to the expiration date of the trainee's contract. If a trainee is terminated, his or her contract will not be renewed.

Non-Promotion (Not Promoted): a decision to not promote the trainee to the next post graduate year of training.

Non-Renewal (Non-Reappointment): a decision to not renew a trainee's contract with the School of Medicine for the next post graduate year of training.

Grievance: a process of contesting a decision made by a training program or the School of Medicine in connection with the evaluation and remediation procedure or submitting an issue for resolution in accordance with this Policy.

Adverse Action: an action taken with respect to a trainee which is to be accorded due process consistent with ACGME Requirements or this Policy. Adverse Actions include Dismissal, Non-Renewal/Non-Reappointment, Non-Promotion, Suspension, Delayed Graduation, or other action with respect to which a trainee may receive a Fair Hearing under this Policy.

Academic/Professional Counseling: advising, counseling, or mentoring provided or required of a trainee in accordance with this Policy to address an academic or professional deficiency. Academic or professional counseling is often provided by faculty member of the trainee's residency or fellowship program.

Misconduct: conduct, willful or otherwise, that seriously departs from standards of

professionalism or professional expectations, including standards set by the School of Medicine. Misconduct includes behavior by a trainee that endangers patients, peers, staff, medical students, or faculty; subjects peers, staff or faculty to an unacceptable work or learning environment; or dishonest, unethical, and/or illegal behavior.

Unprofessional Behavior: conduct, willful or otherwise, that departs from standards of professionalism or professional expectations, including standards set by the School of Medicine or ACGME. Unprofessional behavioral includes, but is not limited to, disrespectful behavior toward faculty, patients, supervisors, staff and/or medical students, and peers; failing to provide patient and family-centered care; poor time management and/or failing to be properly prepared to participate in learning and clinical care activities of a training program.

#### **IV. Descriptions of Patients, Patient Care, and the Work Environment**

Trainees shall at all times follow the requirements of HIPAA as well as the policies and procedures of the hospital, clinic, or healthcare system in which they are serving. It is to be understood that in situations where trainees are working at hospitals, clinics, or healthcare systems outside of the University, they must strictly adhere to the policies and procedures of the respective hospital, clinic, or healthcare system in which the patient received care.

These guidelines apply even if the individual patient is the only person who may be able to identify him/her/themselves on the basis of the posted description. Anonymous descriptions must not contain information that will enable any person, including people who have access to other sources of information about a patient, to identify the individuals described. This encompasses all emails and text messages sent from personal phones.

At no time shall patients, or patient stories, be depicted in a disparaging, demeaning, or insulting manner. Even if patients are not identified (by name, record number, image), or even if consent has been obtained from the patient, any description of patient care should be professional and respectful of the patient.

All descriptions of the workplace environment shall respect the privacy rights of colleagues and co-workers. Individuals shall not be identified by name or be described in such a fashion that their identity is easily apparent, without explicit consent of that individual.

#### **V. Sanctions**

Tulane residents and fellows shall be subject to the sanctions described below which consider, among other factors, the severity of the violation. When determining the appropriate sanction, Tulane will consider the nature of the violation by taking into consideration the severity, whether it was intentional or unintentional, and whether any violation resulted from a pattern or practice of improper use or disclosure of PHI. Misconduct or violations identified by the training program or reported to the training program director may be addressed in a tiered manner as set forth herein or may result in immediate adverse action, depending on the conduct. In all cases, regardless of the level of the infraction, trainees are entitled to due

process described in the GME Policy on Remediation, Adverse Actions, Due Process, and Grievances regardless of when the action is taken during a trainee's appointment. Tiered sanctions may be omitted (skipped) or repeated, depending on the frequency, severity, and/or nature of the violation.

1. **Level 1: Unintentional Disclosure of PHI or records.** This level of violation occurs when a trainee unintentionally or carelessly accesses, reviews, uses, or discloses PHI, which is not for a legitimate purpose or exceeds the minimum necessary for a legitimate purpose. Examples include but are not limited to:
  - a. discussing PHI in a public area;
  - b. leaving a paper copy of a medical record unattended in an accessible area with PHI unsecured;
  - c. leaving an electronic copy of a medical record unattended in an accessible area with PHI unsecured;
  - d. leaving a computer unattended with access to PHI;
  - e. disclosing PHI to the wrong recipient.

The resident or fellow will be subject to sanctions based upon the severity and any past incidence of violations of these Policies & Procedures. *Sanctions may be tiered and progressive, and may range in severity from, for example, a remedial education for a first offense, a written warning for a second or significant offense, to termination of employment for repeated offenses.*

2. **Level 2: Intentional and Unauthorized Access of PHI.** This level of violation occurs when a trainee intentionally accesses, reviews, uses, or discloses PHI in a manner not related to a business purpose, but for reasons not related to their job functions. Examples include but are not limited to:
  - a. accessing and reviewing PHI without a business purpose;
  - b. trainee shares a password to a system or device containing electronic PHI.

The trainee will be subject to sanctions based upon the severity and past incidence of these Policies and Procedures. *Sanctions may be tiered and progressive, and may range in severity from, for example, a written warning for a first offense, to an unpaid suspension or termination of employment for a second or significant offenses.*

3. **Level 3: Intentional and Unauthorized Disclosure of PHI.** This level of violation occurs when a trainee intentionally accesses, reviews, uses, or discloses PHI for personal gain or with malicious intent. Examples include but are not limited to:
  - a. Inappropriately disclosing an Individual's PHI without an authorization;
  - b. posting an Individual's PHI on social media platforms or on the internet without an authorization;
  - c. accessing an Individual's PHI for personal gain or malicious intent, regardless of whether any PHI is disclosed;

d. accessing PHI for identity theft or fraud purposes.

The trainee will be subject to sanctions based upon the severity and past incidence of these Policies and Procedures. *Sanctions for this level of violation may be tiered and progressive or may result in an immediate termination of employment.*

## **VI. Disciplinary Process**

When a trainee violates or is suspected of violating the GME Policy on Access, Review, Use and Disclosure of Personal Health Information (PHI), the following procedures should be followed.

- a. The alleged violation should be reported by the Program Director, Designated Institutional Official (DIO), or an Administrative Personnel or member of GME Administration to the HIPAA Privacy Office upon discovery. The HIPAA Privacy Office will notify the Information Security Office of a suspected Information Security violation of the applicable policy.
- b. If a trainee becomes aware that a violation may have occurred, he/she/they must immediately report it to the HIPAA Privacy Office or their supervisor.
- c. Upon notification of an alleged HIPAA violation, the HIPAA Privacy Office will investigate, review, and assess the alleged violation, and determine the appropriate sanction based on the severity of the violation. The HIPAA Privacy Office will coordinate the appropriate disciplinary action for the trainee with the Office of Graduate Medical Education to address according to the due process as outlined in the GME Policy on Remediation, Adverse Actions, Due Process, and Grievances.
- d. All disciplinary actions will be documented in writing and maintained in the trainee's record, in accordance with GME policy. Disciplinary action may be appropriately delayed if the action could adversely affect or compromise patient care. The documentation must include the personnel involved, steps taken, the relevant time period, the reason for the sanction and the final determination of the investigation.

## **VII. Training**

Tulane includes information about its sanctions policy in its annual and onboarding HIPAA training materials to communicate to residents and fellows the potential consequences for failing to comply with HIPAA and these Policies and Procedures.

## **VIII. Retention Period**

The HIPAA Privacy Office will document in writing all sanctions and retain such documentation for six (6) years.

## **References/Associated Policies**

- Tulane University School of Medicine, Graduate Medical Education, *XVI. Policy on Remediation, Adverse Actions, Due Process and Grievances*

- Tulane University School of Medicine, Graduate Medical Education XX. *Policy on Social Media and Out-Of-Work Conduct*
- Tulane University *Confidentiality of Protected Health Information Policy*