

<b>Title: Prohibition Against Retaliation for Protected Activities</b>	
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<b>Discrete Operating Unit/Facility:</b> Banner Baywood Medical Center Banner Behavioral Health Banner Boswell Medical Center Banner Casa Grande Medical Center Banner Churchill Community Hospital Banner Del E Webb Medical Center Banner Desert Medical Center Banner Estrella Medical Center Banner Fort Collins Medical Center Banner Gateway Medical Center Banner Goldfield Medical Center Banner Heart Hospital Banner Ironwood Medical Center Banner Lassen Medical Center Banner Payson Medical Center Banner Thunderbird Medical Center Banner—University Medical Center Phoenix Banner—University Medical Center South Banner—University Medical Center Tucson Community Hospital East Morgan County Hospital McKee Medical Center North Colorado Medical Center Ogallala Community Hospital Page Hospital Platte County Memorial Hospital Sterling Regional MedCenter Washakie Medical Center	Banner Corporate Banner Health Clinics Banner Imaging Services Banner MD Anderson Cancer Center Banner Health Network Banner Home Care and Hospice Banner Plan Administration Banner Pharmacy Services Banner Surgery Centers Banner Urgent Care Centers Occupational Health/Employee Services Post-Acute Care Services Research Rural Health Clinics University Physicians Health Plans

**I. Purpose/Population:**

- A. A variety of federal and state laws prohibit Banner Health (“Banner”) from retaliating against employees, former employees, applicants, independent contractors, agents, and others affiliated with Banner and any discrete operating unit owned, operated, or controlled by Banner (except Sonora Quest Laboratories and other entities approved by the Chief Legal Officer/General Counsel) (collectively referred to as “Banner Staff”), or patients who engage in Protected Activity.
- B. Banner has also established a Compliance Program to prevent, detect, and correct illegal and unethical conduct that requires Banner Staff to engage in certain Protected Activity, namely to report Potential Compliance Issues to a supervisor, department manager or director, compliance officer, the Ethics & Compliance Department or through the ComplyLine.
- C. **Purpose:** The purpose of this Policy is to foster an environment where Banner Staff and patients will feel free to engage in Protected Activity without fear of retaliation. To that end, this Policy explains:
  - 1. The kinds of adverse employment actions that could amount to Prohibited Retaliation;
  - 2. The consequences for engaging in Prohibited Retaliation; and
  - 3. The procedure Banner takes to investigate and remedy Prohibited Retaliation.
- D. For purposes of the False Claims Act, this Policy only applies to employees, contractors, and agents who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employees, contractors, agents, or associated others in furtherance of an action under the False Claims Act.<sup>1</sup>
- E. **Population:** All Employees.

**II. Definitions:**

- A. **Banner Leader** is a person employed by Banner as a supervisor, manager, director, or member of the senior management team of any facility or of the Banner system.
- B. **Federal Health Care Program:** Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded in whole or in part by the United States Government, including, but not limited to, Medicare, Medicaid (AHCCCS), managed Medicare/Medicaid, and TRICARE/VA/CHAMPUS.
- C. **Potential Compliance Issue:** Any suspected violation of Banner’s Code of Conduct or policies and procedures and/or any suspected violation of any laws or regulations relating to a Federal Health Care Program, including, but not limited to, the False Claims Act, the Physician Self-Referral (Stark) Law, and the Anti-Kickback Statute.
- D. **Protected Activity** is one or more of the following actions:
  - 1. Alleging, orally or in writing, unlawful discrimination, harassment, or retaliation against oneself or others to anyone, including, but not limited to:

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<sup>1</sup> 31 U.S.C. § 3730(h)(1).

- a. Threatening to file a charge or other formal complaint of discrimination with any federal, state, or local government agency;
- b. Refusing to obey an order or follow a Banner policy because of a reasonable, good faith belief that the order is unlawful; or
- c. Requesting accommodation for a disability, religious practice, or other lawfully protected reason.

Allegations under this Policy include, but are not limited to, those made to a Banner Leader, coworker, government agency (such as the Equal Employment Opportunity Commission, Department of Labor, or National Labor Relations Board), the ComplyLine, the Human Resources Department, the Legal Department, or the Ethics & Compliance Department).

2. Reporting Potential Compliance Issues in good faith to a supervisor, department manager or director, compliance officer, the Ethics & Compliance Department or through the ComplyLine.
  3. Making a good faith report about an activity, policy, or practice that a health professional reasonably believes:
    - a. Violates professional standards of practice or is against the law; and
    - b. Poses a substantial risk to the health, safety or welfare of a patient.
  4. Filing a complaint of discrimination with any federal, state, or local government agency charged with investigating complaints of illegal discrimination, harassment, or retaliation.
  5. Testifying, assisting, or participating in an investigation, proceeding, hearing, or court action under any anti-discrimination law.
  6. Taking any of the following actions:
    - a. Requesting leave or otherwise asserting rights under the Family and Medical Leave Act;
    - b. Filing a Workers' Compensation claim;
    - c. Serving on a jury;
    - d. Refusing to commit an illegal act;
    - e. Making a complaint involving payment of wages;
    - f. Reporting a violation or anticipated violation of any state or federal law (i.e., whistle blowing);
    - g. Taking military leave or time off for military training;
    - h. Reporting safety violations;
    - i. Complaining about access for disabled individuals;
    - j. Requesting an accommodation for medical or religious reasons; or
    - k. Engaging in concerted activities for the mutual benefit of two or more employees (e.g., employees discussing wages, scheduling, or other working conditions with each other, or an employee bringing the concerns of a group of employees to the attention of management).
- E. Prohibited Retaliation includes, but is not limited to, one or more of the following actions, if such action(s) violates the law and is taken because of a Protected Activity:
1. Denying employment, transfer or promotion
  2. Denying a religious or medical accommodation without sufficient business justification;
  3. Giving a negative performance evaluation
  4. Denying job benefits

5. Demoting, suspending, or terminating an employee, contractor, or agent;
6. Reducing or restricting a person's duties and/or responsibilities;
7. Excluding a person from meetings or work-related functions that he or she would otherwise attend or participate in;
8. Giving unwarranted discipline;
9. Engaging in harassment. (*i.e.*, severe or pervasive unwelcome, or offensive conduct that a reasonable person would consider to be intimidating, hostile or abusive);
10. Giving a negative job reference;
11. Transferring an employee to another position simply because the employee complained of illegal discrimination, harassment or retaliation, or engaged in any other Protected Activity;
12. Subjecting a person to other adverse treatment such as denying training, moving to a less desirable shift or location, giving less desirable tasks without sufficient business justification;
13. Taking any action against any person that is intended to "pay back" that person for his/her Protected Activity;
14. Withholding or delaying treatment or care for a patient; or
15. Intimidating, threatening, coercing, discriminating against, or taking any other retaliatory action against a patient, who, in good faith and in a reasonable manner, exercises his or her rights concerning privacy of health information or against any person who files a complaint with the Department of Human Services or participates in an investigation related to Banner's compliance with the HIPAA regulations.

### **III. Policy:**

- A. Banner strictly prohibits retaliation against any Banner Staff or patient who engages in Protected Activity.
  1. Banner Staff are protected from Prohibited Retaliation even if the allegation of illegal discrimination, harassment, or retaliation turns out to be without merit.
    - a. Example: Mary believes that she was denied a promotion because she is a woman. She complains to the Human Resources Department, which investigates the complaint. The Investigation reveals that Mary was denied the promotion because she did not have a Masters degree, which was a minimum qualification for the job. Even though Mary's complaint of discrimination was without merit, Mary is still protected against Prohibited Retaliation.
  2. Banner Staff are protected against Prohibited Retaliation when, in accordance with the Compliance Program, they report, investigate, or attempt to stop Potential Compliance Issues.
    - a. Example: Karen believes in good faith that she has witnessed a possible violation of Banner's Code of Conduct and tells her immediate supervisor. Karen is protected against Prohibited Retaliation.
  3. Banner Staff are protected against Prohibited Retaliation even after any employment, contractual, or other relationship with Banner has ended.
    - a. Example: Susie complains of discrimination at Banner and applies for a job with another employer. Banner will not give a negative job reference to the potential

outside employer simply because Susie complained of discrimination while she worked at Banner; if Banner did so, such an action would be Prohibited Retaliation.

4. Banner Staff are protected from Prohibited Retaliation even if the Protected Activity involved a different employer.
  - a. Example: John applies for a job at Banner. The hiring manager learns that John filed a charge of discrimination with the EEOC against his last employer. The hiring manager cannot refuse to hire John simply because he filed a charge of discrimination against his last employer. If the hiring manager refused to hire John for this reason, this refusal would be Prohibited Retaliation.
5. Any person closely associated with Banner Staff (e.g., a spouse, child, domestic partner, or fiancé) who engages in Protected Activity is also protected against Prohibited Retaliation.
  - a. Example: John and Mary are engaged to be married and they both work for Banner in the same department. Mary complains that she is being sexually harassed by their manager. If the manager denies a promotion to John simply because Mary complained of sexual harassment, this would be Prohibited Retaliation.
- B. Any Banner Staff who engages in Prohibited Retaliation will be subject to corrective action, up to and including termination of employment or contractual relationship with Banner.

#### **IV. Procedure/Interventions:**

- A. Banner Staff who feel that they have been subject to Prohibited Retaliation are encouraged to report the matter to a Banner Leader, the Human Resources Department, or the Ethics & Compliance Department.
- B. Banner Staff who have witnessed a possible act of retaliation in violation of this Policy must report the incident to a Banner Leader, the Human Resources Department, the Ethics & Compliance Department, or if it involves patients, a Patient Services Representative.
- C. A Banner Leader who learns of an allegation of Prohibited Retaliation must report the allegation to the Human Resources Department, the Ethics & Compliance Department, or if it involves patients, a Patient Services Representative.
  1. Banner Leaders will not conduct investigations of allegations of Prohibited Retaliation, but will cooperate with the department or individual tasked with investigating the allegation, as described in Section IV.D.
- D. Upon receiving an allegation of Prohibited Retaliation, the Human Resources Department, the Ethics & Compliance Department, or the Patient Services Representative will investigate the allegation to determine whether any retaliation has occurred.
  1. If the allegation involves a Banner employee or any human resources issue, the Human Resources Department will be notified before initiating an investigation. Every investigation involving a Banner employee or human resources issue will be coordinated with the Human Resources Department.
  2. If the allegation involves a Potential Compliance Issue, the Ethics & Compliance Department will be notified before initiating the investigation. Every investigation

- involving a Potential Compliance Issue will be coordinated with the Ethics & Compliance Department.
3. If the allegation involves a patient privacy issue, the Privacy Officer will be notified before initiating the investigation. Every investigation involving a patient privacy issue will be coordinated with Banner's Privacy Officer.
- E. If the investigation reveals that Prohibited Retaliation occurred, the Human Resources Department, the Ethics & Compliance Department, or the Patient Services Representative will work with the appropriate Banner Leader to promptly:
1. Take action (if possible) to correct the situation for the person who has been subject to Prohibited Retaliation, which may include, for example, rescinding corrective action, reinstating job duties, or initiating care or treatment.
  2. Deliver corrective action to the person(s) who engaged in Protected Retaliation. If the retaliating person(s) are Banner employees, the corrective action will be delivered in a manner that is consistent with Banner's Human Resources policies and procedures and will, at a minimum, consist of an advanced level of corrective action.
- F. The allegation of Prohibited Retaliation, the ensuing investigation, and any discipline administered as a result of the investigation will be documented and maintained by the investigating parties in accordance with Banner's record retention policies.
1. If the Ethics & Compliance Department is involved in the investigation, the System Compliance Committee will receive a report on the outcome of the investigation, which includes the findings of the investigation and any corrective action delivered as a result of those findings.
- G. Before taking any adverse action against Banner Staff who have engaged in Protected Activity, Banner Leaders should consult with the Human Resources Department to ensure that the adverse action is appropriate and not Prohibited Retaliation.
1. Example: An employee complaints of discrimination. A month later, the manager believes that corrective action should be given to the employee for an unrelated performance issue. The manager should first consult with the Human Resources Department to ensure that the corrective action does not constitute Prohibited Retaliation.

## **V. Procedural Documentation:**

- A. If formal discipline is given, documentation in accordance with Banner's Corrective Action Policy (#7647) is required.

## **VI. Additional Information:**

- A. Banner has a confidential compliance hotline known as the ComplyLine, which can be contacted at any time by calling 888-747-7989 or online at <https://bannerhealthcomplyline.alertline.com>. Any report to the ComplyLine of a Potential Compliance Issue is considered a report to the Ethics & Compliance Department and is, therefore, a Protected Activity under this Policy.

## **VII. References:**

- A. 31 U.S.C. § 3730(h)
- B. Banner's Code of Conduct

- C. *OIG Compliance Program Guidance for Hospitals*, 70 Fed. Reg. 4858 (Jan. 31, 2005).
- D. *OIG Compliance Program Guidance for Clinical Laboratories*, 63 Fed. Reg. 45076, 45083 (Aug. 24, 1998).
- E. *OIG Compliance Program Guidance for Home Health Agencies*, 63 Fed. Reg. 42410, 42421 (Aug. 7, 1998).
- F. *OIG Compliance Program Guidance for Third Party Medical Billing Companies*, 63 Fed. Reg. 70138, 70148 (Dec. 18, 1998).
- G. *OIG Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry*, 64 Fed. Reg. 36368, 36384 (July 6, 1999).
- H. *OIG Compliance Program Guidance for Hospice*, 64 Fed. Reg. 54031, 54043 (Oct. 5, 1999).
- I. *OIG Compliance Program Guidance for Medicare+Choice Organizations Offering Coordinated Care Plans*, 64 Fed. Reg. 61893, 61905 (Nov. 15, 1999).
- J. *OIG's Compliance Program Guidance for Nursing Facilities*, 65 Fed. Reg. 14289, 14301 (Mar. 16, 2000).
- K. *OIG Compliance Program Guidance for Individual and Small Group Physician Practices*, 65 Fed. Reg. 59434, 59444 (Oct. 5, 2000).
- L. *Standards for Privacy of Individually Identifiable Health Information*, 67 Fed. Reg. 53182 (Aug. 14, 2002); 45 C.F.R. § 164.530.

### **VIII. Other Related Policies/Procedures:**

- A. Compliance: Reporting and Investigating Potential Compliance Issues (#6013)
- B. Compliance: ComplyLine (#12648)
- C. Harassment and Sexual Harassment Policy (#7649)
- D. Corrective Action Policy (#7647)
- E. Records Retention and Destruction (#5767)
- F. Patient Complaint and Grievance (#2865)
- G. Compliance: Arizona False Claims Statutes Policy (#15468)
- H. Compliance: California False Claims Statutes Policy (#15469)
- I. Compliance: Colorado False Claims Statutes Policy (#15470)
- J. Compliance: Nebraska False Claims Statutes Policy (#15471)
- K. Compliance: Nevada False Claims Statutes Policy (#15472)
- L. Compliance: Wyoming False Claims Statutes Policy (#15473)

### **IX. Keywords and Keyword Phrases:**

- A. Protected Activity
- B. Retaliation
- C. Corrective Action
- D. Compliance
- E. Discrimination
- F. Harassment
- G. Privacy
- H. Release of Information
- I. Patient Rights
- J. Compliance
- K. ComplyLine
- L. Human Resources
- M. HR
- N. HRPolicies

### **X. Appendix:**

- A. N/A