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POLICY SUBJECT:

Public Interest Disclosure (Whistleblower Protection)

PURPOSE:

The purpose of this policy is to provide guidelines and procedures for the disclosure of significant and serious wrongdoing and for the protection against reprisals for persons who make such disclosures

BOARD POLICY REFERENCE:

- Executive Limitations (EL-2) Treatment of Clients
- Executive Limitations (EL-3) Treatment of Staff
- Executive Limitations (EL-7) Asset Protection and Risk Management

POLICY:

Southern Health-Santé Sud is committed to the highest standards of openness, integrity and accountability in the services it provides. It acknowledges that individuals working in the health care field may face a dilemma between loyalty to their employers and colleagues versus a duty to protect their patients/clients against professional, incompetent, illegal, or unethical behavior.

It is expected that the majority of concerns will be dealt with fairly through normal reporting policies, procedures, and practices, and that professional incompetence or misconduct will be reported as required by regulated professionals. However, when existing systems and communication channels do not prove effective, staff should be offered this alternative method to disclose a concern with confidence that they will be treated impartially and protected from reprisal. Disclosure of concerns should be seen as one more way that systems can be improved and safety of patients/clients enhanced.

It is Southern Health-Santé Sud's policy to provide a mechanism for individuals to disclose significant and serious wrongdoings without fear of reprisal and in keeping with the provisions of *The Public Interest Disclosure (Whistleblower Protection) Act*.

The regional policies relating to the reporting and disclosure of critical occurrences will be followed if a matter relates to the disclosure of a critical occurrence. See ORG.1810.PL.001 Occurrence Reporting and Managing Critical Incidents, Critical Occurrences, Occurrences and Near Misses and See ORG.1810.PL.002 Disclosure of Critical

Incidents, Occurrences, and Near Misses. Other legislation such as that pertaining to Workplace Health and Safety may also need to be considered.

Responsibilities of the Chief Executive Officer

The Chief Executive Officer is responsible for the establishment of procedures to manage disclosures by employees of Southern Health-Santé Sud.

Appointment of Designated Officer

The Chief Executive Officer will designate a senior official to be the designated officer for the purposes of this policy, to receive and deal with disclosures by employees of Southern Health-Santé Sud. That individual is:

-Mr. René Ouellette

Information about this policy to be communicated

The Chief Executive Officer must ensure that information about this policy and the disclosure procedures are widely communicated to the employees of Southern Health-Santé Sud.

DEFINITIONS:

Designated Officer means the Chief Executive Officer or the senior official designated by the Chief Executive Officer to receive and deal with disclosures under this policy.

Disclosure means a disclosure made in good faith by an employee in accordance with this policy.

Employee means an employee or manager employed by Southern Health-Santé Sud.

Ombudsman means the Ombudsman appointed under *The Ombudsman Act*.

Reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, or co-operated in an investigation under this policy:

- a disciplinary measure;
- a demotion;
- termination of employment;
- any measure that adversely affects his or her employment or working conditions;
- a threat to take any of the measures referred to in clauses above.

Wrongdoing means a wrongdoing as defined by this policy.

Wrongdoings to which this policy applies

This policy applies to the following wrongdoings in or related to the operations and/or management of Southern Health-Santé Sud:

- an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- an act or omission that creates a substantial and specific danger to life, health or safety or persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- gross mismanagement, including of public funds or a public asset;
- knowingly directing or counseling a person to commit a wrongdoing described in clauses above

Discipline for wrongdoing

An employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment, in addition to and apart from any penalty provided by law.

Southern Health-Santé Sud, upon review of the disclosure and with any other information obtained, reserves the right to address instances where there is evidence of 'bad faith' on the part of staff making the disclosure. Making clearly unfounded or malicious disclosures may result in disciplinary action taken against the staff member.

PROCEDURE:

Making a disclosure

An employee who is considering making a disclosure may request advice from the designated officer.

Request may be in writing

The designated officer may, at his/her discretion, require that the request for advice be in writing.

Disclosure by employee

If an employee reasonably believes that he/she has information that could show that a wrongdoing has been committed or is about to be committed, the employee may make a disclosure to

- the employee's supervisor;
- the employee's designated officer; or
- the Ombudsman.

Content of disclosure

A disclosure made under this policy must be in writing and must include the following information, if known:

- description of the wrongdoing;
- the name of the person or persons alleged to
 - have committed the wrongdoing, or
 - be about to commit the wrongdoing;
- the date of the wrongdoing;
- whether the wrongdoing has already been disclosed and a response received

Procedures for the receipt of a disclosure when the disclosure is made to a supervisor

1. The supervisor must arrange to privately discuss the disclosure with the disclosing employee within ten (10) working days of receiving the disclosure.
2. The supervisor must determine how the disclosing employee wishes to receive communication about the disclosure and respect the wishes of the employee. All pertinent verbal communication must be documented by the supervisor in writing and kept in the disclosure file.
3. The supervisor must advise the disclosing employee that information related to the disclosure, including his/her identity, will be protected and kept confidential to the fullest extent possible, subject to any other Act and to the principles of procedural fairness and natural justice. The supervisor must advise the disclosing employee that he/she also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.
4. The supervisor must advise the disclosing employee that further review and handling of the disclosure will be undertaken by or under the direction of the designated officer.

5. Immediately following the discussion with the disclosing employee, the supervisor must contact the designated officer regarding the disclosure. If the subject matter of the disclosure relates to a matter under the supervisor's responsibilities, the supervisor must discuss with the designated officer whether any action is to be taken by the supervisor regarding the matter. Any advice or direction given by the designated officer to the supervisor must be followed.
6. The supervisor must also arrange with the designated officer how the disclosure file will be forwarded to the designated officer to ensure that it is sent in a secure and confidential manner. The supervisor must promptly forward the disclosure file in its entirety and any accompanying material (e.g. route slip, transmittal) as arranged, marked "private and confidential", to the designated officer. The supervisor must not keep a copy of the disclosure file or any of its contents.
7. If the subject matter of the disclosure involves the designated officer, the supervisor must forward the disclosure file in its entirety to the Chief Executive Officer for review and handling. The disclosure file and any accompanying material (e.g. route slip, transmittal) must be marked "private and confidential" and forwarded in a confidential manner. The supervisor must not keep a copy of the disclosure file or any of its contents. The supervisor must advise the disclosing employee that further review and handling of the disclosure will be undertaken by or under the direction of the Chief Executive Officer.
8. If, after submitting a disclosure, the disclosing employee wishes to withdraw the disclosure, the supervisor should request that the disclosing employee provide written direction to the supervisor to do so. The supervisor should advise the employee that a disclosure may be made to the Ombudsman if the employee wishes to do so.
9. Upon receipt of the written withdrawal notice, the supervisor must close the disclosure file and forward the closed file to the designated officer for statistical tracking purposes only, with instructions that the disclosure has been withdrawn. The file and any accompanying material or instructions must be marked "private and confidential", and forwarded to the designated officer in a confidential manner. The supervisor must not keep a copy of the disclosure file or any of its contents.
10. In the event that a disclosure is withdrawn, and depending on the nature of the disclosure, the supervisor should discuss with the designated officer whether any further action is to be taken regarding the subject matter of the disclosure.
11. The supervisor must not disclose receipt or withdrawal of a disclosure to anyone other than the designated officer, or in the event the disclosure relates to the designated officer to the Chief Executive Officer.

Procedures for the receipt and review of a disclosure by the designated officer

Note: the procedures in this section also apply to the review and handling of a disclosure by the Chief Executive Officer acting as or instead of the designated officer.

1. Upon receipt of the disclosure or disclosure file, the designated officer must review the disclosure to ensure that:
 - 1.1. the nature of the disclosure pertains to matter within the government body; and,
 - 1.2. review of the disclosure does not represent a conflict for the government body or the designated officer. (For example, reviewing a disclosure involving the Chief Executive Officer Officer, a Board member or the Minister responsible for the government body would represent a conflict for the designated officer.)
2. If the disclosure pertains to a matter outside the government body, the designated officer has the authority to refer the disclosure to the designated officer of the government department, office or government body, as appropriate, for review and handling. Prior to making the referral, the designated officer must provide notice of the referral to

the disclosing employee and advise the employee that if he/she does not agree with the referral, the disclosing employee may withdraw the disclosure within ten (10) working days. The designated officer must advise the disclosing employee that a disclosure may be made to the Ombudsman. If the disclosing employee does not withdraw the disclosure, the designated officer must refer the disclosure to the designated officer of the government department, office or government body, as appropriate, for review and handling.

3. If the disclosure represents a conflict for the designated officer or the government body, the designated officer has the authority to refer the disclosure to the Ombudsman. Prior to making the referral, the designated officer must provide notice of the referral to the disclosing employee and advise the employee that if he/she does not agree with the referral, the disclosing employee may withdraw the disclosure within ten (10) working days. If the disclosing employee does not withdraw the disclosure, the designated officer must refer the disclosure to the Ombudsman.
4. Unless the disclosure involves the Chief Executive Officer Officer, a Board member or the Minister responsible for the government body, upon receipt of a disclosure or disclosure file, the designated officer must notify the Chief Executive Officer that a disclosure has been received, and provide information to the Chief Executive Officer regarding the nature of the alleged wrongdoing. The designated officer must ensure that only as much information is provided as is necessary to convey the nature of the allegation, recognizing the Chief Executive Officer's responsibility for the administration of the government body.
5. If the disclosure has been made directly to the designated officer, he/she must arrange to privately discuss the disclosure with the disclosing employee within ten (10) working days of receiving the disclosure.
6. The designated officer must determine how the disclosing employee wishes to receive communication about the disclosure and respect the wishes of the employee. All pertinent verbal communication must be documented in writing, signed and dated by the designated officer, and kept in the disclosure file.
7. The designated officer must advise the disclosing employee that information related to the disclosure, including his/her identity, will be protected and kept confidential to the fullest extent possible subject to any other Act and to the principles of procedural fairness and natural justice. The designated officer must advise the disclosing employee that he/she also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.
8. If, after submitting a disclosure, the disclosing employee wishes to withdraw the disclosure, the designated officer must request that the disclosing employee provide written direction to the designated officer to do so. The designated officer must advise the employee that a disclosure may be made to the Ombudsman if the employee wishes to do so. Upon receipt of the withdrawal notice, the designated officer must close the disclosure file.
9. In the event that a disclosure is withdrawn, the designated officer must determine whether any action regarding the subject matter of the disclosure needs to be taken. This action is independent of the disclosure process, and is to be determined on a case-by-case basis, depending on the nature of the disclosure. The designated officer may need the advice of the Chief Executive Officer and/or legal or other advice.
10. The designated officer must determine if the disclosure was made in good faith falls within the categories of wrongdoing covered by the Act (Section 3), keeping in mind the purpose of the Act and, if the employee had a reasonable belief that the information could show that a wrongdoing has been committed or is about to be committed. Disclosures that do not meet these criteria do not require further action under the Act; however, the designated officer must determine whether any other action regarding the subject matter of the disclosure may need to be taken.

11. A disclosure must be reviewed promptly to determine if the matter disclosed represents a wrongdoing as defined in the Act and to determine the appropriate action to be taken, if any. Every effort should be made to complete the review within thirty (30) working days from the initial receipt of the disclosure.
12. If, in the designated officer's opinion, an investigation is not warranted, the reason for this determination, and any action(s) that has been taken or that will be taken, is to be documented in writing in the file. The disclosing employee and the Chief Executive Officer should be advised promptly that review of the disclosure has been concluded.
13. If, in the designated officer's opinion, an investigation is warranted with regard to the disclosure, the designated officer must promptly advise the Chief Executive Officer. The disclosing employee may, where appropriate, be advised on a confidential basis that an investigation will be undertaken.
14. If outside legal advice is to be arranged for any person involved in a disclosure, care must be taken to handle all correspondence to or from legal counsel, including billings for these services, with due regards to confidentiality requirements and protection of identity under the Act.

Procedures for investigation of the disclosure – designated officer

Note: the procedures in this section also apply to the investigation of a disclosure by the Chief Executive Officer acting as or instead of the designated officer.

1. Investigations must be managed by the designated officer, with appropriate assistance, depending on the nature of the disclosure. This responsibility cannot be delegated.
2. Managing the investigation may involve engaging specialized assistance (e.g. internal audit; labour relations) or referral to an appropriate agency (e.g. law enforcement) to conduct the investigation.
3. Investigations must be conducted promptly and in a confidential manner, with due regard for the protection of the identity of persons involved in the disclosure process. All persons involved with the investigation must be cautioned not to disclose any information related to the investigation or the disclosure except as required by law or in accordance with the principles of procedural fairness and natural justice.
4. Investigations must be conducted in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and to be given an opportunity to reply to the disclosure. The investigator must ensure the confidentiality of the information collected and must protect the identity of the disclosing employee, any witnesses and the alleged wrongdoer, to the fullest extent possible.
5. Documentation of the outcome of the investigation must be included in the disclosure file. If the investigation results in a find of wrongdoing, the disclosure file must include any recommendations or corrective actions to be taken in relation to the wrongdoing, or the reasons why no corrective action is being taken.
6. The disclosing employee, the alleged wrongdoer and the Chief Executive Officer must be advised of the outcome of the investigation within sixty (60) working days of completing the investigation, unless there are extenuating circumstances. The designated officer must include a note in the disclosure file, signed and dated, confirming that appropriate communication has occurred.
7. If outside specialized expertise is retained by the designated officer to assist in the investigation (e.g. outside legal advice, specialized investigators, forensic auditors), care must be taken to handle all correspondence to or from any expert, including billings for these services, with due regard to confidentiality requirements and protection of identity under the Act.

IMPORTANT POINTS TO CONSIDER:

Making a disclosure to the Ombudsman

Nothing in this policy prevents an employee or other person from making a disclosure direct to The Ombudsman. (Phone 1-800-665-0531)

Public disclosure if situation urgent

If an employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to life, health or safety of persons, or the environment, such that there is insufficient time to make a disclosure under this policy, the employee may make a disclosure to the public

- if the employee has first made the disclosure to an appropriate law enforcement agency, or, in the case of a health-related matter, the Chief Medical Officer of Health; and
- subject to any direction that the agency or officer considers necessary in the public interest.

Immediately after a disclosure is made to an appropriate law enforcement agency, or, in the case of a health-related matter, the Chief Medical Officer of Health, the employee must also make a disclosure about the matter to his/her supervisor or designated officer.

Restrictions to disclosure

Nothing in this policy authorizes the disclosure of

- information that is protected by The Freedom of Information and Protection of Privacy Act;
- information that is protected by solicitor-client privilege;
- in case of a disclosure to the public, information that is subject to any restriction created by or under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act.

Caution re: disclosure of personal or confidential information

If the disclosure involves personal information or confidential information, the employee must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure.

Protection from reprisal

No person shall take reprisal against an employee or direct that one be taken against an employee because the employee has, in good faith,

- sought advice about making a disclosure from his/her supervisor, designated officer or Chief Executive Officer, or the Ombudsman;
- made a disclosure; or,
- co-operated in an investigation under this policy.

An employee or former employee who alleges that a reprisal has been taken against him/her may file a written complaint with the Manitoba Labour Board.

False or misleading statement

No person shall – in seeking advice about making a disclosure, in making a disclosure, or during an investigation – knowingly make a false or misleading statement, orally or in writing, to a supervisor, designated officer or the Chief Executive Officer, or the Ombudsman, or to a person acting on behalf of or under the direction of any of them.

Obstruction in performance of duties

No person shall wilfully obstruct a supervisor, designated officer or the Chief Executive Officer Officer, or the Ombudsman, or any person acting on behalf of or under the direction of any of them, in the performance of a duty under this Act.

Destruction, falsification or concealment of documents or things

No person shall, knowing that a document or thing is likely to be relevant to an investigation under this Act,

- destroy, mutilate or alter the document or thing;
- falsify the document or make a false document;
- conceal the document or thing; or
- direct, counsel or cause, in any manner, a person to do anything mentioned in clauses above.

Offence and penalty

A person who contravenes this policy may be subject to disciplinary action up to and including termination of employment and may also be subject to be found guilty of an offence under *The Public Interest Disclosure (Whistleblower Protection) Act* and upon summary conviction be subject to a fine of up to \$10,000.00.

Legal advice

If the designated officer or Ombudsman is of the opinion that it is necessary to further the purposes of *The Public Interest Disclosure (Whistleblower Protection) Act*, he/she may, subject to the regulations made under the Act, arrange for legal advice to be provided to employees and others involved in any process or proceeding under this Act.

Protection from liability

No action or proceeding may be brought against a supervisor, designated officer or the Chief Executive Officer, or the Ombudsman, or a person acting on behalf of or under the direction of any of them, for anything done or not done, or for any neglect,

- in the performance or intended performance of a duty under *The Public Interest Disclosure (Whistleblower Protection) Act* or this policy; or
- in the exercise or intended exercise of a power under the Act; unless the person was acting in bad faith.

Annual Report about disclosures

Each year, the Chief Executive Officer must prepare a report on any disclosures of wrongdoing that have been made to a supervisor or designated officer of Southern Health-Santé Sud.

The Report must include the following information:

- the number of disclosures received and the number of disclosures acted on and not acted on;
- the number of investigations commenced as a result of a disclosure;
- in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations or corrective actions taken in relation to the wrongdoing or the reasons why no corrective action was taken.

The Report must be included in the Annual Report of Southern Health-Santé Sud.

REFERENCES:

Government of Manitoba – Public Interest Disclosure Act