



Albert Einstein College of Medicine

Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Employees and Non-Students

(Including Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence & Dating Violence)

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I. Purpose

This Policy outlines standards of behavior and requirements for non-discrimination and gender-based misconduct at Albert Einstein College of Medicine (also referred to as “Einstein” or “College of Medicine”).

II. Scope

To Whom Applicable

This Policy governs the conduct of all College of Medicine faculty, administration (whether supervisors, administrators, and managers), and other staff, whether full-time or part-time (hereinafter collectively, “employees”), employees of contracted service providers, interns, volunteers, visitors, and other third-parties conducting business with the College of Medicine and covers their treatment of each other and of students, as well as others with whom they come into contact at or near the College of Medicine and/or at College of Medicine-sponsored and affiliated activities and events.

Where Applicable

This Policy is intended to protect all afore-mentioned individuals and applies to conduct that occurs on College of Medicine premises and/or at College of Medicine-sponsored and affiliated activities and events, whether on College of Medicine premises or at other locations, including, but not limited to, overnight trips, service learning programs and internships, study or research abroad, work-related travel, off-site conferences, and to all forms/uses of technology by all individuals covered by this policy. The College of Medicine may also address off-campus behavior that occurs other than at College of Medicine-sponsored or affiliated events if it determines that the behavior, or the continued presence of the accused perpetrator creates or contributes to a hostile environment, or impairs, obstructs, substantially interferes with or adversely affects the mission, processes or functions of the College of Medicine. Discrimination, Harassment or Sexual Misconduct in any form (including Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence) is a violation of this policy and will be dealt with seriously, promptly and thoroughly. If any of the principles and procedures in this policy are inconsistent with those contained in another College of Medicine employment policy, the principles and procedures in this policy will control, except that this policy does not override any applicable rights or provisions contained in any collective bargaining agreement or faculty policy.

Which Procedures Applicable

The specific set of investigative and disciplinary procedures that apply will depend on the parties involved, as follows:

Where both the alleged victim (the “Complainant”) and the person accused (the “Respondent”) are employees, faculty or volunteers, the procedures set forth herein will apply.

If a student is involved as either a Complainant or Respondent, the procedures set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students will apply.

Where a Respondent is both a student and an employee, the Vice President for Human Resources/Title IX Coordinator will determine which of these procedures applies based on the circumstances (such as whether the student or employee role predominates, particularly in reference to the relevant incident).

The College of Medicine's disciplinary authority may not extend to third parties mentioned above (employees of contracted service providers, interns, volunteers, visitors, and other third-parties conducting business with the College of Medicine) who are not employees, faculty, or students of the College of Medicine. However, a Complaint that such a person engaged in Prohibited Conduct against an employee will be investigated in accordance with this policy as will a Complaint of Prohibited Conduct by a third party about an employee. A Complaint that a third party engaged in Prohibited Conduct against a student will be investigated in accordance with the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students, as will a Complaint of Prohibited Conduct by a third party about a student.

III. Policy

III.A. Executive Summary

The following is a brief summary of the Policy. Please read the full policy for more details, including definitions and examples of Discrimination and Harassment; Complaint reporting procedures and guidelines; and the investigation and resolution processes.

Albert Einstein College of Medicine (also referred to as "Einstein" or "College of Medicine") prohibits discriminatory practices, Harassment and Sexual Misconduct of any kind and in any form. Detailed definitions of Prohibited Conduct under this policy are set forth in Section III.C.1 and Appendix A.

Disciplinary action will be taken against any individual(s) engaging in behavior in violation of this policy, including managers and supervisors, who knowingly allow such behavior to continue.

Complaints may be made to the College of Medicine's Vice President for Human Resources/Title IX Coordinator, Senior Counsel, Director of Security, Director of Employee Relations, or Confidential Compliance Hotline, as set forth in Section III.E.1.

There is no time limit on when a Complaint can be made.

No College of Medicine employee may discourage an individual from making a Complaint.

Additionally, any College of Medicine employee serving in a managerial or supervisory capacity with any knowledge of a violation of the policy by employees, students, or third parties, must report the incident to the Vice President for Human Resources/Title IX Coordinator, Director of Security, Senior Counsel, or Director of Employee Relations even if the actual victim of such Discrimination, Harassment or Sexual Misconduct is not interested in filing a formal Complaint. If anyone other than the Vice President for Human Resources/Title IX Coordinator receives the Complaint, they must immediately report it to the Vice President for Human Resources/Title IX Coordinator. See Section III.E. All other employees are encouraged to make such reports.

The College of Medicine will respond to all Complaints promptly, thoroughly, fairly and impartially, pursuant to the procedures set forth in Section III.E. Complaints will be overseen by the Vice President for Human Resources/Title IX Coordinator.

The College of Medicine expects all members of the College of Medicine community to cooperate with investigations.

Retaliation is prohibited against anyone who filed and/or participated in the investigation of a Complaint, even if the Complaint is unsubstantiated.

Those who knowingly make a false report will be subject to serious disciplinary action.

Individuals who allege they are victims of Sexual Abuse/Assault, Stalking, Domestic Violence, or Dating Violence (defined in Appendix A) have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to the College of Medicine; (iii) to request the College of Medicine's assistance in notifying law enforcement authorities; (iv) to be protected by the College of Medicine from retaliation for reporting an incident; and (v) to receive assistance and resources from the College of Medicine.

Any questions regarding this policy may be directed to the College of Medicine's Vice President for Human Resources/Title IX Coordinator or to the Director of Employee Relations:

Yvonne Ramirez, Vice President for Human Resources/Title IX Coordinator
1300 Morris Park Ave., Belfer 1209
Bronx, NY 10461
(718) 430-2541
yvonne.ramirez@einsteinmed.org

Robert L. Cancellieri, Esq., Director of Employee Relations
1300 Morris Park Ave., Belfer 1206
Bronx, NY 10461
(718) 430-2551
robert.cancellieri@einsteinmed.org

III.B. Statement of Equal Employment Opportunity and Non-Discrimination

The College of Medicine is committed to the principles of equal employment opportunity and non-Discrimination. The College of Medicine thus prohibits Discrimination on the basis of race, religion, color, creed, age, national origin or ancestry, sex, marital status, sexual orientation, gender identity and expression, physical or mental disability, veteran or disabled veteran status, military status, pregnancy status, genetic predisposition/carrier status, sexual and reproductive health decisions, citizenship status, familial status, Domestic Violence victim status, or any other personal characteristic protected under applicable federal, state or local law.

III.C. Prohibited Conduct & Definitions

Einstein is committed to maintaining an academic, work and living environment in which all individuals are treated with respect and dignity. Each individual at the College of Medicine has the right to work and learn in a safe environment that promotes equal opportunities for all. This policy prohibits discriminatory practices, Harassment and Sexual Misconduct of any kind (“Prohibited Conduct,” as set forth below). Where Prohibited Conduct has occurred, Einstein will act promptly to stop it, prevent its recurrence, discipline and/or take other appropriate action against those responsible.

This Policy is not intended to regulate protected speech. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates this policy or otherwise violates federal, state or local anti-discrimination laws.

III.C.1. Prohibited Conduct

Prohibited Conduct includes Discrimination or Harassment based on race, religion, color, creed, age, national origin or ancestry, sex, marital status, sexual orientation, gender identity or expression, physical or mental disability, veteran or disabled veteran status, military status, pregnancy status, genetic predisposition/carrier status, sexual and reproductive health decisions, citizenship status, familial status, Domestic Violence victim status, or any other characteristic protected by any applicable law, ordinance, or regulation. Applicable laws that prohibit such Discrimination and Harassment include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits Discrimination on the basis of sex, pregnancy status, race, color, national origin, or religion; Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits Discrimination on the basis of sex; Violence Against Women Act of 1994 (“VAWA”); Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”); Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, which prohibit Discrimination on the basis of disability; N.Y. Executive Law, art. 15, §290 et seq. (Human Rights Law); and Title 8 of the Administrative Code of the City of New York (Human Rights Law).

This Policy prohibits Discrimination against or Harassment of any individual based on that individual’s membership in a protected class, whether or not it rises to the level of unlawful Discrimination or Harassment. In addition, this policy protects all others listed above in Section II, even if they are not members of a protected class, for example, if someone is discriminated against or harassed based on an inaccurate assumption that the person is a member of a protected class.

Examples of conduct that may violate this policy include the use of epithets, slurs, jokes, stereotyping, or intimidating or hostile acts directed at any individual because of his/her protected class status, as well as the failure to provide equal consideration, acknowledgment or access to employment or educational opportunities to equally qualified individuals. Harassment does not have to include intent to harm or be directed at a specific target. Prohibited Harassment may involve a single episode or ongoing behavior depending on the severity of the issue. In addition, this policy forbids not only verbal and physical Harassment but also Harassment in any medium, including email and electronic social media.

Discrimination and Harassment can take many forms, including, but not limited to, Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence. These and related terms are

defined below and in Appendix A. Such behaviors are prohibited by this policy as well as federal, state and local laws. Anyone found responsible by the College of Medicine for such conduct will face serious disciplinary sanctions, up to and including termination of employment.

III.C.2. Sexual Harassment

Sexual Harassment, including Sexual Abuse/Assault (“sexual violence”), is a form of sex Discrimination prohibited by federal, state and local laws. Sexual Harassment is offensive and includes Harassment on the basis of sex, sexual orientation, gender identity and the status of being transgender. Sexual Harassment in any form is prohibited and constitutes a violation of this policy, regardless of whether it rises to the level of being unlawful. The College of Medicine may be liable for harm to victims of Sexual Harassment by College of Medicine employees and others, and harassers may also be individually subject to liability.

For purposes of this policy, Sexual Harassment refers to any *unwelcome* or *unwanted* sexual advances, requests for sexual favors, or other verbal, physical, demonstrative, or electronic conduct or communication of a sexual nature, or which is directed at an individual because of the individual’s sex.

Sexual Harassment may occur in a single incident or consist of a series of incidents. It can occur between any two people covered by this policy, including, but not limited to, two faculty or staff members, a faculty or staff member and a student, people of the same or different gender, or people of the same or unequal status or power. A harasser can be a superior, a subordinate, a coworker or anyone in the workplace including independent contractor, vendor, client, customer or visitor. Sexual Harassment is considered a form of misconduct and disciplinary action will be taken against individuals engaging in Sexual Harassment and individuals, including supervisors and managers, who knowingly allow such behavior to continue.

Examples of conduct which may constitute Sexual Harassment include, but are not limited to: verbal comments of an overtly sexual nature, whether in the form of jokes, innuendoes, slurs, or other statements; the use of sexual teaching materials or comments of a sexual nature not relevant to the material being taught or any other academic purpose; remarks of a sexual nature about an individual’s clothing or body; remarks speculating about an individual’s sexual orientation, activity or previous sexual experiences; verbal Harassment or abuse of a sexual nature; making offensive gender-based remarks; the display or transmission of sexually offensive objects, photographs, drawings, graffiti, email, electronic social media communications, computer graphics or programs when sexual content is not relevant to any academic purpose; non-verbal behaviors of a sexually degrading or offensive nature, such as gesturing, or leering; unwanted touching, hugging, or brushing against an individual’s body; requests, demands or persistent pressure for sexual favors, particularly when accompanied by an offer of rewards or threats of retaliation concerning work, grades, promotions, tenure or any other academic or College of Medicine-related decision; and Sexual Abuse/Assault (“*sexual violence*”).

Sexual Harassment also may consist of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone who is offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, and which interfere with the recipient’s job performance. Sexual Harassment also occurs when a person in authority tries to

trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” Harassment.

In addition, Sexual Harassment may include hostile actions taken against an individual because of that individual’s sex, sexual orientation, gender identity and the status of being transgender, such as (i) interfering with, destroying or damaging a person’s workstation, tools or equipment, or otherwise interfering with the individual’s ability to perform the job; (ii) sabotaging an individual’s work; or (iii) bullying, yelling, or name-calling. Sex stereotyping may also constitute Sexual Harassment. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.

III.D. Duty to Report

Any employee serving in a managerial or supervisory capacity with any knowledge, whether from firsthand observation, having been confided in or having heard about it in some other fashion, of a known or suspected instance of Prohibited Conduct *must* report the incident to the Vice President for Human Resources/Title IX Coordinator, Senior Counsel, Director of Security, or Director of Employee Relations even if the alleged victim of such Discrimination or Harassment is not interested in filing a formal Complaint. All other employees are encouraged to make such reports.

Managers and supervisors who knowingly allow Prohibited Conduct to continue without reporting it will be disciplined.

Additionally, all employees have a duty to report immediately to the NYS Maltreatment Hotline (800-342-3720) if they have reasonable cause to suspect abuse or maltreatment of minors (individuals under the age of 18).

Bystander Intervention: Einstein expects all members of the College of Medicine community to take reasonable and prudent actions to prevent or stop an act of Discrimination, Harassment, or Sexual Misconduct, and provide assistance if an act has occurred. Taking action or providing assistance may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

However, no employee is authorized to investigate or resolve a suspected violation of this policy without the involvement of the Vice President for Human Resources/Title IX Coordinator.

If you are not sure what your duty or role is in a given situation, please contact the Vice President for Human Resources/Title IX Coordinator.

Vice President for Human Resources / Title IX Coordinator

Any questions, concerns, or Complaints about this policy, Prohibited Conduct, and/or Title IX should be directed to the Vice President for Human Resources/Title IX Coordinator:

Yvonne Ramirez
1300 Morris Park Ave., Belfer 1209
Bronx, New York 10461

(718) 430-2541

yvonne.ramirez@einsteinmed.org

The Director of Employee Relations or the College of Medicine's Senior Counsel may be contacted as well:

Robert L. Cancellieri, Esq., Director of Employee Relations

1300 Morris Park Ave., Belfer 1206

Bronx, NY 10461

(718) 430-2551

robert.cancellieri@einsteinmed.org

Dana Lee, Senior Counsel

1300 Morris Park Avenue

Belfer 310

Bronx, New York 10461

(718) 430-2546

dana.lee@einsteinmed.org

Title IX prohibits Discrimination on the basis of sex in education program and activities. Sexual Harassment and Sexual Assault are forms of sex Discrimination prohibited by Title IX. The College of Medicine has designated an individual to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for ensuring Title IX compliance at the College of Medicine, as well as compliance with this policy. The Title IX Coordinator is also responsible for overseeing all Title IX Complaints and other Complaints under this policy, identifying and addressing any patterns of systemic problems that are found based on review of such Complaints or otherwise, and providing education and training about this policy to the College of Medicine community.

In addition to the Title IX Coordinator, inquiries regarding Title IX may be directed to the United States Department of Education's Office of Civil Rights ("OCR"). This agency may be contacted as follows:

United States Department of Education, Office for Civil Rights

Region 2 – New York

Jacob Javits Federal Building 26 Federal Plaza - Suite 3312 New York, NY 10278

Voice Phone: (800) 368-1019

Fax: (212) 264-3039

TDD: (800) 537-7697

III.E. Complaints

The procedures for investigating and resolving Complaints depend on who is involved.

If only employees, faculty, and/or volunteers are involved, the procedures set forth herein will apply.

If a student is a Complainant or Respondent, the procedures set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students will apply.

Where a Respondent is both a student and an employee, faculty, or volunteer, the Title IX Coordinator will determine which of these procedures applies based on the circumstances (such as whether the student or employee role predominates, particularly in reference to the relevant incident).

For more information on which procedures apply, see Section II. If you have any questions, such as which set of procedures apply, please contact the Title IX Coordinator/Vice President for Human Resources, Director of Employee Relations or Senior Counsel.

There is no time limit on when a Complaint pursuant to this policy can be made to the College of Medicine, however, evidence may be lost and the College of Medicine's ability to investigate and respond may be affected by any time delay in reporting.

The College of Medicine strongly encourages alleged victims to promptly file a Complaint in order to ensure campus safety and to preserve important evidence that may be essential for a thorough and fair resolution, including future legal and proceedings. Evidence preservation is particularly important because as time goes by, an investigation becomes more difficult. Memories may become unreliable, and information and witnesses may become unavailable.

No College of Medicine employee may discourage an individual from reporting Prohibited Conduct covered by this policy. Furthermore, any attempt to retaliate against or penalize an alleged victim or any other person who reports or participates in the resolution of an incident is strictly prohibited, and any party found to have engaged in retaliation will be subjected to discipline (see Section III.F.2).

III.E.1. How to Report a Complaint to Einstein

Complaints may be reported by anyone covered by this policy who believes they have been subjected to Prohibited Conduct or by anyone else who has knowledge of a violation of this policy. Anyone who wishes to initiate a Complaint regarding a violation of this policy may do so by contacting any of the following:

Vice President for Human Resources / Title IX Coordinator

Yvonne Ramirez
1300 Morris Park Ave.
Belfer 1209
Bronx, NY 10461
(718) 430-2541
yvonne.ramirez@einsteinmed.org

Director of Employee Relations

Robert L. Cancellieri, Esq.
1300 Morris Park Ave., Belfer 1206
Bronx, NY 10461
(718) 430-2551
robert.cancellieri@einsteinmed.org

Senior Counsel

Dana Lee
1300 Morris Park Avenue
Belfer 310
Bronx, New York 10461
(718) 430-2546
dana.lee@einsteinmed.org

Employees may also report a Complaint of Sexual Harassment (including Sexual Assault or other Sexual Misconduct) in writing by submitting a Sexual Harassment Reporting Complaint Form, HR-FRM-2018-016, to Yvonne Ramirez, Vice President for Human Resources/Title IX Coordinator. These [forms](#) may be obtained [online](#), or from Human Resources.

Complaints may instead be reported anonymously. Einstein will investigate anonymous reports to the extent possible, and also keep records and reports of certain anonymous Complaints pursuant to the requirements of the Clery Act. However, all anonymous reporters should be aware that reporting anonymously may affect the College of Medicine’s ability to investigate and respond effectively. To the extent there is a concern regarding retaliation for making a Complaint, any such retaliation is prohibited and Einstein will take steps to prevent such retaliation as well as strong responsive actions should it occur (see Section III.F.2). Anonymous reports may be made as follows:

Confidential Compliance Hotline

1-800-662-8595

See Appendix C for information regarding confidential support services.

In addition to the options listed above, Sexual Abuse/Assault, Stalking, Domestic Violence, and Dating Violence may also or instead be reported to other College of Medicine personnel identified by the College of Medicine as “campus security authorities” in the Annual Security Reports it publishes in compliance with the Clery Act, including:

Security Department

Neil Kaplan, Chief of Security
1300 Morris Park Avenue, Forchheimer B9
Bronx, New York 10461
(718) 430-2180
neil.kaplan@einsteinmed.org

Individuals who allege they are victims of Sexual Abuse/Assault, Stalking, Domestic Violence, or Dating Violence (defined in Appendix A) have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to the College of Medicine; (iii) to request the College of Medicine’s assistance in notifying law enforcement authorities; (iv) to be protected by the College of Medicine from retaliation for

reporting an incident; and (v) to receive assistance and resources from the College of Medicine. Complaints under this policy and Complaints with law enforcement may be filed simultaneously.¹

When any of these afore-mentioned individuals or any other Einstein employee is first notified of a Complaint, that person must promptly inform the Vice President for Human Resources /Title IX Coordinator of the Complaint. If the Complaint involves an allegation of Prohibited Conduct, the Vice President for Human Resources/Title IX Coordinator will promptly inform Senior Counsel of such Complaint.

Other Resources and Reporting Options

Regardless of whether a victim of sexual violence wants to make a Complaint to either the College of Medicine or the local police, he/she should promptly seek medical attention both to address his/her own health and to preserve potential evidence should he/she later decide to file charges or obtain a protective order.

For information on resources including emergency assistance, hospitals, law enforcement, security, medical care, mental health treatment, counseling, and other support services, see Appendix C. If desired, the College of Medicine can assist with accessing these resources.

III.E.2. Confidentiality in Reporting

Einstein will attempt to comply with all requests from a Complainant that his/her name or identity not be revealed to the Respondent and witnesses. However, Einstein is not able to guarantee confidentiality because doing so may limit Einstein's ability to investigate the allegations and respond effectively. To the extent there is a concern regarding retaliation for making a Complaint, any such retaliation is prohibited and Einstein will take steps to prevent such retaliation as well as strong responsive actions should it occur (see Section III.F.2).

However, even College of Medicine offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible.

Further, Einstein will complete recordkeeping, reporting and disclosures required by federal law *without* including any personally identifying information about the alleged victim.

In all instances, Einstein will endeavor to maintain the Complainant's and Respondent's privacy and reveal the parties' identities only to those individuals who need to know it in order for an investigation to commence or continue (as applicable) and the matter to be resolved.

Clery Act: The College of Medicine has an obligation to report certain crimes in its annual security report pursuant to the Clery Act. However, it will do so in an anonymized manner that identifies neither the

¹For an explanation of the differences between Einstein's and law enforcement's Complaint and investigation procedures, see Appendix B.

specifics of the crime nor the identity of the alleged victim or the reporting individual. The Clery Act also requires the College of Medicine to issue timely warnings of certain crimes that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual.

FERPA: The Family Educational Rights and Privacy Act allows institutions to share information with Parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either Parent's prior year federal income tax return. However, the College of Medicine will generally not share information about a report of Domestic Violence, Dating Violence, Stalking, or Sexual Assault with Parents without the permission of the reporting individual.

When a Complaint is Reported

Following a report of an incident to the Vice President for Human Resources / Title IX Coordinator, the Complainant will be immediately advised in writing of Einstein's policies and procedures, as described herein. The Vice President for Human Resources/Title IX Coordinator will discuss the Complainant's rights and options, as well as any confidentiality concerns.

Complaints will be overseen by the Vice President for Human Resources/Title IX Coordinator, in consultation with the Senior Counsel, as appropriate. Every effort will be made, consistent with the need to discharge Einstein's responsibilities and protect the safety of the College of Medicine community, to respect the wishes of the alleged victim regarding further investigation. A Complaint will not be pursued without the alleged victim's consent, unless the College of Medicine is obligated to do so or, in its judgment, the allegations are serious enough to warrant further action. Einstein at all times reserves the right to proceed as necessary to protect the safety of the campus community and workplace and to maintain compliance with all applicable laws and regulations.

III.E.3. Interim Protective Measures and Accommodations

The College of Medicine may take reasonable and prudent interim measures to protect and ensure safety, prevent retaliation, and/or avoid an ongoing hostile environment. Interim measures may be available to the Complainant, the reporter (if different than the Complainant), the Respondent (i.e., the person against whom a report has been filed), and all third-party witnesses pending resolution of the Complaint, regardless of whether the Complainant chooses to report the conduct to campus security or local law enforcement. Interim measures may include restrictions on contact (College of Medicine-issued "no contact" orders),² bans from areas of campus, and changes to academic, living/ housing, transportation,

²No contact orders prohibit continued intentional contact with the Complainant. If the accused/Respondent and Complainant/reporting individual observe each other in a public place, it shall be the responsibility of the accused or Respondent to leave the area immediately and without directly contacting the reporting individual. The College of Medicine may establish an appropriate schedule for the accused/Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Complainant/reporting individual. Intentional and/or continued violations of a College of Medicine-issued "no

employment, or working situations (including moving offices or locations and changing work schedules). Employees may discuss their options for any such accommodations, as applicable, with the Vice President for Human Resources / Title IX Coordinator, who may assist with identifying and obtaining reasonably available accommodations. Upon request by the Complainant or Respondent, an individual's request for accommodation will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, including potential modification, and shall be allowed to submit evidence in support of his or her request.

The College of Medicine may also assist an individual with obtaining an Order of Protection or other protective measures via reports to law enforcement or otherwise. If an Order of Protection or the equivalent is received by the College of Medicine, individuals have a right to receive a copy of it, and have an opportunity to meet or speak with a College of Medicine representative, or other appropriate individual, who can explain the order and answer questions about it, including information about the accused's responsibility to stay away from protected persons. An explanation of the consequences for violating such an order will also be explained, and may include, but not be limited to, arrest, as well as suspension or expulsion for students, and termination for employees. If an Order of Protection or the equivalent is violated, campus security may provide assistance in making an appropriate arrest.

Interim measures may be modified as necessary throughout while the Complaint is pending.

The College of Medicine also will consider the safety of the College of Medicine community when making decisions regarding appropriate interim measures. The College of Medicine will endeavor to maintain as confidential any accommodations or protective measures to the extent that maintaining them would not impair the ability of the College of Medicine to provide such measures.

III.F. Investigation and Resolution

The College of Medicine, in its sole discretion, reserves the right to depart from the prescribed steps in order to effectively handle any and all Complaints in accordance with applicable laws.

Upon receipt of a Complaint or upon receiving information which the College of Medicine determines on its own warrants further investigation (even if no Complaint is filed or even if a Complaint is filed and later withdrawn), a fair, prompt, thorough and impartial investigation will commence in accordance with the procedures set forth below, assuming no parties are students. (As discussed above in Section II, if a student is involved, the procedures set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Procedures for Students will apply).

Generally, the investigation will be conducted by the Vice President for Human Resources/Title IX Coordinator, the Security Department, or another appropriate entity as determined by the College of

contact" order is a violation of this policy and may result in additional misconduct charges and additional disciplinary sanctions including suspension and expulsion for students, or up to and including termination of employment for employees.

Medicine (it being understood that the College of Medicine reserves the right to use an outside individual or organization to conduct or assist with the investigation). The investigator will consult with the Senior Counsel, as appropriate, throughout this process.

The College of Medicine expects all members of the College of Medicine community to cooperate with investigations. However, neither Complainant nor Respondent will be compelled to participate in the investigation of Complaints alleging Sexual Abuse/Assault, Stalking, Domestic Violence and/or Dating Violence. Moreover, the College of Medicine's ability to compel a third party to participate in the investigation process may be limited.

The procedures for Complaints involving only employees or third parties (other than students) are set forth below and depend on the type of Prohibited Conduct being reported.

The procedures for Complaints regarding Sexual Harassment or Discrimination are set forth in Section III.E.1.

The procedures for Complaints regarding Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or any type of discriminatory violence are set forth in Section III.F.1 below.

As discussed above in Section II, if a student is involved, the procedures set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Procedures for Students will apply.

If you have any questions, such as to which set of procedures apply, please contact the Vice President for Human Resources/Title IX Coordinator, Director of Employee Relations or Senior Counsel.

Information gathered during the investigation process will be handled by the College of Medicine with due diligence and care. Discreet inquiry, corrective counseling, and trust will be stressed by the College of Medicine in dealing with all Complaints. Records and information concerning Complaints will be kept confidential to the greatest extent possible, and the College of Medicine will comply with all applicable laws in maintaining the confidentiality of the investigation. However, subject to applicable laws, the College of Medicine cannot guarantee complete confidentiality where it would conflict with the College of Medicine's obligations to ensure a safe, non-discriminatory and Harassment-free environment and/or to comply with crime reporting requirements. For example, under conditions of potential imminent harm to the community, the College of Medicine may be required by federal law to inform the community of the occurrence of an incident of sexual violence (but would not identify the victim). In addition, consistent with law, information regarding violations of this policy may be shared among College of Medicine personnel as appropriate and necessary.

Even College of Medicine offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide will be relayed only as necessary for the Vice President for Human Resources/Title IX Coordinator to investigate and/or seek a resolution.

A Complainant may decide after filing a Complaint that he/she does not want to have the College of Medicine pursue an investigation. Complainants and others should understand that compliance with such a request may limit the College of Medicine's ability to take action in response to the Complaint. In such a situation, the College of Medicine will evaluate the request in the context of the College of Medicine's responsibility to provide a safe, non-discriminatory, and Harassment-free environment. In evaluating

such a request, the College of Medicine will consider several factors, including the seriousness of the alleged misconduct, the Complainant's age, whether a weapon or force was involved, the parties involved, whether there have been other Complaints of misconduct against the Respondent, and the applicability of laws mandating an investigation or other action.

Investigation & Resolution of Complaints Regarding Sexual Harassment or Discrimination

These procedures govern Complaints of Prohibited Conduct involving Sexual Harassment or Discrimination. If the alleged Prohibited Conduct involves Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or any type of discriminatory violence, the procedures in Section III.F.2 apply instead. These procedures may be applied subject to any employee's union rights pursuant to a collective bargaining agreement or otherwise.

Einstein will respond to all reported Complaints promptly, thoroughly, fairly and impartially. Upon receipt of a Complaint or upon receiving information which Einstein determines on its own warrants further investigation (even if no Complaint is filed or even if a Complaint is filed and later withdrawn), Einstein will conduct an investigation as necessary and appropriate. The investigation will commence as soon as practicable upon receipt of a Complaint (or, if no complaint has been filed, upon the College of Medicine receiving information which it determines on its own warrants further investigation).

The investigation will permit both parties an opportunity to be heard and present information. The investigation will typically include an interview with the Complainant, Respondent, and others who may have knowledge or information regarding the incident, including the person who made the initial report, if different than one of the parties, each of whom is expected to cooperate with any investigation. It may also include a review of any relevant documents, including any documents provided by any parties or witnesses. Any employee represented by a union, retains any right to union representation throughout the investigation process.

Both parties will be advised by the Vice President for Human Resources/Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the College of Medicine to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see Section III.E.2).

At the close of the investigation, the investigator will report to the parties, as appropriate, regarding any findings and outcome. If the investigator finds that Prohibited Conduct has occurred, Einstein will take prompt and appropriate remedial action, including disciplinary action. Depending on the circumstances, disciplinary action may include, but is not limited to, counseling, warning, loss of privileges, suspension, and termination of employment.

If Einstein determines that a third party has violated this policy, appropriate action will be taken.

In addition to any disciplinary action, Einstein may take action to eliminate or prevent any hostile environment created by Discrimination or Harassment, to prevent the recurrence of the Discrimination or Harassment, and to address the effects of the Discrimination or Harassment on the parties involved, the witnesses and the College of Medicine community, as appropriate. Such efforts may include additional training and awareness programs for the College of Medicine community.

Investigation & Resolution of Complaints Regarding Sexual Abuse/Assault, Stalking, Domestic Violence or Dating Violence

These procedures govern Complaints of Prohibited Conduct involving Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence (as defined in Appendix A), or any type of discriminatory violence.

The investigation will be conducted by officials who are impartial (*e.g.*, no conflict of interest or bias), and who receive annual training on issues related to Sexual Abuse/Assault, Stalking, Dating Violence, and Domestic Violence, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

The investigation process is set forth below, though the College of Medicine, in its sole discretion, reserves the right to depart from the prescribed steps in order to effectively handle any and all Complaints in accordance with applicable laws.

Additionally, although the College of Medicine will exercise due diligence in complying with the stated time limits set forth in this policy, stated time limits may be extended for good cause depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance. Both parties will be notified in writing of any extensions and the reason for the delay. Any party may request an extension of any deadline by submitting a written request to the Vice President for Human Resources/ Title IX Coordinator detailing the reason for such request and the amount of additional time requested. The Vice President for Human Resources/ Title IX Coordinator has the discretion to grant or deny any such request.

The steps of the investigation and disciplinary process are as follows:

The Vice President for Human Resources/Title IX Coordinator (or his/her designee) will request the Complainant to provide to the Vice President for Human Resources/Title IX Coordinator, within 5 days after the request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The Complainant is expected to share with the Vice President for Human Resources/Title IX Coordinator, or other appropriate investigative entity as designated by the College of Medicine, any relevant supplemental information that subsequently becomes available.

The Vice President for Human Resources/Title IX Coordinator (or his/her designee) will promptly inform the Respondent in writing (and send a copy to the Complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, and factual allegations) and ask the Respondent to respond to them within 5 days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The Respondent is expected to share with the Vice President for Human Resources/Title IX Coordinator, or other appropriate investigative entity as designated by the College of Medicine, any relevant supplemental information that subsequently becomes available. The Vice President for Human Resources/Title IX Coordinator will inform the Complainant of any defenses that the respondent may provide. The Vice President for Human Resources/Title IX Coordinator (or his/her designee) may ask to meet with the parties separately to discuss the allegations.

The Vice President for Human Resources/Title IX Coordinator (or other designated investigator) will fully, fairly and impartially investigate the Complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party and appropriate officials will also be afforded equal and timely access to information that will be used to adjudicate the Complaint.

Depending on the nature of the allegations, the investigation may include interviews with the Complainant and Respondent, interviews of witnesses, collection of documentation (including email and other communications relevant to the Complaint), a review of documents or any other steps deemed important by the investigator in order to thoroughly and fairly conduct the investigation.

Both parties will be advised by the Vice President for Human Resources/Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the College of Medicine to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see Section III.E.2).

Each party will be provided written notice in advance of any interview or hearing, with sufficient time to prepare for meaningful participation. Both parties are permitted to have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any College of Medicine meeting/proceeding. The party shall promptly notify the Vice President for Human Resources/Title IX Coordinator if he/she intends to use an advisor/support person, and identify such advisor/support person. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding. The advisor/support person may be asked to leave the meeting/proceeding if he/she deviates from his/her role. The advisor/support person will be subject to the same confidentiality expectations applicable to others in attendance at the meeting/proceeding.

The Vice President for Human Resources/Title IX Coordinator will explore possible interim protective measures and accommodations with both parties. Examples of protective measures and accommodations that may be considered are addressed in Section III.E.3.

The Vice President for Human Resources/Title IX Coordinator (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.

The Vice President for Human Resources/Title IX Coordinator (or his/her designee) will provide the Complainant and the Respondent with periodic status updates.

The Vice President for Human Resources/Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 days after receipt of the Respondent's statement regarding the allegations, and generally within 40 days after receipt of the formal Complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline.

The Vice President for Human Resources/Title IX Coordinator (or other designated investigator) will compile a written neutral investigation report, summarizing the relevant evidence and making findings of

fact and conclusions, and will then determine the credible evidence and make a finding as to whether this policy has been violated. A finding of a violation of this policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the Prohibited Conduct occurred).

The Vice President for Human Resources/Title IX Coordinator will simultaneously inform the parties in writing of the conclusion of the investigation and the finding, as well as the rationale for the decision. Neither the Complainant nor the Respondent is entitled to receive a copy of the internal investigative report or any other related documents, except, in the case of any faculty Complaint, as may otherwise be expressly required by any faculty handbook/policy. If the College of Medicine determines to furnish a document to one party, it will also simultaneously furnish a copy to the other party.

Findings and recommendations will be promptly referred to the Vice President for Human Resources/Title IX Coordinator for consideration of appropriate disciplinary action. The Vice President for Human Resources/Title IX Coordinator will consult with Senior Counsel and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the Complainant or Respondent. With respect to faculty, the Vice President for Human Resources/Title IX Coordinator also will consult with the Dean.

The College of Medicine expects all cases involving a finding of Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, and discriminatory acts involving violence to involve consideration of termination of employment. Other sanctions that may be imposed include counseling, warning, suspension, restriction from employment by the College of Medicine, removal from College of Medicine housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, community service, restitution, and a fine. In addition, the Respondent may also be required to undergo an assessment and treatment by a therapist or counselor, attend an intervention treatment program and/or issue a letter of apology.

In addition to any disciplinary action, the College of Medicine may take action to eliminate a hostile environment created by Discrimination, Harassment or Sexual Misconduct, to prevent the recurrence of the Discrimination, Harassment or Sexual Misconduct, and to address the effects of the Discrimination, Harassment or Sexual Misconduct on the parties involved, the witnesses and the College of Medicine community, as appropriate. Such efforts may include additional training and awareness programs for the College of Medicine community.

The Vice President for Human Resources/ Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, including rationale for such sanctions. Such notice may also include any other remedial or preventative action being taken or provided by the school. Neither party may appeal the decision.

Notwithstanding the foregoing, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the Tenure and Compensation Policy and Rules and Regulations Providing for System of Appointments, Titles, and Compensation Agreements Policy, each as applicable.

The College of Medicine will endeavor to fully resolve all formal Complaints generally within 60 days (or, in the case of a faculty Complaint, such other time period as may otherwise be required by any faculty policy) after receipt of the formal Complaint. The 60 day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.

III.F.1. Documentation of Investigations

The Vice President for Human Resources/Title IX Coordinator will maintain records of all Complaints (both formal and informal), investigations, findings (including the basis for those findings) and appeals. These records will be kept on file in accordance with the College of Medicine's records and retention policy.

III.F.2. Retaliation

This policy prohibits retaliation against any individual who filed and/or participated in the investigation of a Complaint, even if the Complaint is unsubstantiated. Retaliation includes threats, Intimidation, reprisals, Harassment, and/or any other adverse action threatened (expressed or implied) or taken against anyone who reports a violation or suspected violation of this policy or who participates in an investigation of a Complaint. Retaliation may take place in person, over the telephone or through electronic or social media means. Regardless of how it manifests itself, retaliation is prohibited. Retaliation is a serious violation of this policy, as well as federal, state and local law. Anyone who either observes or becomes aware of such retaliatory behavior is strongly encouraged to report it to the Vice President for Human Resources/Title IX Coordinator, and all College of Medicine employees are under a business duty to do so. The Vice President for Human Resources/Title IX Coordinator will review the facts and recommend the appropriate disciplinary action, up to and including termination of employment for employees, and disciplinary sanctions for students as set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students. Violations of this prohibition will be addressed through the procedures outlined in Section III.E of this policy or for violations that involve students in the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students and/or other College of Medicine disciplinary procedures as the College of Medicine deems appropriate.

III.F.3. Knowing False Claims or Information

The College of Medicine considers any allegation of Discrimination, Harassment or Sexual Misconduct a serious matter and encourages individuals to report all incidents to the College of Medicine. All good faith reports will be treated seriously. Any individual who *knowingly* files a false claim, or who *knowingly* provides false information during an investigation or proceeding may be subject to appropriate disciplinary action, up to and including termination of employment for employees, and disciplinary sanctions for students as set forth in the Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Students.

Education/Training

As part of the College of Medicine's commitment to providing a safe, non-discriminatory and Harassment-free environment, this policy shall be disseminated widely to the College of Medicine community through publications, websites, student orientations, new employee orientations, current

employee training and other appropriate channels of communication. The College of Medicine also provides training programs for College of Medicine employees and students to promote awareness and a safe and respectful College of Medicine environment.

III.G. Re-Evaluation

The College of Medicine reserves the right to modify and/or amend any or all of the terms and/or procedures outlined herein at any time, in its sole discretion. In the event the College of Medicine determines that circumstances warrant modification or amendment of this policy, timely notice of the same will be communicated to all affected parties. This policy is made available to the entire faculty, staff, and student body of Einstein, as well as all interested others, and can be accessed via the Human Resources webpage or can be obtained from the Vice President for Human Resources / Title IX Coordinator, Senior Counsel, or the Einstein Office of Student Affairs.

IV. Definitions

Definitions are contained within the body of the document.

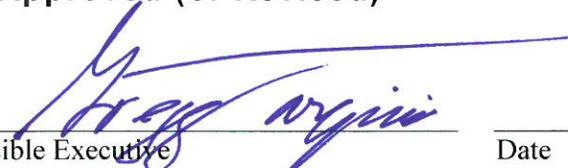
V. Effective Date

Effective as of: 18 June 2019

VI. Policy Management and Responsibilities

Einstein's Human Resources department is the Responsible Office under this Policy. Einstein's Associate Dean for Administration and Finance is the Responsible Executive, and Einstein's Vice President for Human Resources and Diversity is the Responsible Officer for the management of this Policy.

VII. Approved (or Revised)



Responsible Executive



Date

Appendix A: Crime and Related Definitions

The following definitions are drawn from the Violence Against Women Act (VAWA) and its regulations, as well as various New York State laws.

Affirmative Consent (“Consent”)

Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition does not vary based upon a participant’s sex, sexual orientation, gender identity or expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol;
- Consent may be initially given but withdrawn at any time;
- Consent cannot be given when a person is incapacitated (as hereafter described);
- Consent cannot be given when it is the result of any coercion, Intimidation, force, or threat of harm; and
- When consent is withdrawn or can no longer be given, sexual activity must stop.

Children under 17 years of age cannot legally consent under New York State Law to having sex or sexual contact with an adult (i.e., someone who is 17 years of age or older). **Any sexual contact in New York between a child under 17 and an adult is a crime, and any such illegal behavior between a College of Medicine student under 17 and a College of Medicine employee or employee of a contracted service provider to the College of Medicine will be reported to an appropriate law enforcement agency. Other jurisdictions may have different standards, and any illegal behavior in such jurisdiction also will be reported to the appropriate law enforcement agency.**

Additionally, state law identifies certain other individuals who are incapable of consent, including, the mentally disabled, mentally incapacitated, physically helpless, and certain persons who are committed to the care and custody of a client or patient of a hospital or certain governmental departments, offices or agencies. committed to the care and custody of the state department of correctional services, a hospital, the office of children and Family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

Dating Violence

Dating Violence, for purposes of this policy, is violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

New York State does not specifically define “Dating Violence.” However, under New York Law, intimate relationships are covered by the definition of Domestic Violence when the crime is committed by a person in an “intimate relationship” with the victim. See “Family or Household Member” for definition of “intimate relationship.”

Regarding the appropriateness of romantic or sexual relationships between College of Medicine employees and students, see Einstein’s Workplace Romance & Fraternalization Policy.

Domestic Violence

Domestic Violence includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner under applicable law, by a person similarly situated to a spouse of the victim under applicable law, by a Family or Household Member, or by any other person against an adult or youth victim who is protected from that person’s acts under applicable law.

Examples of conduct that may constitute, whether alone or in combination, Domestic Violence include, but are not limited to: a pattern of name-calling, insults, put-downs; keeping or limiting a person from contacting Family or friends; withholding money, food or other necessities; stopping a person from getting or keeping a job, getting to class, or staying in school; actual or threatened physical harm; Sexual Abuse/Assault (“*sexual violence*”); Stalking; possessiveness or extreme jealousy; Intimidation; physical assault or threats thereof; and emotional isolation/manipulation.

Family or Household Member

The following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) person formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; or (g) any other category of individuals deemed to be a victim of Domestic Violence as defined by the office of children and Family services in regulation. Factors that may be considered in determining whether a relationship is an “intimate relationship”

include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship.³

Incapacitation

Occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Evaluating Incapacitation requires an assessment of an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity is in violation of this policy.

Alcohol and Other Drugs: *Being intoxicated or impaired by drugs or alcohol is never an excuse for Prohibited Conduct and does not diminish one's responsibility to obtain Affirmative Consent for any sexual contact.* In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's ability to provide Affirmative Consent, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity. Please also see the College of Medicine's [Drug and Alcohol Policy](#).

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

³ Generally, "intimate relationship" status shall be applied to those who are or were married, dating, or in an intimate relationship, regardless of sex, gender identity or expression, or sexual orientation.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Parent

Natural or adoptive Parent or any individual lawfully charged with a minor child's care or custody.

Sexual Assault

Sexual Assault, for purposes of this policy, is any nonconsensual sexual act prohibited by law, including when the victim is incapable of giving consent. New York State does not specifically define Sexual Assault. However, for the purposes of this policy, Sexual Assault includes offenses that meet the definitions herein of Rape, Fondling, Incest, Sexual Abuse, or statutory Rape. Sexual Assault includes:

Non-Consensual Sexual Act or Contact: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (as defined above under "Affirmative Consent"). This includes any intentional sexual touching, however slight and with any object or body part, that is without Affirmative Consent, and/or by threat, Intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. Such touching may include intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without Affirmative Consent or where the victim is incapable of Affirmative Consent due to mental or physical incapacity. *Statutory Rape* is non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

New York State law specifically defines Rape as sexual intercourse with another person by forcible compulsion, or where the person is incapable of consent, including in most circumstances where such person is a minor. It similarly defines a criminal sexual act as oral sexual conduct or anal sexual conduct with another person by forcible compulsion, or where the person is incapable of consent, including in most circumstances where such person is a minor (Statutory Rape).

Sexual Misconduct

When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

New York State law specifically prohibits forcible touching, defined as when a person intentionally, and for no legitimate purpose: (1) forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire; or (2) subjects another person to sexual contact for the purpose of gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is a passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York State or any of its political subdivisions. Forcible touching includes squeezing, grabbing, or pinching.

Sexual Abuse

When a person subjects another person to sexual contact without the person's consent or where the person is incapable of consent, including in most instances where such person is a minor.

Stalking

Stalking refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others, or to suffer substantial emotional distress (i.e., significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling). Such a course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking may include contact through a third party.

Examples of conduct that may constitute prohibited Stalking include, but are not limited to: unwelcome/unwanted communications of any type, including face-to-face, telephone calls, voice messages, e-mail, text messages, postings, written letters or notes and unwanted gifts; use of threatening words or conduct; pursuing or following; observing and/or surveillance; trespassing or vandalism; entering or remaining on or near a person's property, residence, classroom, place of employment or any other location where the person is present; interfering with or damaging a person's property, including pets; and engaging in other unwelcome contact.

Additionally, New York State law specifically defines Stalking as when a person intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate Family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate Family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Appendix B: A Plain Language Explanation of Distinctions between the New York State Penal Law and the College of Medicine Disciplinary Processes

New York State Education Law Article 129-B requires that College of Medicine officials explain differences between College of Medicine processes and the criminal justice process in addressing sexual and interpersonal violence.

There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. The College of Medicine disciplinary process seeks to determine whether an individual has violated College of Medicine policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated College of Medicine policy may be suspended, expelled or otherwise restricted from full participation in the College of Medicine community. This document is intended to help explain the differences between the criminal justice system and College of Medicine disciplinary processes.

	Criminal Justice System	College of Medicine Disciplinary System for Complaints Between Employees and/or Third Parties⁴ Regarding Sexual Abuse/Assault, Stalking, Domestic Violence and/or Dating Violence
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive workplace and campus environment.

⁴For Complaints involving students, see the Gender-Based Misconduct Policy and Complaint Procedures for Students.

<p>Governing Law.</p>	<p>NYS Penal Code; NYS Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.</p>	<p>Title IX; The Clery Act, as amended by the Violence Against Women Act; NYS Education Law Articles 129-A and 129-B. College of Medicine’s Non-Discrimination and Gender-Based Misconduct Policy and Complaint Procedures for Employees; Faculty Policies; Code of Conduct.</p>
<p>How to report and whether there must be action once a report is made.</p>	<p>Crimes involving sexual violence may be reported to the local police agency or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.</p>	<p>Victims may disclose sexual violence to various College of Medicine employees or to others who will try to ensure privacy to the extent consistent with the College of Medicine’s obligation to provide a safe educational environment. When a report is made to the Vice President for Human Resources/Title IX Coordinator (TIXC) or any other College of Medicine resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.</p>
<p>Who investigates?</p>	<p>Police or other law enforcement officials.</p>	<p>Investigators employed or retained by the College of Medicine; these individuals may work for different departments within the College of Medicine, including, but not limited to, Human Resources, the Security Department, Student Affairs and Academic Affairs, and the Office of General Counsel.</p>

Procedures.	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	College of Medicine policies, which generally incorporate requirements of Governing Law. Collective bargaining agreements and faculty policies may impact some procedures.
Standard of Evidence.	Crimes must be proven “Beyond a Reasonable Doubt.”	A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not).
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	The College of Medicine offers confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the College of Medicine, the parties to the proceedings, and pursuant to law.

Who are the parties?	The prosecution/State and defendant. The victim/survivor is not a party, but often the critical witness for the prosecution.	Reporting individual (“Complainant”) and Accused (“Respondent”).
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual’s participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Complainants cannot be required to participate in the College of Medicine process. However, the College of Medicine will be limited in its ability to respond if a Complainant does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the State (or the United States in federal cases).	The College of Medicine initiates proceedings, with the Complainant generally having an active role.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	Upon conclusion of an investigation, a hearing may be scheduled where the hearing officer may question the parties and witnesses. The parties may not cross-examine the witnesses. The College of Medicine permits both parties to participate in any hearing.

<p>Role of attorneys.</p>	<p>Both the State and the defendant are represented by counsel; counsel may question witnesses.</p>	<p>The parties may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any College of Medicine meeting/proceeding. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding.</p>
<p>Mental Health and Sexual History.</p>	<p>In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.</p>	<p>Generally not admissible, but subject to quite limited exceptions. NYS Education Law Article 129-B permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process.</p>
<p>Possible Results.</p>	<p>If a prosecution takes place, the defendant may</p> <ul style="list-style-type: none"> • plead guilty or “no contest” • have the case dismissed by the judge (on legal grounds) • be found “guilty” or “not guilty” by a judge or jury 	<p>In a proceeding, the Respondent may be found “responsible” or “not responsible” for violations of the College of Medicine’s rules. Respondents may also accept responsibility before a finding by an adjudicator.</p>

Sanctions.	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An employee found responsible for violating College of Medicine policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), from a warning to termination, subject to any provisions to the contrary in any collective bargaining agreement or faculty policy.
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* From [http://system.suny.edu/sexual-violence-prevention-workgroup/College of Medicine-and-Criminal-Resource](http://system.suny.edu/sexual-violence-prevention-workgroup/College-of-Medicine-and-Criminal-Resource)

Appendix C: Resources and Reporting Options

Employee Resources

An anonymous report may be made to the Confidential Compliance Hotline at 1-800-662-8595. A report also may be made to the College of Medicine's Vice President for Human Resources/Title IX Coordinator, Director of Employee Relations, Senior Counsel, Security Department, or other "campus security authorities" (See Section III.E.1). Either type of report may trigger an investigation by the College of Medicine.

For a confidential support services, employees may also contact the Employee Assistance Program at:

Carebridge: 844-300-6072 or www.myliferesource.com

1199 Members Assistance: 646-473-6900 or www.1199SEIUBenefits.org (1199 members only)

Community Resources⁵

Law Enforcement

The College of Medicine's first and foremost concern for anyone who has been the victim of an incident of Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or any other crime is their physical safety. Thus, if anyone who has been a victim of such unlawful behavior is feeling physically unsafe, he/she should immediately call the Security Department, the local police precinct, 911, or the state police for assistance.

New York City Police Department & State Police

911 (Emergency)

Local Police Precincts

49th Precinct

2121 Eastchester Rd., Bronx, NY 10461

(718) 918-2000

Medical Care & Evidence Preservation

If anyone has been the victim of an incident of Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or any other crime is in need **of immediate medical treatment**, he/she should go to the nearest hospital emergency room or call 911.

Additionally, victims of Sexual Assault should consider the following:

⁵Fees may apply to off-campus resources. Complainants should check with each resource to determine whether reporting is confidential.

Sexual Assault Forensic Examination

Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a Rape kit) at a hospital. While there should be no charge for a Rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services.

To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

To obtain a **Sexual Assault Forensic Examination (SAFE)**, a Sexual Assault victim may contact Jacobi Medical Center, Social Work Department, 1400 Pelham Parkway, room 1E4, Bronx, NY 10467, tel. 718-918-5800, or the North Central Bronx Hospital, Sexual Assault Treatment Program, 3424 Kossuth Avenue, Bronx, NY 10467, tel. 718-519-5722. Both Jacobi Medical Center and North Central Bronx Hospital are SAFE-designated hospitals. Emergency care and support is available 24 hours/7 days a week, and a Victim Service Program social worker or volunteer advocate is on call at all times.

Financial Assistance for Healthcare

The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds.

More information may be found here: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf

or by calling 1-800-247-8035. Options are explained here:

<http://www.ovs.ny.gov/helpforcrimevictims.html>

Sexually Transmitted Infections

Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Contact your primary care physician or, in emergencies, visit your local hospital if you need testing for STIs and emergency contraception.

Victims of Sexual Assault, Stalking, Domestic Violence, Dating Violence or other crime should also consider seeking mental health services.

The College of Medicine is well aware of the emotional trauma often suffered by a victim of sexual violence, and therefore it has designated trained counselors in its Counseling Center to serve as Sexual Assault coordinators for the College of Medicine. They can be reached by calling (929) 246-6791 or emailing oasc@einsteinmed.org and asking for a Sexual Assault coordinator. Advice and support will be offered on a confidential basis as the victim begins to make choices regarding how to proceed post-assault.

Other Resources Not Affiliated with the College of Medicine

The NYC Alliance Against Sexual Assault has compiled numerous resources available to victims online at www.svfreenyc.org or by calling (212) 229-0345.

SOVRI (Support for Orthodox Victims of Rape and Incest) Hotline at Beth Israel Medical Center, (888) 613-1613 is a confidential hotline (no caller- ID is used) that may be called anonymously for information and support.

Manhattan Family Justice Center can provide a wide range of services and support.

The Manhattan location is at:

80 Centre Street

New York, NY, 10013

Phone: (212) 602-2800

<http://www.nyc.gov/html/ocdv/html/help/fjc.shtml>

Family Court Volunteer Lawyer Program (part of the New York State Access to Justice Program)

900 Sheridan Avenue

Bronx, NY 10451

Phone: (718) 618-2150

Hotline: (718) 618-2150

Safe Horizon (NYC)

2 Lafayette Street, 3rd Floor

New York, NY 10007

Phone: (212) 227-3000

<http://www.safehorizon.org/help@safehorizon.org>

Hotline: (866) 689-4357

Lifenet Helpline 1-800-543-3638 is a general crisis hotline

Immigration & Visa Assistance Services for Victims of Sexual & Interpersonal Violence:

U.S. Citizenship and Immigration Services (USCIS)

<http://www.uscis.gov/citizenship/learners/find-help-your-community>

USCIS Find Legal Services Webpage

<http://www.uscis.gov/avoid-scams/find-legal-services>

Board of Immigration Appeals (BIA) (Listing of attorneys by state who provide immigration services either for free or for little cost)

<http://www.justice.gov/eoir/probono/states.htm>

American Immigration Lawyers Association (AILA) Immigration Lawyer Referral Service

<http://www.aialawyer.org/>

American Bar Association (ABA) (Information on finding legal services by state)

<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>

Legal Rights & External Remedies for Sexual Harassment:

Sexual Harassment is not only prohibited by the College of Medicine, but is also prohibited by applicable federal, state and local law. Aside from the internal processes for reporting a Complaint at the College of Medicine, employees may also choose to pursue legal remedies and relief with the following governmental entities:

- **New York State Division of Human Rights (NYSDHR)**
One Fordham Plaza, Fourth Floor
Bronx, NY 10458
(718) 741-8400
www.dhr.ny.gov
- The New York State Human Rights Law (NYSHRL), codified as N.Y. Executive Law, art.15, § 290 et seq., applies to employers in New York State with regard to Sexual Harassment and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A Complaint alleging violation of the NYSHRL may be filed either with the NYSDHR or in New York State Supreme Court. Complaints with the NYSDHR may be filed any time within one year of the Harassment. If an individual did not file with the NYSDHR, they can sue directly in state court under the NYSHRL, within three years of the alleged Sexual Harassment.

The NYSDHR will investigate the Complaint and determine whether there is probable cause to believe that Sexual Harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If Sexual Harassment is found, after a hearing, the DHR has the power to award relief, which varies but may include requiring the employer to take action to stop the Harassment, or redress the damage caused, including paying monetary damages, attorneys' fees, and civil fines.

- **United States Equal Employment Opportunity Commission- New York District Office (EEOC)**
33 Whitehall Street, 5th Floor New York, NY 10004
1-800-669-4000
TTY: (800) 669-6820
Fax: (212) 336-3790
www.eeoc.gov

The EEOC enforces federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (codified as 42 U.S.C. §2000e et seq.). An individual can file a Complaint with the EEOC anytime within 300 days from the Harassment. The EEOC will investigate the Complaint and determine whether there is reasonable cause to believe that Discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a Complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if Discrimination is found to have occurred.

If an individual filed an administrative Complaint with the NYSDHR, the NYSDHR will file the Complaint with the EEOC to preserve the right to proceed in federal court.

- **New York City Commission on Human Rights (NYCCHR)**
40 Rector Street, 10th Floor
New York, NY 10006
(212) 306-7450
www.nyc.gov/humanrights

The New York City Human Rights Law (NYCHRL) allows individuals to file a Complaint with the Law Enforcement Bureau of the NYCCHR or proceed directly to court. The NYSDHR and NYCCHR have a work-sharing agreement. Therefore, filing a claim with each agency is unnecessary, as long as you indicate to one of the agencies that you want to cross-file the claim with the other agency.