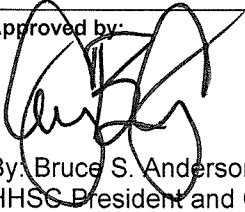
 <p>HAWAII HEALTH SYSTEMS CORPORATION "Quality Health Care for All"</p>	<p>Department: General Counsel</p>	<p>Procedure No.: ADM 0035B</p>
	<p>Issued by: Alice M. Hall, VP & General Counsel</p>	<p>Revision No.: N/A</p>
<p>PROCEDURE</p>	<p>Approved by:  By: Bruce S. Anderson, Ph.D. HHSC President and CEO</p>	<p>Effective Date: June 20, 2013</p>
<p>Subject: Preservation of Information in Litigation or Anticipation of Litigation</p>		<p>Supersedes Policy: NA</p>
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Reviewed April 26, 2013; Next Review April 26, 2013

I. **Purpose:** The purpose of this procedure is to provide a uniform process for the preservation of relevant evidence – in any form, including paper and electronic – where there is a reasonable anticipation of litigation and steps must be taken to prevent destruction or alteration of any relevant evidence.

II. **Definitions:**

"Employee": All employees of HHSC and the HHSC regions and the HHSC corporate and regional boards.

"ESI": Electronically stored information.

"Litigation Hold": An order or directive to cease destruction and preserve all records, regardless of form, related to the nature or subject of the directive.

"Trigger Event": Any event that may indicate the potential threat of litigation including, but not limited to any: (1) notice of a lawsuit; (2) Charge of discrimination; (3) notice of claim (including complaints made to any internal or external investigatory agency); (4) demand letter from an individual or attorney (including cease and desist letters); (5) document preservation request from an adverse party or legal counsel; (6) meeting in which an individual brings an attorney; (7) challenge to a corrective action (e.g., if an individual alleges a violation of state/federal law such as discrimination, harassment, whistleblower, etc.); (8) notice of an investigation by any administrative, civil or criminal authority; (9) service of a subpoena; (10) unexpected negative care outcome or other event that resulted in known and significant injury; and (11) verbal or written statement from an individual indicating an intention to initiate legal action.

III. **Procedure:**

A. Notification of Trigger Event

- Any employee in the HHSC regions who becomes aware of a Trigger

Event must immediately notify his/her Regional Risk Management Officer. The Risk Management Officer shall gather all available information regarding the Trigger Event from the employee and provide such information to the HHSC VP/General Counsel or her designee for a determination of whether litigation is reasonably anticipated thus warranting the issuance of a Litigation Hold.

- Corporate employees who become aware of a Trigger Event must immediately notify the HHSC VP/General Counsel or the Corporate Director of Risk Management for a determination of whether litigation is reasonably anticipated thus warranting the issuance of a Litigation Hold.

B. Issuance of Litigation Hold

- In deciding whether to impose a Litigation Hold, the VP/General Counsel or her designee shall consider all circumstances, including but not limited to the following:
 - The nature and specificity of the complaint or threat
 - The party making the claim
 - The position of the party making the claim
 - The business relationship between the accused and accusing parties
 - Whether the threat is direct, implied or inferred
 - Whether the party that would make the claim is aware of such claim
 - The strength, scope or value of a potential claim
 - The likelihood that data relating to a claim will be lost or destroyed
 - The significance of the data to the known or reasonably anticipated issues
 - Whether the company has learned of similar claims
 - The experience of the industry
 - Whether the relevant records are being retained for some other reason
 - Press and/or industry coverage of the issue either directly pertaining to the client, or of complaints brought against someone similarly situated in the industry
- In the event that a Litigation Hold is found to be unnecessary, the VP/General Counsel or her designee shall document in writing the specific reasons for this determination.
- If a Litigation Hold is deemed necessary, the VP/General Counsel or her designee shall consult with all relevant corporate and regional departments to determine what evidence – including paper records, ESI and other materials – would reasonably be related to the potential litigation. At a minimum, this consultation should include inquiries regarding the type and location of relevant materials, all personnel in possession of such materials, and applicable time frame(s).

- Based on the information obtained from all relevant corporate and regional departments, the VP/General Counsel or her designee shall prepare – or if outside counsel is retained, work with outside counsel to prepare – a Litigation Hold to be transmitted to all involved departments and personnel.
- All Litigation Hold communications are confidential and should be shared solely on a “need-to-know” basis.
- Upon issuance of a Litigation Hold, all normal destruction practices (such as those contained in HHSC’s Retention of Records Policy and Procedure (CMP 008A and CMP 008B)) shall be suspended to the extent that they may pertain to any relevant evidence. In other words, all information subject to a Litigation Hold shall be preserved even if required to be destroyed by any other retention/destruction policies and/or procedures.
- An example of a Litigation Hold is attached hereto as Exhibit 1.
 - **Note: This is only an example as an actual Litigation Hold must always be adapted to the specific facts and updated pursuant to all applicable statutes, rules and case law.**

C. Compliance with Litigation Hold

- Any employee who receives a Litigation Hold shall immediately sign the document to acknowledge receipt, understanding and compliance with its terms. The original signed Litigation Hold shall be returned to the VP/General Counsel or her designee and a copy shall be retained by the employee.
- The following is a non-exhaustive list of potential sources for relevant materials:
 - Local area and/or dedicated server(s)
 - Personal share or personal folders on the server(s)
 - Laptop and/or department computer
 - Home computer, smartphone and/or PDA
 - Email including archived email and sent email
 - Email trash bin, desktop recycle bin
 - Removable storage media (e.g., disks, CDs, DVDs, memory sticks, and thumb drives)
 - Department/office files
 - Personal desk files
 - Files of administrative personnel in department/office
 - Files located in department/office staff home

- Examples of preservation methods may include, but are not limited to:
 - For ESI: suspension of auto-delete program(s); securing or imaging a hard-drive; securing and preserving a backup tape or backup media; and/or sequestering or archiving information/records.
 - For paper records: making photocopies and/or sequestering original paper records to protect from loss, destruction or alteration.
 - Any instruction contained in the Litigation Hold.
- Employees who receive a Litigation Hold should consult with the corporate and/or regional IT Department for assistance in securing or preserving any ESI so as to avoid the potential loss of such information due to any routine destruction procedures.
- Full compliance with the Litigation Hold is mandatory. Any questions regarding the same shall be directed to the VP/General Counsel or her designee. In the event that an employee is unsure whether certain materials must be preserved, the employee shall retain such materials unless and until the VP/General Counsel or her designee determines otherwise.
- Employees who reasonably comply with the requirements of the Litigation Hold shall not be held personally liable for the inadvertent loss of evidence provided that such loss is not due to intentional conduct, recklessness or gross negligence.

D. Monitoring of Litigation Hold

- The VP/General Counsel or her designee shall monitor compliance with the Litigation Hold and issue any amendments as they may become necessary.
- The VP/General Counsel or her designee may periodically query employees subject to a Litigation Hold to ensure compliance. Employees who are queried shall immediately confirm that all relevant evidence outlined in the Litigation Hold has been and continues to be preserved.
- If an employee who has been issued a Litigation Hold discontinues employment while such Litigation Hold is still active, the employee's department head shall take possession of any and all relevant evidence under the control of the separated employee and notify the VP/General Counsel or her designee of the employee's separation.

E. Release from Litigation Hold

- The VP/General Counsel or her designee shall determine when a

Litigation Hold is no longer necessary. In such event, the VP/General Counsel or her designee shall release the parties subject to the Litigation Hold from further compliance through the issuance of a written notice.

- Prior to destroying any materials, employees who are released from a Litigation Hold shall ensure that the materials preserved pursuant to such Litigation Hold are not required to be preserved under any other Litigation Holds, policies or procedures. If no overlapping preservation requirements exist, all normal retention and destruction policies and procedures – including HHSC’s Policy and Procedure on Retention of Records (CMP 008A and CMP 008B) – shall be reinstated.

IV. Applicability: All HHSC facilities, HHSC staff, regional and corporate boards.

V. References: Haw. R. Civ. P. Rules 26 and 37; Fed. R. Civ. P. Rules 26 and 37; ADM Policy 0035A.

VI. Attachments: Exhibit 1: Sample Litigation Hold Letter.

Exhibit 1

IMPORTANT LITIGATION HOLD

To: HHSC Employee
From: VP/General Counsel or Designee
Date: XXX XX, 20__
Re: Preservation and Retention of Documents

This Litigation Hold (“Litigation Hold”) is implemented across Hawaii Health Systems Corporation (“HHSC”) and is to inform you of the need to preserve certain Documents, described below. This Litigation Hold is the result of potential claims asserted by John Doe (“Doe”) against HHSC. It is critical that all employees who receive this Litigation Hold review and comply with the procedures outlined below so that we do not destroy or delete any Documents that are responsive to the Litigation Hold.

Until I advise you otherwise, you must preserve all Documents relating in any way to the subject matters listed below. Failure to preserve the Documents covered by this Litigation Hold could result in the imposition of harsh penalties or sanctions by a court or by other governmental authorities. **Do not discard, destroy or alter in any way any of the Documents described below.** If there is any question as to whether Documents are covered by this Litigation Hold, the Documents should be preserved. Documents must be maintained even if known to be duplicates of Documents held by yourself or others, and even if the duplicate has notes or hand-written comments on it.

“Documents” include items preserved in any form, including electronically or in hard-copy. Examples of Documents include e-mails and attachments, instant messages, social media or blog posts, drafts, letters, memos, voice mail, appointment books, contracts, telephone records, notes (handwritten or typed), reports, tables, slides, charts, graphics, spreadsheets, PowerPoints, photographs, computer files, data stored on a computer, audio or video tapes, CDs, DVDs, “working” or other personal files, guidelines, procedures, and minutes.

Please save and preserve all Documents in the following categories:

- Doe’s personnel file;
- Doe’s payroll records;
- All Documents relating to Doe’s employment or job performance, including policies in effect during his periods of employment, including but not limited to the years 2002-2009;
- All e-mails sent or received by Doe, including e-mail messages where he appears as a cc or a bcc;
- All e-mails that relate or refer to Doe;
- All Documents relating to any complaints about Doe;
- All Documents relating to any complaints by Doe;

- All Documents relating or referring to any investigations addressing or involving Doe or conduct by Doe;
- All Documents relating to any discipline issued to or counseling of Doe;
- All Documents concerning any Charges filed by Doe with the Hawaii Civil Rights Commission or Equal Employment Opportunity Commission relating to his employment with HHSC;
- All Documents concerning any union grievances filed by or on behalf of Doe;
- All policies and collective bargaining agreements applicable to Doe and in effect during Doe's employment with HHSC;
- All other Documents, including but not limited to correspondence, notes and memoranda that otherwise relate to Doe.

All electronic Documents (*e.g.* e-mails, Word files, Excel files) that are responsive to this Litigation Hold should be copied onto a flash drive, CDR or DVDR. All non-electronic, hard-copy Documents that are responsive to this Litigation Hold should be moved to a special paper folder that can be collected from you in the future, when necessary.

NOTE: Documents may be located in a variety of locations, including a network server, workstations, home or personal computers, the hard drive of your work computer, online, in third-party websites, laptops, hand-held devices (*e.g.* PDAs, Blackberries, iPhones), mobile phones, USB "flash" or "jump" drives and removable media such as DVDs or CDs. Be sure to search all possible locations where responsive Documents might be located. Save all versions of Documents, even if you believe they are duplicates, including Documents that include notations, revisions or redactions.

Because Doe is a current employee of HHSC, Documents falling within the scope of this Litigation Hold will include both Documents that exist as of the date the Litigation Hold is issued as well as Documents that are created, sent or received after that date. Please ensure that you preserve Documents covered by this Litigation Hold on a going-forward basis, to include newly created, sent or received Documents (communications directly sent to or received from HHSC's legal counsel – whether in-house or retained outside – can be excluded; however, when in doubt, please preserve the Document).

You must take all steps necessary, including instructing other employees under your supervision, to save all Documents in your possession, custody or control that relate in any way to this dispute. More specifically,

- Do not destroy any Documents and/or materials relating to this dispute, even if they would otherwise be routinely discarded or destroyed in the ordinary course of your business. This includes preventing any periodic purging or deletion of Documents or information (**including e-mails**) off computer systems that might otherwise occur. Computer records may be archived to disk or tape, but they may not be destroyed.
- Conduct a diligent search of your on-site files to identify and secure for future review any Documents relating to the allegations giving rise to this dispute. As noted above, this includes all paper Documents that are maintained in filing cabinets or other

containers that will be needed from time to time for ongoing business and all computer-stored information, e-mail, notes, drafts and tapes of telephone conversations, folios, reports, statements, etc., if any.

- To the extent you or your staff may have sent potentially relevant Documents off-site to archives or storage, please identify those Documents and ensure that they are not destroyed in the ordinary course of business.

If you have any questions about whether a Document should be retained in accordance with this Litigation Hold, please contact me. If you have any doubts and cannot reach me, retain the Document and authorization should be obtained before the Document can be discarded. Additionally, if you are aware of individuals who may have Documents covered by this Litigation Hold who are not listed as recipients, please let me know immediately. I apologize for this inconvenience I am presenting to you, but I very much appreciate your ongoing and very important commitment to this exercise.

As a reminder, it is inappropriate to disparage or criticize any employee involved in this matter or to discourage any employee from participating in this matter. It is also impermissible to ever retaliate against an employee who brings a complaint or lawsuit claiming discrimination.

Thank you for your cooperation.

ACKNOWLEDGMENT

I have received and reviewed the Litigation Hold, dated [DATE]. I agree to comply with the Litigation Hold and will contact VP/General Counsel or Designee if I have any questions regarding my obligation to preserve relevant information which may be subject to the Litigation Hold.

Print Name: _____

Signature: _____

Date: _____