Section 6 Subject 6.0 **Policy 6.1.0**	Compliance Structure **Institutional Compliance Plan**	12/09/10-Originated 11/03/11 -Reviewed w/changes -Reviewed w/o changes 11/30/11- Effective Inst. Compliance -Author

Institutional Compliance Plan

Policy

The University of Texas Medical Branch is committed to conducting its business in an ethical and law-abiding fashion. We are intolerant of fraud, abuse, waste, or other violations of any applicable federal, state, or local laws, and regulations. We will maintain a business culture that builds and promotes compliance consciousness and encourages employees and faculty to conduct all University business with honesty and integrity. Our commitment to compliance includes: communicating to all employees, faculty, consultants, and independent contractors clear business ethical guidelines to follow; providing general and specific training and education regarding applicable laws, regulations, and policies; and providing monitoring and oversight to help ensure that we meet our compliance commitment. We promote open and free communication regarding our ethical and compliance standards and provide a work environment free of retaliation.

Responsibility and accountability for actual compliance with laws, regulations, and policies rests with each individual employee. The department chairman/head or leader of each operating unit is accountable for ensuring that their subordinates are adequately trained and for detecting noncompliance with applicable policies and legal requirements when reasonable management efforts would have led to the discovery of problems or violations.

To promote compliance and implement an institutional compliance program we have developed an Office of Institutional Compliance (OIC). The OIC is responsible for developing an institutional compliance program that will promote compliance with all applicable legal requirements, foster and help ensure ethical conduct, and provide education, training, and guidance to all employees and faculty. Our institutional compliance plan and program is designed to prevent accidental or intentional noncompliance with applicable laws and regulations; to detect such noncompliance, if it occurs; to discipline those involved in noncompliant behavior, and to prevent future noncompliance.

The policies and procedures contained in this program are intended to establish a framework to help ensure compliance but are not to be considered all-inclusive.

Requirements for an Effective Compliance Program

Our compliance program has been developed to include the seven requirements of an effective compliance program included in the Federal Sentencing Guidelines.[1] These requirements are:

1. Establish compliance standards and procedures to be followed by employees and faculty that are reasonably capable of reducing the prospect of criminal conduct;

2. Assign high-level personnel of the organization to have overall responsibility to oversee compliance with such standards and procedures;

3. Use "due care not to delegate substantial discretionary authority to individuals who the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activity;"

4. Communicate effectively compliance standards and procedures to all employees by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required;

5. Take reasonable steps to achieve compliance with standards by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct and by having in place and publicizing a reporting system whereby employees and other agents can report criminal conduct by others within the organization without fear of retribution;

6. Consistently enforce standards through appropriate disciplinary mechanisms, including discipline of individuals responsible for the failure to detect an offense; and

7. Take all reasonable steps to respond appropriately to detected offenses and to prevent further similar offenses.

Standards of Conduct Guide

UTMB has developed a *Standards of Conduct Guide*. The purpose of the *Standards of Conduct Guide* is to communicate to all UTMB employees

[1] Commentary. U. S. Sentencing Guidelines § 8A1.2.

Standards of Conduct Guide, continued

and students an expectation and requirement of ethical conduct and compliance with applicable laws, policies, rules, and regulations. The *UTMB Standards of Conduct Guide* is a framework within which all employees are expected to operate. The *UTMB Standards of Conduct Guide* represents policies of UTMB, the University of Texas System and the *Rules and Regulations of the Board of Regents of the University of Texas System*, know as *Regents' Rules and Regulations*. This booklet does not include all general compliance issues, nor does it contain the special compliance issues that are job specific. Instead, the *UTMB Standards of Conduct Guide* should be regarded as a set of guiding principles that apply to every UTMB employee.

The *UTMB Standards of Conduct Guide* applies to all UTMB employees, including administration, faculty, fellows, residents, and students. Moreover, the *Standards of Conduct Guide* is applicable to physicians not employed by UTMB but serving on UTMB Hospitals medical staff as well as university and hospital subcontractors, independent contractors, and consultants.

Compliance Organization and Oversight

Responsibility for oversight of the Institutional Compliance Program rests with a multi-disciplinary Executive Institutional Compliance Committee (Executive ICC), which is appointed by the President. Minutes of all meetings are maintained in a confidential manner by the OIC.

The responsibility for implementing and managing the Institutional Compliance Program is assigned to the Associate Vice President and Chief Compliance Officer (CCO), who functions within UTMB's organizational structure. The CCO is authorized to report to the UTMB President or the Chancellor of the UT System at any time. The CCO will, with assistance of the Executive ICC, perform the following activities:

1. Review, revise, and formulate appropriate policies and procedures to guide UTMB's Institutional Compliance Program;
2. Review, revise, and approve institutional compliance plans and policies relating to all aspects of compliance;
3. Responsible for monitoring the day-to-day compliance activities of UTMB;

Compliance Organization and Oversight, continued

4. Prepare and submit annual report to the Board of Regents of The University of Texas System. Prepare and present reports regarding compliance matters, as needed to the Executive ICC, the Board of Regents of The University of Texas System, and any other appropriate authority;
5. Serve as a resource across the institution on substantive compliance questions and issues;
6. Develop an institutional compliance training program that includes general compliance training for all employees and specialized compliance training for specific employees;
7. Monitor Fraud Alerts issued by the Office of Inspector General (OIG) and take reasonable action to prevent the subject of such alerts from occurring or recurring;
8. Develop guidelines and procedures for compliance monitoring in accordance with state and federal requirements;
9. Participate in any external audit review process, resolve compliance issues, and respond to legal or administrative inquiries related to compliance issues or audits;
10. Provide advice and direction to executive and senior management, staff, and employees to facilitate compliance with statutory, regulatory, and case law requirements;
11. Maintain current knowledge of laws and regulations, keeping abreast of recent changes that may affect the institution's policies, procedures and processes through personal research, seminars, peer contact, and bench-marking compliance monitoring practices and implementation strategies with other institutions; and
12. Review, respond to, and investigate reports of noncompliance.

Compliance Plans and Policies

The Institutional Compliance Program is comprised of additional compliance plans to ensure that the institution and its employees uphold UTMB's commitment to the highest standards of business and ethics. These plans consist of the following:

- Institutional Compliance Plan;
- Billing Compliance Plan; and
- Privacy Compliance Plan.

The OIC also reviews and approves institutional policies related to compliance matters.

Information, Education and Training

Information- Occasional letters, articles in Impact, the institutional semimonthly newsletter, and other publications, regarding the institutional compliance program and the OIC are sent to all employees. E-mail notifications and communications are also sent to employees. The content of these publications may be related to specific, and or general compliance issues and other elements of the program. Every employee is given a copy of the UTMB Standards of Conduct Guide. Employees must sign the acknowledgment form printed at the end of the Standards of Conduct Guide. The form is returned to the OIC, recorded and sent to Employee Records to be filed in the employee's personnel file.

Education and Training- UTMB is committed to communicating our standards for ethical conduct and UTMB policies to all employees. The OIC provides education and training to develop compliance awareness and commitment. All administration, faculty, medical staff, and employees must complete general compliance training that includes, but is not limited to, the following topics:

1. Standards of Conduct Guide;
2. General compliance and business ethics;
3. Billing compliance;
4. Research compliance;
5. Conflicts of interest;
6. Patient Privacy;
7. Employee's individual responsibility for knowledge of and compliance with laws, regulations, and policies;
8. Reporting violations or questionable conduct;
9. Fraud and abuse;
10. Self-referral issues;
11. Use of compliance hotlines;
12. Prohibition against remuneration for referrals;
13. Emerging compliance issues;
14. Compliance as a condition of employment and as a function of job performance; and
15. Legal consequences of non-compliance.

The education and training program includes annual general compliance training and privacy training for all employees. Specific

Information, Education and Training, continued

training is required for all new faculty physicians and practitioners. Employees are required to complete required training assigned fortheir specific position in accordance with appropriate timeframes and frequency. The content of the training includes laws and regulations applicable to specific job duties and responsibilities. As new developments or concerns arise, the UTMB OIC may require additional training for some or all UTMB employees. A variety of teaching methods, materials, tools, and languages will be utilized to instill compliance knowledge, awareness, and conduct in every employee.

Maintenance of Training Documentation and Disciplinary Action- Compliance training is required of all employees and is considered a condition of employment. Failure to meet education and training requirements will result in disciplinary action, up to and including termination. All persons in supervisory positions are responsible for ensuring that each UTMB employee reporting to them has completed the compliance training applicable to that person. Completion of required compliance training will be closely monitored and documented. The UTMB Human Resources Department maintains training records and reports detailed training activities for employees. Summary reports of compliance with education and training requirements are provided to the Executive ICC.

Adherence to the Compliance Program as a Requirement for Promotion for Faculty and as an Element for Evaluating all Employees

- ***Faculty-*** Adherence to the UTMB institutional compliance program is a part of each faculty member's annual evaluation and is also used as a criterion for promotion in academic rank. It is understood that the Appointment Promotion and Tenure Committee of each UTMB school should consider participation in compliance training and any involvement in compliance infractions as a part of the promotion evaluation process.

- ***Managers and Supervisors*** - include all individuals who have as part of their job descriptions the supervision of any UTMB employee. The promotion of and adherence to the institutional compliance program by all management and supervisors is

Information, Education and Training, continued

considered an integral part of their job performance. At UTMB, employees' awareness of and adherence to the institutional compliance program should be used as an element or measurement tool in the evaluation process for continuing employment and promotions.

1. Managers and supervisors are required to ensure and verify that employees complete all mandatory and elective training assigned to the employee including compliance training at UTMB. Managers and supervisors should inform employees that UTMB will take disciplinary action for violation of policies, procedures, and regulatory requirements, or for failure to complete mandatory training requirements. Moreover, employees are informed that strict adherence to the laws, regulations, and policies are a condition of employment.

2. Managers and supervisors are responsible for informing employees of compliance policies and procedures specifically related to their job function and appropriately monitoring employees to help ensure adherence to policies and procedures.

Risk Assessment and Work Plan

The UTMB OIC assesses institutional risk on an ongoing basis as a matter of conducting daily activities for purposes of:

- Identifying high-risk compliance issues;
- Establishing a priority for these issues;
- Establishing monitoring activities designed to review processes and strengthen compliance; and
- Preparing the OIC annual work plan.

Work Plan- In conjunction with the Executive ICC the OIC will create an annual work plan to review high risk items identified through the risk assessment process. The work plan will also include other items and/or issues in which the OIC expects to be involved in during that fiscal year.

Compliance Monitoring

UTMB monitors the implementation of the Institutional Compliance Plan and the annual work plan. The OIC conducts periodic reviews of operations that include technical and professional billing, privacy, research, financial operations, and other compliance related issues. These reviews are aimed at ensuring adherence to general compliance

Compliance Monitoring, continued

policies and applicable federal and state laws and regulations.

Reviews include on-site visits; interviews with personnel involved in administration, operations, billing, reporting, and other related activities; review of documentation and other written materials; and trend analysis studies.

The CCO will report to the Executive ICC, the President, and the Board of Regents, review findings and corrective action plans as needed. Plans are also presented for subsequent reviews to ensure on-going corrective action.

Reporting Violations or Questionable Conduct

Employee's Responsibility-*It is every employee's responsibility to report suspected violations of laws, regulations, policies or questionable conduct. Remaining silent and failing to report any violation or potential violation that a person knows or should have known of, may subject a person to disciplinary action up to and including termination. UTMB has established methods for employees to report, confidentially and anonymously, any questionable conduct or possible violation(s). Individual employees may discuss concerns with their supervisor or directly with the CCO by contacting the OIC directly at: 409-747-8700. Additional methods for reporting are described below.*

All employees with questions regarding the Institutional Compliance Plan or other compliance requirements in general are encouraged to seek answers and/or clarification from the OIC.

Fraud, Abuse and Privacy Hotline (1-800-898-7679) -*UTMB has established a dedicated Fraud, Abuse and Privacy Hotline as an internal reporting mechanism for reporting suspected waste, abuse, fraud, or other illegal conduct of UTMB employees, students, vendors, or independent contractors. The UTMB Fraud, Abuse and Privacy hotline is available 24 hours a day, 365 days a year by calling 1 (800) 898-7679.*

Individuals may also report suspected fraud, waste, and abuse involving state resources to the State Auditor's Office's Hotline at 1-800-TX-AUDIT (1-800-892-8348). The State Auditor's Office provides additional information at its website.

Reporting Violations or Questionable Conduct continued

Confidential and Anonymous-*UTMB will ensure the anonymity, to the extent allowed by law, of individuals who report violations or questionable conduct. All reported allegations or concerns will be investigated confidentially.*

Intentional False Accusations-*UTMB will consider it a serious violation of UTMB policy for employees to intentionally make false accusations. Such false accusations may result in disciplinary action, up to and including termination, against the accuser. All reports to the UTMB OIC should be made in good faith and with the best of intentions.*

Non-retaliation Policy - *Employees are encouraged to freely discuss and raise questions to managers or to any appropriate personnel about situations they may feel are in violation of applicable laws, regulations, rules, policies, and procedures. Moreover all UTMB employees have a personal obligation to report any activity that appears to violate applicable laws, regulations, rules, policies, and procedures. Employees wishing to remain anonymous may file a report via the UTMB Fraud, Abuse and Privacy Hotline (800-898-7679). UTMB shall not intimidate, threaten, coerce, discriminate against, or take any retaliatory action against any individuals who in good faith report suspected wrongdoing to their supervisor or through the UTMB Fraud, Abuse and Privacy Hotline.*

Investigation - All reports of potential violations of laws, regulations, policies or questionable conduct, from any source, shall be logged and presented to the CCO. The CCO will authorize, direct and/or conduct the investigation. A report of the investigation, including findings and recommendations, will be created. A summary report of all investigations will be provided to the Executive ICC periodically. Investigations resulting in extensive corrective action and/or disciplinary action shall be reviewed and approved by the CCO prior to implementation. The Executive ICC will be informed of these actions and following discussion may direct further action.

Response to Allegations, Identified Problems, and Audit Outcomes

Recommendations-*Corrective Actions* -When an instance of non-compliance has been determined and confirmed by the CCO, a corrective action plan will be submitted to the CCO. The corrective action plan will focus on implementing changes in internal processes to improve, prevent, or detect compliance inadequacies. The CCO may notify and meet with the department Chair and/or the department management, the affected faculty member(s) or employee(s) and explain the corrective action to be implemented. The corrective action plan may include one or all of the following elements:

1. Specific areas requiring compliance attention;
2. Requirement of additional training;
3. Ceasing problematic process;
4. Change in policies and procedures;
5. Repaying overpayments;
6. Reporting to the appropriate governmental authorities;
7. Further audit and/or investigation;
8. Determining whether the problem is systematic; and
9. Disciplinary action.

Disciplinary Action-Disciplinary action may be imposed as a part of a corrective action plan for all UTMB administration, faculty, house staff, and employees.

Obligation to Report - Reckless Disregard of Criminal, Civil, or Administrative Law Reports or allegations that may constitute intentional violation or reckless disregard of criminal, civil, or administrative law shall be referred to UTMB legal authorities for investigation and disposition. If the investigation produces credible evidence that provides a reasonable basis to conclude that a violation of law may have occurred, UTMB shall promptly provide all information to the appropriate legal authorities for a determination of prosecution.

Overpayments Detected through Monitoring - UTMB will refund appropriate overpayments to payers identified through compliance monitoring activities, investigations, or other reviews.

Disciplinary Action and Appeal

UTMB will impose disciplinary action on employees who fail to comply with applicable laws, regulations, and policies. The seriousness of the violation will determine the level of the

Disciplinary Action and Appeal, continued

disciplinary action.

Faculty

Disciplinary Action-

Recommendation of disciplinary action related to compliance issues -The UTMB Executive ICC may make recommendations related to disciplinary action of faculty regarding compliance violations up to and including termination. Disciplinary action and termination will be conducted according to *Rules and Regulations of the Board of Regents of the University of Texas System.*

- *Recommendation of summary dismissal* -Reports or allegations that may constitute an intentional violation or reckless disregard of criminal, civil, or administrative law shall be given to UTMB legal authorities for investigation and disposition. Notwithstanding the foregoing, following the determination that a reckless disregard or intentional violation of law has occurred, the Dean of the appropriate school of the faculty member may recommend to the President to proceed with charges for termination, depending upon the nature of the conduct. Procedures for termination shall be according to the *Rules and Regulations of the Board of Regents of the University of Texas System.*

Appeal -

- Appeal of a UTMB disciplinary action shall be according to the appeals procedure in Section 6 of the *Rules and Regulations of the Board of Regents of the University of Texas System*. No other internal appeal process is available to a disciplined faculty other than as provided by the *Regents' Rules.*

Non-employee Medical Staff

Disciplinary Action –

- Disciplinary action administered to non-employee medical staff will follow the guidelines as outlined in the UTMB Medical Staff By-laws.

Appeal -

- Non-employee Medical Staff are subject to the appeals procedures outlined in the UTMB Hospitals Medical Staff By-laws.

Disciplinary Action and Appeal, continued

House Staff

Disciplinary Action –

Disciplinary action administered to house staff is in accordance with the UTMB House Staff Work Agreement and the Office of the Associate Dean for Graduate Medical Education.

Appeal -

- Appeals for disciplinary actions administered to house staff are in accordance with the UTMB House Staff Work Agreement.

Administrative and Professional Staff

Disciplinary Action –

- Administrative and professional employees are subject to the same disciplinary process as faculty.

Appeal -

- Administrative and professional employees are subject to the same appeals procedures and corrective actions (where applicable) as those governing faculty.

Classified Employees

Disciplinary Action –

- Disciplinary action related to classified employees will be administered in accordance with the disciplinary action provided for in the *UTMB Institutional Handbook of Operating Procedures (IHOP) Policy 3.10.1 Discipline, Dismissal and Appeal for Classified Employees*. Any recommendations of disciplinary action shall be managed pursuant to IHOP and the *Rules and Regulations of the University of Texas Board of Regents*

Appeal -

- Appeal for disciplinary action administered to classified employees is in accordance with the appeals procedure provided for in *IHOP Policy 3.10.1 Discipline, Dismissal and Appeal for Classified Employees*.

Non-employment or Retention of Sanctioned Employees, continued

Persons, listed by a federal or state agency as debarred, excluded, or otherwise ineligible for participation in federally funded programs.

UTMB prohibits the retention of the following individuals:

1. Persons convicted of a criminal offense related to health care or research; or
2. Persons listed by a federal or state agency as debarred, excluded, or otherwise ineligible for participation in federally funded programs.

UTMB prohibits the retention of the following individuals:

1. Persons convicted of a criminal offense related to health care or research; or
2. Persons listed by a federal or state agency as debarred, excluded, or otherwise ineligible for participation in federally funded programs.

UTMB Human Resources (HR) screens the list of all employees monthly against the federal and state lists of persons who are debarred, excluded, or otherwise ineligible for participation in federally funded programs. UTMB HR checks references and verifies education and certification credentials of all new employees prior to employment. UTMB Purchasing department is responsible for ensuring that vendors used by UTMB are not ineligible.

Responding to Inquiries

If any member of the UTMB workforce receives an oral or written inquiry regarding UTMB's compliance with any law or regulation, from any source whether governmental or private, the employee shall immediately notify the OIC prior to responding in any way to the inquiry. OIC staff will:

1. Indentify the person or entity making the inquiry;
2. Verify the authority for the inquiry; and
3. Determine the nature of the inquiry.

Record Creation and Retention

The CCO ensures that all records created, maintained and safeguarded by the OIC are retained on an ongoing basis in accordance with *IHOP Policy 2.1.4 Records and Information Management and Retention*.

All UTMB contracts must require that the contracted parties adhere to the Standards of Conduct and the Record Retention Policy. To assure

Record Creation and Retention, continued

overall compliance, the CCO is authorized, along with UTMB's legal counsel, to negotiate contracts with all third parties.

UTMB has adopted the following standards to assist the CCO with oversight of all documents required by law and necessary to its operations:

1. Institutional Compliance Program investigation files shall include the following information:
    a. alleged violation;
    b. investigative process;
    c. copies of interview notes;
    d. key documents;
    e. log of witnesses interviewed;
    f. documents reviewed
    g. results of the investigation
    h. and corrective action implemented, as needed;
2. No employee may enter false or misleading information into UTMB records;
3. Records shall be organized in a manner that facilitates prompt retrieval;
4. All records shall be stored in a safe and secure manner for the period required by federal and state law or by UTMB policy, whichever is longer;
5. Records shall be destroyed when no longer needed to be retained under federal and state law or UTMB policy, whichever is longer;
6. Adequate records shall be developed and maintained to document UTMB's compliance with all applicable laws;
7. The confidentiality and security of records shall be appropriately assured and adhered to based on federal and state laws and UTMB policies; and,
8. No employee may destroy or alter any UTMB record if the CCO or appropriate designee has notice of any pending litigation or governmental investigation, litigation, claim, negotiation, audit, open records request, administrative review, or if any other action involving such record is initiated before the expiration of the retention period and subsequent destruction of such record.

Patient Referrals

UTMB strictly adheres to the federal anti-kickback statute and prohibits any Workforce Member from knowingly and willfully soliciting, receiving, offering or paying remuneration in cash or in kind to induce, or in return for:

1. Referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service payable under the Medicare program, Medicaid program or any other federal health care program; or,
   Purchasing, leasing or ordering or arranging for or recommending purchasing, leasing or ordering of any good, facility service or item payable under the Medicare program, Medicaid program or any other federal health care program.

In addition, UTMB adheres to the following:

1. UTMB does not make payments or provide non-cash benefits (e.g., office space) to any physician or health professional for referrals.

2. Medical staff and health professionals who are not employees of UTMB are free to refer patients to any person or entity they deem appropriate. UTMB employees make referrals to the medical staff, health professionals or other healthcare facilities solely based on what is best for the individual seeking treatment and without regard to the value or volume of referrals any such physician, health professional or other healthcare facility has made to UTMB.

3. Routine waiver of co-payments or deductibles is unlawful because it may result in: (1) false claims; (2) violations of the anti-kickback statute; and, (3) excessive utilization of items and services.

2. UTMB does not waive insurance co-payments or deductibles or otherwise provide financial benefits to patients in return for admissions. Under certain circumstances, UTMB may provide appropriate financial accommodations (e.g., allowing monthly payments over time) to patients with financial need. In such event, the CCO will ensure adherence to UTMB policies and procedures for insurance co-payment or deductibles. Any discounts or accommodations will only be provided in

Patient Referrals, continued

accordance with all applicable state and federal laws and regulations, Regents' Rules and UTMB policies.

The Medicare/Medicaid Fraud and Abuse provisions of the Social Security Act prohibit, among other things, any person from offering or paying remuneration to a referral source of Medicare or Medicaid patients for making or recommending referrals of patients and from making false claims for Medicare or Medicaid reimbursement. In addition, many state laws contain similar limitations on such conduct regardless of source of payment. There are, however, a number of "safe harbors" or transactions that are expressly stated not to violate the fraud and abuse limitations if the intent or actual purpose of the transaction is appropriate. An UTMB employee should never solicit or receive, or pay or offer to pay any remuneration of any type (including kickbacks, bribes or rebates) in return for referring or recommending the referral of an individual to another person, hospital or medical facility for services.

Revisions to Compliance Plan

This compliance plan is intended to be flexible and readily adaptable to changes in regulatory requirements. The Executive ICC shall review the plan at least annually to assure that it remains current and effective. Changes to the plan may be proposed by members of the Executive ICC, departments, or individual employees. Any recommendations for changes to the plan must be approved by the Executive ICC. All changes to the compliance plan must be consistent with the Institutional Handbook of Operating Procedures and the *Rules and Regulations of the Board of Regents of the University of Texas System.*

References

Commentary. U. S. Sentencing Guidelines § 8A1.2.
Regents' Rules and Regulations, Standards of Conduct, Series 30103
Regents' Rules and Regulations, Notice of Nonrenewal to Nontenured Faculty Members, Series 31002
Regents' Rules and Regulations, Faculty Appointments and Titles, Series 31001
Regents' Rules and Regulations, Employee Grievance. Series 30602
Regents' Rules and Regulations, Discipline and Dismissal of Classifed Employees, Series 30601
Texas Education Code Section 51.943
Standards of Conduct Guide
IHOP Policy 3.10.1 Discipline, Dismissal and Appeal for Classified

References, continued

Employees.
IHOP Policy 2.1.4 Records and Information Management and Retention.
IHOP Policy 5.3.8, Faculty Grievance Policy