

St. David's South Austin Medical Center

Practitioner Medication Diversion Policy

MEC Approved 9/13/19

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**PRACTITIONER
MEDICATION DIVERSION POLICY**

1. POLICY STATEMENT

1.A ***Policy Objectives.*** The prevention of medication diversion is essential to:

- (1) ensuring the protection of patients, employees, Practitioners (as defined in Section 1.C), and others in St. David’s South Austin Medical Center (the “Hospital”)¹;
- (2) promoting a healthy work environment; and
- (3) ensuring compliance with the requirements of the Drug Enforcement Administration (“DEA”), Food and Drug Administration (“FDA”), regulatory boards, federal and state survey agencies, accreditation agencies, local law enforcement agencies, and HCA Policies and Procedures and guidance documents.

1.B ***Scope of Policy.*** This Policy applies to all Practitioners who provide patient care services at the Hospital.

1.C ***Definitions.*** Except as specifically defined below, the definitions that apply to the terms used in this Policy are set forth in the Credentials Policy:

- (1) “Diversion” means diverting or otherwise misappropriating medications from the Hospital or from Hospital patients for uses that are illegal and/or not medically authorized or necessary (e.g., taking medications for the Practitioner’s own use, to supply to a family member or friend, or to sell).
- (2) “Medical Staff Leader” means any Medical Staff Officer, Department Chairperson, Section Director, or committee chairperson.
- (3) “Medication Diversion Team” or “MDT” means the multidisciplinary team designated by the Hospital to develop a coordinated and systematic approach to prevent, detect, review, and report medication diversion. The MDT will include a Physician or Medical Staff Leader *and will work in conjunction with the Chief Medical Officer.*
- (4) “Practitioner” means any individual who has been granted clinical privileges and/or membership by the Hospital Board, including, but not limited to, Members of the Medical Staff and Advanced Practice Professionals.

¹ “Hospital” includes any associated Free Standing Emergency Department (“FSED”).

2. GENERAL GUIDELINES/PRINCIPLES

- 2.A ***Coordination with Other Policies That Govern Medication Diversion.*** If a report of diversion involves an issue that is also governed by another Hospital policy, the MDT will notify the person or committee responsible for that other policy of the substance of the report. Efforts will be made to coordinate the review that occurs under this Policy with the review under such other policy.
- 2.B ***Cooperation Between the MDT and the Medical Staff.*** The MDT review procedures described in this Policy are a part of the Hospital's quality review process and do not constitute an "investigation" under the Medical Staff Bylaws. However, if a Practitioner who is under review pursuant to this Policy resigns his or her privileges after agreeing to take a leave of absence or voluntarily refrain from practice, or while under a precautionary suspension, the resignation would be considered to be a resignation to avoid an investigation and would trigger an obligation on behalf of the Hospital to submit a report to the NPDB and state licensing board. Hospital legal counsel shall be consulted in all such cases prior to making any reports. Furthermore, nothing in this Policy prohibits a matter that led to a review by the MDT from also being reviewed concurrently under the appropriate Medical Staff Bylaws, policies, or rules and regulations.
- 2.C ***Education Regarding Medication Diversion.*** Medical Staff Leaders and Hospital management shall facilitate continuing medical education periodically, as needed to:
- (1) assist Practitioners with recognizing and preventing medication diversion;
 - (2) make employees and other personnel aware of this Policy; and
 - (3) encourage the prompt reporting of incidents of suspected medication diversion.
- 2.D ***Patient Care and Safety.*** Nothing in this Policy precludes immediate referral to the Medical Executive Committee or the elimination of any particular step in the Policy if necessary to address a situation that may compromise patient care and safety.
- 2.E ***Delegation of Functions.*** When a function under this Policy is to be carried out by a member of Hospital management, by the MDT, by a Medical Staff Leader, or by a Medical Staff committee, the individual, or the committee through its chair, may delegate performance of the function to a qualified designee who is a Practitioner or Hospital employee (or a committee of such individuals). Any such designee must treat and maintain all information in a strictly confidential manner and is bound by all other terms, conditions, and requirements of this Policy. However, the delegating individual or committee is responsible for ensuring the designee performs the function as required by this Policy.

3. EVENTS THAT TRIGGER A REVIEW

The process set forth in this Policy may be triggered by any of the following events:

3.A **Reported Concerns.**

- (1) **Reports of Suspected Diversion.** Any Hospital employee or Practitioner shall report in a timely manner to his or her supervisor or Department Chairperson, to the Chief Executive Officer, the Chief Operating Officer, the Chief Nursing Officer, or the Chief Medical Officer if he or she observes or suspects an incident of diversion by a Practitioner, including, but not limited to:
 - (a) a witnessed incident of probable medication diversion;
 - (b) behaviors that may indicate an impairment or symptoms of withdrawal, which shall be reported as set forth in the Practitioner Health Policy² and reviewed concurrently through that Policy;
 - (c) suspicious activity such as missing documentation, unaccounted for medication withdrawals, failing or forgetting to have waste witnessed, spending excess time by the medication supply (cart or medicine room), requesting prescriptions from other Practitioners, or exaggerating patient symptoms;
 - (d) self-disclosure of medication diversion by a Practitioner;
 - (e) notification of a suspected medication diversion from an external source, such as local law enforcement or a family member; or
 - (f) the Practitioner has been responsible for administering pain medications to patients whose pain seems to be uncontrolled despite the prescribed medication.

All such reports will then be forwarded to the MDT for review in accordance with this Policy.

- (2) **Follow-up with Individual Who Filed Report.** The MDT shall follow up with individuals who file a report by:
 - (a) thanking them for reporting the matter and participating in the Hospital's culture of safety and quality care;
 - (b) informing them that the matter will be reviewed by the MDT in a confidential manner in accordance with this Policy and that they may be contacted for additional information;

- (c) informing them that no retaliation is permitted against any individual who raises a concern and to report any retaliation or any other incidents of diversion; and
- (d) informing them that, due to confidentiality requirements under state law [if applicable], and/or the Hospital's policy of maintaining confidentiality with respect to personnel matters, no further information can be provided regarding the outcome of the review.

A letter that can be used for this purpose is attached as **Appendix B**. As an alternative to sending a letter, the content of the letter may be used as talking points to discuss verbally with the individual who reported a concern regarding diversion.

- (3) **Anonymous Reports.** Practitioners and employees may report concerns anonymously, but all individuals are encouraged to identify themselves when making a report. This identification promotes an effective review of the concern because it permits the MDT to contact the reporter for additional information, if necessary.
- (4) **Sharing Reported Concerns with Relevant Practitioner.** The substance of reported concerns may be shared with the relevant Practitioner as part of the review process outlined in Section 4, but neither the actual report nor the identity of the individual who reported the concern or otherwise provided information about the matter will be provided to the Practitioner unless:
 - (a) the reporting individual specifically consents to the disclosure; or
 - (b) information provided by the reporting individual is used to support an adverse professional review action that results in a Medical Staff hearing.

Retaliation (as defined in the Medical Staff Professionalism Policy) by the Practitioner against anyone who is believed to have reported a concern or otherwise provided information about a matter is inappropriate conduct and will be addressed by the MEC Leadership³ through the Professionalism Policy.

- (5) **Unsubstantiated Reports.** If a report cannot be substantiated, it will be included in the Practitioner's confidential file and may be used in the evaluation of any additional incidents and/or patterns or trends of suspicious activity.

3.B **Other Triggers.** In addition to reported concerns, other events that may trigger a review under this Policy include, but are not limited to, the following:

- (1) the results of a controlled substance audit indicate diversion may have occurred;
- (2) charging or billing anomalies have been identified; or

- (3) a police incident report indicating diversion may have occurred has been received.

4. MEDICATION DIVERSION TEAM REVIEW PROCEDURES

4.A **Initial Review by the MDT.** The MDT will review the circumstances as reported and assess if any risk to the safety of patients, employees, or the Practitioner is present that requires an immediate response. If the Practitioner is employed by the Hospital, a Hospital - related entity, or a qualifying contract provider, the employing entity may be notified of the review so that it can provide assistance in addressing the matter.

4.B **MDT Assessment Process.** The MDT assessment process includes, but is not limited to, the following steps, as deemed necessary and appropriate:

- (1) Meet with the Practitioner as soon as possible to discuss the concerns and obtain the Practitioner's perspective regarding potential diversion and/or ask the Practitioner to provide a written response to any concerns or to provide additional information.
- (2) Preserve any evidence and conduct additional fact-finding (i.e., review documentation and conduct further interviews).
- (3) As a part of meeting and fact-finding, also assess the Practitioner for impairment (e.g., obtain a drug screen or other evaluation). Failure of the Practitioner to undergo such screening upon request will trigger a precautionary suspension of the Practitioner's clinical privileges and an immediate referral to the Medical Executive Committee for review under the Medical Staff Credentials Policy.
- (4) If necessary based on the circumstances, afford the Practitioner an opportunity to take a leave of absence or voluntarily refrain from practicing or, if the Practitioner refuses, suspend his or her clinical privileges as a precaution in accordance with the provisions in the Medical Staff Credentials Policy.

Upon reasonable suspicion that a diversion occurred, the MDT has the right to conduct an inspection and/or search of the Practitioner, which may include searching Hospital property (including lockers, offices, etc.), as well as personal property (including bags, lunch boxes, pockets, etc.) located on Hospital premises. Failure by the Practitioner to permit such an inspection or search upon request will trigger a precautionary suspension of the Practitioner's clinical privileges and an immediate referral to the Medical Executive Committee for review under the Medical Staff Credentials Policy.

4.C **Referrals and Reports by the MDT.**

- (1) Based on the assessment process, the MDT shall assess the credibility of the report and, if credible, make one of the following determinations:

- (a) ***No Further Review or Action Required.*** If the MDT determines that there are no concerns regarding diversion (for personal use or for distribution to others) or policy violations that require further review or action, the matter shall be closed.
 - (b) ***Diversion Cannot Be Confirmed But Policy Violations Have Occurred.*** If the MDT determines that diversion cannot be confirmed but that policy violations have occurred, the matter shall be referred to the MEC Leadership for review under Section 5 of this Policy. For purposes of this Policy, “policy violations” means a violation of any HCA, Hospital, or Medical Staff policy related to controlled substances. This includes, but is not limited to:
 - (i) failing to keep accurate records of the receipt and disposition of scheduled drugs;
 - (ii) failing to keep all drugs and biologicals in a secure area, and locked when appropriate; or
 - (iii) failing to report abuses and losses of controlled substances.
 - (c) ***Diversion for Personal Use Is Suspected or Confirmed.*** If the MDT suspects or confirms that diversion for personal use has occurred, the matter shall be referred to the MEC Leadership for review under the Practitioner Health Policy. Such a referral does not preclude the Hospital from contacting state and federal authorities if criminal activity has occurred and/or filing appropriate reports under paragraph (3) below.
 - (d) ***Diversion for Distribution to Others Is Suspected or Confirmed.*** If the MDT suspects or confirms that diversion for the purpose of distributing to others has occurred, the matter shall be referred to the Medical Executive Committee for review under the Medical Staff Credentials Policy (irrespective of whether health concerns with Practitioner also exist). Such a referral does not preclude the Hospital from contacting state and federal authorities if criminal activity has occurred and/or filing appropriate reports under paragraph (3) below.
- (2) If the MDT determines that the Practitioner’s actions may be of a criminal nature, the Hospital’s assigned Operations Counsel should be notified in addition to pursuing the further steps in this Policy or other applicable policies.
- (3) In ***all*** cases, the MDT will work with Operations Counsel to ensure that all internal reports are made pursuant to Policy EC.025 and that any external reports are made to the DEA pursuant to Policy CSG.MM.006 and to the following, as applicable:
- (a) local or state police;

- (b) the appropriate state licensing board;
- (c) the FDA/Office of Criminal Investigations (“OCI”) (e.g., tampering cases);
- (d) the Office of Inspector General (“OIG”); and
- (e) patient(s) or patient representative(s) if harm occurred.

5. MEDICAL STAFF REVIEW OF POLICY VIOLATIONS

5.A **Initial Review.** If the MDT determines that a report of diversion cannot be confirmed but that policy violations have occurred, the report will be referred to the Medical Staff’s MEC Leadership. The MEC Leadership shall review any documentation prepared by the MDT and all supporting documentation, including the response from the Practitioner. If it determines that it would be necessary or helpful in addressing the reported concern, the MEC Leadership may also consult with or include the appropriate Department Chairperson in the review.

5.B **Personal Meeting and Letter of Admonition and Warning.** Two or more members of the MEC Leadership shall personally meet with the Practitioner to discuss the policy violations. If the Practitioner acknowledges the seriousness of the matter and agrees that there will be no similar violations in the future, the meeting shall be followed with a formal letter of admonition and warning to be placed in the Practitioner’s confidential file. This letter shall also set forth any additional actions or conditions imposed on the Practitioner’s continued practice in the Hospital as a result of the meeting (e.g., monitoring, etc.).

5.C **Referral to the Medical Executive Committee.** The MEC Leadership shall immediately refer a matter to the Medical Executive Committee if:

- (1) the Practitioner refuses to acknowledge the concern, does not recognize the seriousness of it, or will not agree that there will be no repeat of such conduct; or
- (2) there are one or more additional confirmed policy violations, and in its discretion the MEC Leadership determines that referral to the Medical Executive Committee is appropriate.

The Medical Executive Committee shall conduct its review in accordance with the Medical Staff Credentials Policy. Such referral shall not preclude other action under applicable Human Resources policies.

5.D **Letters Placed in Practitioner’s Confidential File.** Copies of letters sent to the Practitioner as part of the efforts to address the policy violations shall be placed in the Practitioner’s confidential file. The Practitioner shall be given an opportunity to respond in writing, and the Practitioner’s response shall also be kept in the Practitioner’s confidential file.

5.E **Determination to Address Concerns through Practitioner Health Policy.** The MEC Leadership may determine to address the reported concerns about policy violations

through the Practitioner Health Policy if it believes that there may be a legitimate, underlying health issue that is causing the policy violations, and the review process outlined in the Practitioner Health Policy is more likely to resolve the concerns.

Adopted by the Medical Executive Committee on September 13, 2019

Approved by the Board on September 19, 2019

APPENDIX B

LETTER TO RESPOND TO INDIVIDUAL WHO REPORTS A DIVERSION INCIDENT*

Dear _____:

Thank you for reporting your concerns. We appreciate your participation in our efforts to promote and maintain a culture of safety and quality care at our Hospital.

Your concerns will be reviewed in accordance with the Practitioner Medication Diversion Policy or other applicable policy. We will contact you if we need additional information.

Because your report may involve confidential matters under [state] law, we may not be able to inform you of the specific outcome of the review. However, please be assured that your report will be fully reviewed and appropriate steps will be taken to address the matter.

Your report will be treated with the utmost confidentiality. Your identity will not be disclosed to the subject of the report unless:

- (a) you consent; or
- (b) information provided by you is later used to support an adverse professional review action that results in a Medical Staff hearing (which is an extremely rare occurrence).

As part of our culture of safety and quality care, no retaliation is permitted against you for reporting this matter. This means that the individual who is the subject of your report may not approach you directly to discuss this matter or engage in any confrontational, abusive, or inappropriate conduct directed at you. If you believe that you have been subjected to any retaliation as a result of raising these concerns, please report it immediately to *[me/the Medication Diversion Team/Designee (e.g., the Chief Medical Officer)]*.

Once again, thank you for bringing your concerns to our attention. If you have any questions or wish to discuss this matter further, please do not hesitate to call me at _____.

Sincerely,

Medication Diversion Team (or designee)

* ***As an alternative to sending a letter, the content of this letter may be used as talking points to respond verbally to the individual who reported a concern regarding medication diversion.***