



# midland memorial hospital

<b>Title:</b>	HIPAA Section 19: Medical Staff Obligations and Sanctions Regarding the Confidentiality of PHI				
<b>Version:</b>	2	<b>Approved:</b>	Michelle Pendergrass (Director Compliance), Russell Meyers (President /Chief Exec Officer)	<b>Date:</b>	02/09/2017

## POLICY

MIDLAND MEMORIAL HOSPITAL shall have and apply appropriate sanctions against medical staff members (“Medical Staff Members”) who fail to comply with MIDLAND MEMORIAL HOSPITAL’s Policies and Procedures or the HIPAA Privacy Standards. Although medical staff members are not employees or agents of MIDLAND MEMORIAL HOSPITAL, all Medical Staff Members agree, as part of the requirements under the Midland Memorial Medical Staff Bylaws and their privileges on the Medical Staff of Midland Memorial, to comply with MIDLAND MEMORIAL HOSPITAL’s policies and federal and state laws regarding patient privacy and the confidentiality of a patient’s health information.

## PROCEDURE

If it is alleged or discovered that a Medical Staff Member has possibly breached the patient’s confidentiality as defined by law and Hospital Policies, the following procedures shall occur:

1. The Privacy Officer, under the direction of the Medical Executive Committee (MEC), shall investigate the complaint, including but not limited to, an interview of the Medical Staff Member involved, to determine whether the complaint has merit.
2. If the Privacy Officer determines that the complaint is meritorious, he or she shall inform the Medical Staff Member of the breach, the appropriate procedures for the future, and take, or direct and oversee the taking of, whatever mitigating action is necessary with regard to the breach.
3. If and as required by law, MIDLAND MEMORIAL HOSPITAL’s Policy, or the Medical Staff Bylaws, the patient shall be informed of the disposition of the complaint.
4. A copy of the letter to the Medical Staff Member regarding the complaint and its disposition shall be sent to the Medical Staff Member and the Chief of Staff who shall submit the letter to the MEC for its review and determination.
5. If a Medical Staff Member repeatedly breaches patient confidentiality, he or she shall be referred to the Medical Executive Committee for appropriate action under the Medical Staff Bylaws.
6. If a complaint is referred to the U.S. Department of Health and Human Services Office for Civil Rights, the Medical Staff Member and MEC shall cooperate with MIDLAND MEMORIAL HOSPITAL with regard to the investigation and resolution of the complaint.

The Medical Staff shall be aware that breaches of confidentiality may subject both MIDLAND MEMORIAL HOSPITAL and the individual health care provider to civil monetary penalties or criminal

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penalties under the Health Insurance Portability and Accountability Act (“HIPAA”), as well as corrective action under the Medical Staff Bylaws.

Failure to comply with HIPAA generally may result in a civil monetary penalty of between \$100 and \$50,000 for each violation, depending on factors such as whether the violation occurs due to “willful neglect” and whether the violation is corrected within the statutory timeframe. Each day of a continued violation is a separate penalty. Additionally, the attorney general of a state may bring a civil action on behalf of residents of that state in federal court to enjoin further violations or seek statutory damages for violations of HIPAA.

A wrongful disclosure of individually identifiable health information, committed “knowingly” and in violation of HIPAA, may result in criminal punishment, resulting in a fine of up to \$250,000 and/or imprisonment for up to ten years, depending on the violator’s level of intent. **Obtaining or disclosing individually identifiable health information maintained by MIDLAND MEMORIAL HOSPITAL without authorization constitutes a wrongful disclosure punishable criminally.**

## REFERENCES/CITATIONS

- 45 C.F.R. § 164.506(c)(4) (generally limiting disclosures of PHI for the health care operations activities of another covered entity to those situations involving quality assessment and improvement type activities, reviewing the competence or qualifications of health care professionals, and conducting training programs)
- 45 C.F.R. § 164.506(c)(5) (regarding special rules for covered entities that are members of an OHCA; members of an OHCA are allowed to disclose PHI about an individual to another covered entity that participates in the OHCA for any health care operations activities of the OHCA, without first obtaining the individual’s written authorization)
- 45 C.F.R. § 164.520(d) (regarding use of Joint Notice of Privacy Practices)
- 45 C.F.R. § 164.501 (defining one type of OHCA, as “a clinically integrated care setting in which individuals typically receive health care from more than one health care provider”)
- 42 U.S.C. 1320d-5 (outlining general penalties imposed for failure to comply with HIPAA)
- 42 U.S.C. 1320d-6 (outlining criminal penalties for wrongful disclosure of individually identifiable health information)
- Pub.L. 111-5, div. A, title XIII, §§ 13409 & 13410, Feb. 17, 2009 (“American Recovery and Reinvestment Act of 2009”)
- 65 Fed. Reg. 82494 (December 28, 2000) (providing example of OHCA under 45 C.F.R. § 164.501 “the hospital setting, where a hospital and a physician with staff privileges at the hospital together provide treatment to the individual”)

<b>Revision number</b>	<b>Date</b>	<b>Description of Document or Document Change</b>
2	02/09/2017	New Version created: removed organized healthcare arrangement from policy.