

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, et al.,

Defendants.

19 Civ. 4676 (PAE)

PLAINTIFFS' NOTICE OF FILING OF CORRECTED EXHIBIT

Plaintiffs advise the Court that Exhibit 5 to the Declaration of Matthew Colangelo (Dkt. 43-5) was inadvertently docketed without two attachments cited in the exhibit. Attached to this Notice is a complete version of Exhibit 5 with all attachments.

DATED: June 14, 2019

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Matthew Colangelo
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Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF
NEW YORK, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, DISTRICT OF
COLUMBIA, STATE OF HAWAII,
STATE OF ILLINOIS, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF NEW MEXICO, STATE OF
OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH
OF VIRGINIA, STATE OF
WISCONSIN, CITY OF CHICAGO,
and COOK COUNTY, ILLINOIS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ALEX M. AZAR II, *in
his official capacity as Secretary of the
United States Department of Health
and Human Services*; and UNITED
STATES OF AMERICA,

Defendants.

CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF DR. MACHELLE ALLEN

1. I, Dr. Machelles Allen, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I submit this Declaration in support of the City of New York’s litigation against the United States Department of Health and Human Services (“HHS”), Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services, and the United States of America regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (“Final Rule”). I have compiled the information in the statements set forth below either through personal knowledge, NYC Health + Hospitals (herein after “Health + Hospitals” or “the System”) personnel who have assisted me in gathering this information from the System, or on the basis of documents that I have reviewed. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon Health + Hospitals.

3. I am a Senior Vice President and the System Chief Medical Officer (“CMO”) at Health + Hospitals, located in New York City. I am a graduate of Cornell University and the University of California, San Francisco, School of Medicine, and completed a residency in Obstetrics and Gynecology at Health + Hospitals/Jacobi. I have been employed as the System’s CMO since April 2017. Prior to that date, I was the System’s Deputy CMO since October 2013.

**Background on the NYC Health + Hospitals;
Receipt and Use of HHS Funds**

4. Health + Hospitals is New York City’s municipal hospital system and the largest public health care system in the United States. Health + Hospitals protects and promotes the health and well-being of 8.5 million diverse New Yorkers across all five boroughs, serving as the City’s public safety net and health care system.

5. Health + Hospitals operates an integrated health care system consisting of: eleven acute care hospitals; five post-acute/long-term care facilities; “Gotham Health,” a network of health clinics across the five boroughs offering primary and preventive care services; and “NYC

Health + Hospitals/At Home,” a certified home health agency offering expert services in Manhattan, Queens, Brooklyn, and the Bronx.

6. Health + Hospitals offers: “MetroPlus,” a low to no-cost health insurance plan serving more than 500,000 New York residents; “OneCity Health,” the largest Medicaid Performing Provider System in the City composed of hundreds of health care providers, community-based organizations, and health systems; and “Health + Hospitals/Correctional Health Services,” one of the largest correctional health care systems in the nation, with over 43,000 annual admissions in jails across the City.

7. In addition to this range of facilities and programs, twenty-two Health + Hospitals facilities have been designated as “Leaders in LGBT Healthcare Equality” by the Human Rights Campaign Foundation. This designation is given to entities that train staff in the provision of LGBTQ health care, have LGBTQ-responsive policies, and make those policies available to the public and staff.

8. Health + Hospitals received approximately \$3.4 billion in fiscal year 2018 from HHS. In particular, Health + Hospitals received: \$5,933,864 for services covered by Child Health Plus; \$1,153,400,144 for services covered by Medicaid; \$29,459,286 in federal grants related to HIV/AIDS, Sexually Transmitted Disease Treatment and Prevention, Substance Abuse Treatment, Public Health and Prevention, Immunization, Biomedical and Behavioral Research; \$112,799,439 in other grants; \$978,233,262 in Medicaid supplemental payments; and \$1,114,354,374 for services covered by Medicare.

9. These federal funds allow Health + Hospitals to serve around one million patients annually and are essential to the functioning of our System and maintaining public health within our jurisdiction.

Existing Health + Hospitals Policies Addressing Religious Objections

10. Health + Hospitals has robust anti-discrimination policies that are tailored to comply with the existing requirements of our state and local laws on religious accommodation. Foremost among these, Health + Hospitals has an Equal Employment Opportunity (“EEO”) Program and a Religious Accommodation Policy. Attached hereto as Exhibit A are true and correct copies of Operating Procedure No. 20-32, Equal Employment Opportunity Program (“EEO Policy”). Attached hereto as Exhibit B are true and correct copies of Operating Procedure No. 20-18, Corporation Policy with Respect to Requests for Religious Accommodation (“Religious Accommodation Policy”).

11. The EEO Policy emphasizes its commitment to providing equal employment opportunities to all employees and applicants for employment without regard to, among other bases, their actual or perceived religion or creed. *See generally*, EEO Policy.

12. In the context of religious accommodations, Health + Hospitals “grant[s] requests by employees and prospective employees for a reasonable accommodation of the employee or prospective employee’s religious beliefs, practices or observance.” Religious Accommodation Policy at 1; *see also* EEO Policy at 3 (prohibiting the denial of reasonable accommodations for “sincerely held religious beliefs, observances, and practices”).

13. An accommodation would not be available if it would impose an “undue hardship” on the particular facility or department. *Id.* at 7; Religious Accommodation Policy at 3. A requested accommodation may cause an “undue hardship” if it would be significantly difficult or unduly costly to implement, may affect patient care, or would fundamentally change the nature or operation of Health + Hospitals. *Id.*

14. The Religious Accommodation Policy likewise explains that,

A request for a religious accommodation will be denied only if, after exploring reasonable alternatives, the network/facility where the employee works or has applied to work determines that granting the request will cause an undue hardship to the operation of the applicable network/facility either because it would interfere significantly with the safe and efficient operation of the network/facility (including, without limitation, its ability to care for patients in a unit or division affected by the request) or would result in significant expense in relation to the size and operating costs of the network/facility.

Religious Accommodation Policy at 1–2.

15. Requests for religious accommodations should be made in writing to a Senior Manager and be made as far in advance as possible. Religious Accommodation Policy at 2.

16. In determining whether to grant a religious accommodation request, the Senior Manager will engage in an interactive dialogue with the employee’s department to discuss the effects of the accommodation on the department, and when appropriate, alternative accommodations with the employee. EEO Policy at 7–8.

17. The Religious Accommodation Policy requires the Senior Manager to give written decisions on the religious accommodation requests. The Religious Accommodation Policy also provides higher levels of review that offer additional opportunities for exploring alternatives not yet considered. Religious Accommodation Policy at 3–4.

18. Absent plain reason to believe otherwise—such as inconsistency of practice—the Senior Manager accepts the employee’s assertion of the sincerity of his or her religious belief. Religious Accommodation Policy at 4.

19. Health + Hospitals’s policies are modeled on a reasonable accommodation and undue hardship framework in order to balance a variety of interests, at times competing, that surface in the workplace. The desire to balance these interests is motivated in part by Health + Hospitals’s fundamental mission to provide care to all as well as the need to operate a financially

sustainable public hospital system. Health + Hospitals employs tens of thousands of employees in a variety of patient care environments who utilize complex and highly-specialized skill sets. They work together to deliver care to some of the most vulnerable and underserved patients. It is therefore imperative that the System maintain planned and adequate staffing levels so that care can be delivered in a predictable and safe manner. The current model of evaluating requests for reasonable accommodations, which accounts for the burden on Health + Hospitals, allows the System to guarantee that patient safety is not negatively affected.

Immediate Impact of the Final Rule Upon Health + Hospitals

20. It is Health + Hospital's understanding that the Final Rule expands definitions of terms in ways that affect how we function, specifically: "assist in the performance," "discriminate or discrimination," "health care entity," and "referral or refer for."

21. There is a lack of clarity as to who or what falls under these terms, yet Health + Hospitals must prepare for compliance with the Final Rule.

22. **Staffing costs.** Health + Hospitals must expend time, resources, and effort by: modifying hiring practices; double or triple-staffing emergency functions in light of limits the Final Rule places on requiring advance notice of objections; and training staff on what behavior is now permissible from objectors and how to work around objections not planned in advance.

23. For example, in the context of a hysterectomy at least twelve different employees are involved in delivering direct care to the patient. This includes nurses, operating room technicians, and others. If clerical staff and housekeepers are included in that figure, the number increases to at least fifteen different people. Many of those individuals are scheduled to perform services weeks or months in advance. It may be impossible to perform the procedure when even one of them—for example, a scrub nurse or certified registered nurse anesthetist—lodges a last minute objection to providing care. In such an instance, the procedure may not be able to be

rescheduled for weeks or months. This could result in harm to the patient or could discourage the patient from coming back to have the procedure performed.

24. Hiring additional staff to act as alternate providers is impracticable for Health + Hospitals. As shown below, in fiscal year 2018, Health + Hospitals directly employed the equivalent of 35,860 full-time and part-time staff; 8,433 affiliate and temporary staff persons; and 700 staff persons who provided hourly services. These salaries amounted to over \$4 billion.

FY18	H+H (Full Time & Part Time Staff)	Affiliate	Allowances	Overtime	Temporary Staffing	FY18 Total
Full Time Equivalent (FTEs)	35,860	5,657	700	2,144	2,776	47,138
Health + Hospital Corp (\$ in 000s)	\$2,588,661	\$1,208,964	\$51,931	\$155,881	\$155,529	\$4,160,966

25. Additional staffing would be costly. It is not clear Health + Hospitals can feasibly comply with the Rule without compromising patient care.

26. **Emergency care.** As a result of the Rule, and the risk that any employee may now refuse to provide patient care without advance notice to the hospital, Health + Hospitals must attempt to create contingency staffing plans to ensure that more than one of each necessary professional is available at all times in its emergency rooms.

27. Health + Hospitals operates under enormous budgetary constraints and does not have additional staff to perform essential functions required for a patient experiencing an emergency.

28. For example, a woman who arrives at a Health + Hospitals emergency room with a miscarriage or ectopic pregnancy will typically encounter at least fifteen staff members during her course of treatment.

29. These staffers include: Registration Clerks; Triage Nurses; Patient Care Associates; Laboratory Techs; ER Doctors; OR Technicians; Clerical Staff; Radiologists; Radiology Technicians; Staff Nurses; Housekeeping Staff; Scrub Nurses; Circulating Nurses; Anesthesiologists; and Certified Registered Nurse Anesthetists.

30. Just as hiring additional staff for non-emergency services would be cost prohibitive, hiring additional staff for emergency services is not realistic.

31. ***LGBTQ health care.*** In order to better meet the needs of the estimated 750,000 LGBTQ individuals living in the City of New York, Health + Hospitals began collecting sexual orientation and gender identity (“SOGI”) demographic information at the System’s facilities. This data—identifying when, where, and why LGBTQ individuals seek medical treatment—will help the System better allocate resources. This, in turn, creates an affirming experience for LGBTQ patients at Health + Hospitals, thus reducing barriers to equitable care and improving patient outcomes.

32. The Final Rule threatens our effort to improve patient care. It deters LGBTQ individuals from disclosing information for fear that a System employee may refuse them services. It may even cause LGTBQ individuals to delay or refuse to seek care altogether due to stigma and discrimination in the health care setting.

33. ***Contractual relationships.*** Health + Hospitals must review contractual relationships with subcontractor institutions that are used to deliver health services in order to

ensure that such institutions are in compliance with the Rule. In doing so, Health + Hospitals must devote substantial time and resources to this immense undertaking.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 7th day of June, 2019

A handwritten signature in blue ink that reads "Machelle Allen" followed by a small mark that appears to be "MD". The signature is written over a horizontal line.

Machelle Allen, M.D.

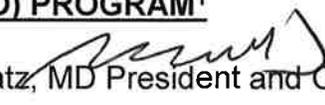
Senior Vice President and Chief Medical Officer NYC
Health + Hospitals

Exhibit 5

Attachment A



OPERATING PROCEDURE NO. 20-32
EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM¹

Effective Date: September 1, 2018 approved by Mitchell Katz, MD President and CEO 

Responsible Department: The Office of Equal Employment Opportunity (EEO)

Sub-Department(s): The Office of Legal Affairs

Regulatory Requirement(s): Civil Rights Act of 1964; New York State Human Rights Law; New York City Human Rights Law, New York City Administrative Code; Age Discrimination in Employment Act (ADEA); Americans with Disabilities Act of 1990

Required Date of Review: September 30, 2020

I. PURPOSE:

NYC Health + Hospitals (hereafter, the System) is committed to providing equal employment opportunities (EEO) to all employees and applicants for employment without regard to actual or perceived race; color; national origin; alienage or citizenship status; religion/creed; sex and/or gender (including sexual harassment and/or "gender identity" – which refers to a person's actual or perceived sex and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth); disability; age; pregnancy; prior record of arrest or conviction; marital status; partnership status; familial status; caregiver status; genetic information or predisposing genetic characteristics; sexual orientation; unemployment status; salary history; credit history; status as a veteran or active military member; status as a victim or witness of domestic violence, sex offenses or stalking; and/or any other protected class covered by federal, state and/or local anti-discrimination laws.

This Operating Procedure is intended to set out the applicable policies and procedures of the System's Equal Employment Opportunity Program. Further, this Operating Procedure serves to remind all staff as to their rights and responsibilities with respect to fostering and maintaining a workplace of equal employment opportunity and to ensure compliance with all applicable federal, state and local antidiscrimination laws.

II. SCOPE:

Everyone who works for the System, or is an applicant for employment with the System, is covered by federal, state, and/or local anti-discrimination laws as well as this Policy. This includes current employees, volunteers, temporary staff, and job applicants. Further, the System is committed to a workplace free from

¹ This Operating Procedure supersedes OP 20-32, "Equal Employment Opportunity Program and Affirmative Action Plan" dated March 21, 2012 and the NYC Health + Hospitals "Equal Opportunity Policy Statements" dated November 12, 2008.

discrimination and/or retaliation. All System employees are expected to be respectful of everyone in the System's workplace (including, but not limited to, contractors, affiliates, vendors, patients, etc.) and members of the public, and to be sensitive to the effects of their behavior on those around them. All affiliates, contractors and/or other non-System employees assigned to a System facility are required to comply with the System's EEO Policy consistent with the terms of their affiliation agreements, service contracts, and/or applicable agreements, rules, regulations, and laws.

This Policy not only protects individuals from prohibited conduct because of their own protected status (such as their own actual or perceived race, religion, national origin or disability), but also protects individuals from conduct motivated by the actual or perceived race, religion, national origin, or disability, etc., of other persons with whom they are associated. For example, this Policy applies to individuals who are subjected to adverse actions because of their marriage to, or domestic partnership or association with, persons of a particular racial, religious, or national origin group, or persons who have a disability.

The System's EEO Policy extends to conduct which occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, work conferences/trade shows, offsite business-related or System-sponsored social functions (e.g. System sponsored holiday party), System vehicle, or facility where System business is being conducted and discussed.

III. POLICY:

It is the policy of the System to recruit, select, train and promote, into all job levels, the most qualified individuals without regard to actual or perceived race; color; national origin; alienage or citizenship status; religion/creed; gender (including sexual harassment and/or "gender identity" – which refers to a person's actual or perceived sex and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth); disability; age, pregnancy; prior record of arrest or conviction; marital status; partnership status; familial status; caregiver status; genetic information or predisposing genetic characteristics; sexual orientation; unemployment status; salary history; credit history; status as a veteran or active military member; status as a victim or witness of domestic violence, sex offenses or stalking; and/or any other protected class covered by federal, state and/or local anti-discrimination laws.

To achieve and maintain an atmosphere of opportunity and equality, the System has in place an Equal Employment Opportunity ("EEO") Office staffed by EEO personnel. The Office of Equal Employment Opportunity (EEO) is responsible for the day-to-day implementation and monitoring of the Equal Employment Opportunity Program under the supervision of the Office of Legal Affairs. However, it is the responsibility of all employees of the System to ensure compliance with the System's EEO policies and obligations, to prevent discrimination in the work place, and to ensure that all employees and applicants for employment are given the opportunity to realize their full potential.

A. Types of Prohibited Conduct

Decisions and practices based on an individual's protected status (e.g., race, religion, age, and/or the other previously listed categories) that unlawfully affects the terms and conditions of employment or potential employment with the System are prohibited by this Policy. This includes unlawful decisions, actions, and practices that occur in the course of recruitment, testing, hiring, work assignments, determination of salary and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge, or any other application or selection process relating to employment.

This Policy prohibits sexual harassment (i.e., unwelcome conduct or language of a sexual nature) and harassment based on any other protected characteristic referenced above (such as race, gender, religion, disability, or sexual orientation). In addition, this Policy prohibits conduct which unreasonably interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment based on any protected characteristic. Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint and/or investigation of an EEO-related matter or in the reasonable accommodation process are strictly prohibited.

This Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; sincerely held religious beliefs, observances, and practices; and/or status as a victim of domestic violence, sex offenses, or stalking. As set forth in more detail later in this policy, all requests for a reasonable accommodation based on a disability; pregnancy, childbirth, or a related medical condition; and/or status as a victim of domestic violence, sex offenses, or stalking, must be made with and/or referred to the Office of EEO.

In addition, this Policy prohibits any employee of the System from aiding, abetting, inciting, compelling, or coercing any person present in a facility of the System, whether or not that person is an employee of the System, from engaging in any conduct prohibited by this Policy, including, but not limited to, conduct that creates a hostile work environment based on any protected characteristic.

Some offensive acts or remarks may be violations of other policies of the System concerning codes of conduct and professional behavior even if they are not so severe that they violate federal, state, or local discrimination laws. The System may discipline conduct that violates such policies even if the conduct does not violate this Policy.

B. Specific Protections

The following sections are provided to enable individuals to understand the unique definitions, issues, rights, and responsibilities under this Policy pertaining to sexual harassment and discrimination based on disability; genetic information; retaliation and status as a victim of domestic violence, sex

offenses, or stalking.

1. Sexual Harassment

NYC Health + Hospitals is committed to maintaining a workplace free from sexual harassment. Sexual harassment is unlawful and subjects NYC Health + Hospitals to liability. The System is committed to eliminating such practices through heightened employee awareness, training, and prompt investigations of allegations. Sexual harassment is prohibited under federal, state and local antidiscrimination laws, including but not limited to Section 703 of Title VII of the Civil Rights Act of 1964 as amended, the New York State Human Rights Law, and the New York City Human Rights Law.

Sexual harassment is any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature in which someone's submission to or rejection of the conduct is made part of their employment, used as the basis for employment decisions affecting them, or the conduct unreasonably interferes with their work or creates an intimidating, hostile or offensive work environment. A broad range of behavior may be considered sexual harassment, including sexually suggestive remarks, pictures or gestures, verbal abuse or harassment of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary touching, patting, or pinching.

The key word is "unwelcome" indicating that the conduct must not be wanted or solicited. This Policy is not intended to regulate social interactions in the work place. When a person makes it known that the sexual overture or conduct is unwelcome, then it must stop immediately.

The following describes some of the types of acts that may be considered sexual harassment:

- Physical assaults of a sexual nature, such as:
 - Rape, sexual battery, molestation, or attempts to commit these assaults. Intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employees' body.
- Unwanted sexual advances, propositions or other sexual comments, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities;
 - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which are sufficiently severe or pervasive to create a hostile work environment.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects,

promotional material, reading materials, or other materials that are sexually demeaning, pornographic.

Sexual harassment may involve individuals of the same or different gender(s) and can include a complaint by or against a manager or employees of the same rank or against a non-employee.

Any employee of NYC Health + Hospitals who believes that they have experienced sexual harassment and/or are made aware that sexual harassment occurred, even if it does not involve themselves, should contact the Office of EEO. In addition, employees are encouraged to be an ally to any person who was harassed by letting them know that they saw what happened to them and encouraging them to report the behavior to the Office of EEO. Any supervisor or manager that witnesses and/or is made aware that sexual harassment occurred must report it to the Office of EEO.

Please note that pursuant to the System's EEO Internal Complaint process whenever the Office of EEO receives a complaint of sexual harassment or otherwise knows of possible sexual harassment occurring, it will conduct an investigation. Those who are found to have engaged in sexual harassment and/or any supervisory or managerial personnel who knowingly allows such behavior to continue will be subject to appropriate sanctions, including but not limited to disciplinary and/or corrective actions as deemed appropriate. Retaliation against those who complain of sexual harassment or who testify, assist or participate in an investigation, proceeding, or hearing involving a complaint of sexual harassment is unlawful and strictly prohibited by this policy. Some examples of retaliation could include a termination or failure to hire, a demotion, a decrease in pay, a decrease in the number of hours worked, poor performance evaluation/rating, etc.

2. Disability

In accordance with the Americans with Disabilities Act (ADA), as well as all other federal, state and local anti-discrimination laws, it is the policy of the System to provide equal employment opportunity to persons with disabilities with respect to all personnel practices, including, but not limited to, hiring, recruitment, advertising, promotion, training, compensation and benefits. Discrimination against a person based on that person's actual or perceived disability, or relationship with a person with a disability, will not be tolerated by the System. For purposes of this Policy, a disability is: 1) a physical, medical, mental, or psychological impairment; 2) a history or record of such impairment; or 3) being regarded as having such impairment.

The System provides reasonable accommodation to its employees and applicants with disabilities to enable them to perform the essential functions of their job. The Office of EEO is responsible for overseeing and coordinating requests for reasonable accommodation received from employees or applicants for hire. In order to request an accommodation, the individual shall make a request with the Office of EEO.

3. Genetic Information Non-Discrimination Act (GINA)

The System, in keeping with Title II of the Genetic Information Non-Discrimination Act (GINA), hereby confirms its commitment to prevent the misuse of certain information for employment purposes.

The System respects all employees' privacy of their genetic information and enforces a strict policy of non-discrimination on the basis of genetic information. It is a violation of this Policy to discriminate, harass or retaliate on the basis of genetic information when it comes to all aspects of employment. This includes unlawful decisions, actions, and practices that occur in the course of recruitment, testing, hiring, work assignments, determination of salary and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge, or any other application or selection process relating to employment. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. family medical history).

4. Domestic Violence, Sex Offenses, or Stalking

The New York City Human Rights Law prohibits employment discrimination against an individual in the terms, conditions, compensation or privileges of employment because of the actual or perceived status as a victim of domestic violence, or victim of sex offenses or stalking.

The System provides reasonable accommodation to its employees and applicants for hire who are victims of domestic violence, sex offenses or stalking to enable them to perform the essential requisites of their job. The Office of EEO is responsible for overseeing and coordinating requests for reasonable accommodation received from employees or applicants for hire. In order to request an accommodation, the individual shall make a request with the Office of EEO.

5. Retaliation

It is a violation of this Policy to retaliate against or harass any person who asserts their rights regarding claims of employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct; or 3) participating in any way in the complaint and/or investigation of an EEO-related matter or in the reasonable accommodation process. It is also a violation of this Policy to retaliate against or harass someone because of their association with such an individual.

Behaviors which may be considered retaliatory include, but are not limited to, threats, reprimands, negative evaluations, harassment, refusal to hire, denial of promotion or job benefits, demotion, suspension, discharge, or other actions affecting the terms, conditions, or privileges of employment.

Examples of behavior that are protected against retaliation under this Policy

include, but are not limited to, expressing an intent to file or filing a charge or complaint alleging prohibited conduct under this Policy; participating as a witness in an EEO investigation, an EEO administrative proceeding, hearing, or trial; and/or seeking a reasonable accommodation.

IV. PROCEDURE/GUIDELINES:

1. Requests for Reasonable Accommodations

The System shall provide reasonable accommodations to qualified employees or job applicants unless to do so would cause an undue hardship. Reasonable accommodation requests may be made in connection with disabilities; pregnancy, childbirth, or a related medical condition; sincerely held religious beliefs, observances, and practices; and/or status as a victim of domestic violence, sex offenses, or stalking.²

Whether an accommodation is reasonable will depend upon the circumstances of the particular request. Undue hardship may exist when an accommodation is significantly difficult or unduly costly, extensive, substantial, disruptive, or would fundamentally change the nature or operation of the System's business.

The Office of EEO is responsible for overseeing and coordinating requests for reasonable accommodations received from employees and job applicants for disabilities; pregnancy, childbirth, or a related medical condition; and/or status as a victim of domestic violence, sex offenses, or stalking. All requests for a reasonable accommodation for these categories must be made with and/or referred to the Office of EEO. Supervisors, managers, or human resources personnel who become aware of any employee or job applicants request for a reasonable accommodation must notify the Office of EEO.

In order to request a reasonable accommodation for a disability, the employee or job applicant shall make a request to the Office of EEO by completing a reasonable accommodation request form and providing supporting documentation (as applicable). Requests for a reasonable accommodation may also be referred to the Office of EEO through Human Resources, the Occupational Health and Safety Department (OHS) or from the employee's department. Upon receipt and/or notice of an employee's need for a reasonable accommodation, the assigned EEO personnel will engage in the interactive process to clarify the employee's functional limitations and identify the appropriate reasonable accommodation(s). In order to determine an employee's essential functions, the reasonableness of a request, and/or whether or not such a request would impose an undue hardship, the EEO personnel will engage in an interactive dialogue with the employee's department to discuss if and how the requested reasonable accommodation can be effectuated by the department without imposing an undue hardship and, when appropriate, discuss alternative accommodations with the employee. Whether an accommodation is reasonable

² The System treats leave requests to address medical or health care needs related to an individual's gender identity in the same manner as requests for all other medical conditions. In addition, the System provides reasonable accommodations to individuals undergoing gender transition, including medical leave for medical and counseling appointments, surgery and recovery from gender affirming procedures, surgeries and treatments as it would for any other medical condition.

will depend upon the circumstances of the particular request.

The following details the specific aspects of each type of request:

A. Disabilities

An employee or job applicant with a disability who requires a reasonable accommodation(s) to enable them to perform the essential functions of the job, or to enjoy the benefits and privileges of employment, are urged to promptly request an accommodation with the Office of EEO. Supervisors, managers, or human resources personnel who become aware of any employee or job applicants request for a reasonable accommodation **must** notify the Office of EEO. The EEO personnel involved in the process shall provide reasonable assistance (such as help in completing forms) to an individual requesting an accommodation. Additionally, if a reasonable accommodation is requested to facilitate an individual's ability to apply for employment, the staff supervising the application procedures may be required to assist the applicant in completing the application process. All documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability shall be collected and maintained by the Office of EEO separately and apart from the individual's personnel and labor files. Such information will be treated as confidential records, except that managers and supervisors may be informed of limitations, work restrictions and reasonable accommodations requested. Furthermore, medical information may be provided: 1) to first-aid and safety personnel if the disability might require emergency treatment; 2) to government officials investigating the System's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law; and 4) for insurance purposes.

B. Religion

The System shall grant requests by employees and job applicants for a reasonable accommodation of the individual's sincerely-held religious beliefs, practices or observances unless granting such request will cause an undue hardship to the operation of the applicable facility. Requests for religious accommodations should be made in writing to the individual's "Senior Manager" as set forth in NYC Health + Hospitals Operating Procedure 20-18, "*Corporation Policy with Respect to Requests for Religious Accommodation.*" Please refer to Operating Procedure 20-18 for further guidance on the System's Policy regarding requests for religious accommodation.

C. Victim of Domestic Violence, Sex Offenses, or Stalking

Employees or job applicants who require a reasonable accommodations in connection to their status as a victim of domestic violence, sex offenses or stalking are urged to promptly request an accommodation with the Office of EEO. Supervisors, managers, or human resources personnel who become aware of any employee or job applicants request for a reasonable accommodation must notify the Office of EEO. Certification of one's status as a victim of domestic violence, sex offenses, or stalking may be requested by the EEO personnel handling the accommodation request. A person may

satisfy the certification requirement by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or medical or other professional service provider from whom the individual seeking a reasonable accommodation, or that individual's family or household member, has sought assistance in addressing domestic violence, sex offenses, or stalking and the effects of the violence or stalking; a police or court record; or other information consistent with the disclosure and the request for accommodation.

D. Pregnancy, Childbirth or Related Medical Condition

Employees or job applicants who require a reasonable accommodations on the basis of pregnancy, childbirth, or a related medical condition are urged to promptly request an accommodation with the Office of EEO. Supervisors, managers, or human resources personnel who become aware of any employee or job applicants request for a reasonable accommodation must notify the Office of EEO. The System shall provide reasonable accommodations to employees or job applicants on the basis of pregnancy, childbirth, or a related medical condition unless to do so would cause undue hardship. Such reasonable accommodations may include, but is not limited to bathroom breaks; leave for a period of disability arising from pregnancy, childbirth, or related medical conditions; breaks to facilitate increased water intake; breaks for the purpose of expressing breast milk; periodic rest for those who stand for long periods of time; and assistance with manual labor, among other things. If granted, the reasonable accommodation shall allow the individual to perform the "essential requisites" of their job.

2. Internal Complaint Procedure

A. Reporting Violations of the EEO Policy

Employees or job applicants of the System who believe that they have been subjected to any action, decision, or harassment in violation of this Policy, or who witness others being subjected to conduct covered by this Policy, are urged to promptly report the incident(s) to the Office of EEO. Supervisors, managers, or human resources personnel who become aware of any claimed violations of this Policy must notify the Office of EEO. Please note that a complaint can be filed against a non-System employee, including but not limited to, affiliates, contractors, members of the public, and/or other non-System employees assigned to a System facility. In such cases, the Office of EEO may contact the non-employee and/or issue recommendations for remedial action consistent with the terms of their affiliation agreements, service contracts, and/or applicable agreements, rules, and regulations. In certain circumstances, a joint investigation between the System's Office of EEO and the non-employees employer may be appropriate. Further, should the Office of EEO receive a complaint against a System employee from a non-employee, the Office of EEO may conduct an investigation, and/or a joint investigation with the non-employee's employer, and issue recommendations for remedial action as deemed appropriate.

Complaints must be in writing and filed within one (1) year of the most recent alleged discriminatory action. Complaint forms may be obtained from Office of EEO and/or the NYC Health + Hospitals Intranet portal. The complaint shall include the name, contact information and signature of the person filing the complaint and a detailed description of the action alleged. It may be filed by personal delivery, electronic mail, or ordinary mail, addressed to the Office of EEO.

After the submission of a written complaint to the Office of EEO, the assigned EEO personnel will review the complaint to determine if it alleges a violation of the EEO Policy. If so, the assigned EEO personnel will conduct an investigation of the complaint. If deemed necessary, as part of the investigation, separate meetings will be arranged to discuss allegations with the person who submitted the complaint, the person who is alleged to have violated the EEO Policy, potential witnesses and/or other persons who could contribute any information regarding the allegations. All internal complaints shall be responded to by the assigned EEO personnel as soon as practicable based on the unique facts and circumstances of the complaint.

After the investigation, the assigned EEO personnel will make a determination of whether a violation of this Policy has occurred. If it is determined that there is no violation of the EEO Policy, the complaint will be closed with such notice of determination sent to the Complainant and the Respondent. If it is determined that there is reasonable cause to believe that the EEO Policy was violated or that behavior inconsistent with the Policy occurred, such notice of determination will be provided to the parties. Where appropriate, remedial and corrective measures will be taken by the Office of EEO and/or the matter will be referred to Human Resources, Labor Relations and/or other department as deemed appropriate.

B. Complaints against Senior Management Staff

Complaints against senior management staff (President, Senior Vice Presidents, Vice Presidents, Executive Directors, and General Counsel) and/or members of the Board of Directors may be filed with the Office of EEO at Central Office. The Office of EEO and the Office of Legal Affairs, in consultation, will determine whether the investigation will be conducted by the Office of EEO or by an independent investigator, as appropriate. Where the General Counsel is named as a respondent, the complaint will be referred to the President of NYC Health + Hospitals for the assignment of an investigator. The investigative findings and recommendations of an independent investigator, before finalization, shall be shared with the Office of EEO and/or the Office of Legal Affairs, except where the General Counsel has been named as a respondent. The Office of EEO or the Office of Legal Affairs shall refer the investigative findings and recommendations to either the President or Board of Directors, as appropriate. In those instances where the General Counsel is named as a respondent, the findings will be referred directly by the investigator to the President of NYC Health + Hospitals.

C. Cooperating in an Investigation

All current employees, volunteers, and temporary staff, are required to cooperate fully during an investigation into an EEO complaint. All affiliates, contractors and/or other non-System employees are required to cooperate with an investigation into an EEO complainant consistent with the terms of their affiliation agreements, service contracts, and/or applicable agreements.

Failure or refusal to cooperate may result in a recommendation for disciplinary action.

D. Confidentiality

All EEO complaints and investigations will be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. While all internal EEO investigations will be conducted in a confidential manner, certain exceptions apply. In the course of the investigation, the assigned EEO personnel may discuss EEO matters with other individuals who may have information about a complaint. In addition, it may be necessary for the assigned EEO personnel to disclose certain information on a need to know basis. The Office of EEO may disclose to persons with a legitimate need to know certain information in order to respond to the complaint allegations or to implement interim or corrective action, including but not limited to disciplinary action (e.g. certain information regarding the complaint and witness statements may be shared with Labor Relations and/or Human Resource in order to determine whether further action/s should be taken). All persons with whom the Office of EEO interacts concerning the complaint and its investigation are asked to refrain from discussing the complaint, to the extent possible, beyond their interaction with the Office of EEO.

E. Allegations Made in Bad Faith

If any employee knowingly makes a false accusation of discrimination or knowingly provides information in bad faith in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

F. Contact with the EEO Office

An employee has a right to meet privately with the Office of EEO. Such meetings may take place either during or outside of office hours. If an employee makes a request to meet with EEO personnel during office hours, the employee should obtain approval from a manager or supervisor before leaving their work assignment. An employee need not disclose to the manager/supervisor the purpose for or details of the meeting with the EEO personnel. Reasonable requests to meet with an EEO personnel during work hours should not be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with EEO personnel at the earliest practical time consistent with the operational needs of their units.

At the employee's request, arrangements may also be made to hold the EEO meeting before or after office hours, or during the employee's lunch period. Should such a meeting take place entirely on the employee's own time, he or she need not advise a manager or supervisor of the meeting, or obtain the consent or approval of a manager or supervisor. If necessary, the EEO personnel will make arrangements for interpreters and other forms of communication assistance to facilitate effective communication with persons with disabilities.

G. Right to Representation During Internal Investigation

All internal EEO investigations will be conducted consistent with all applicable collective bargaining agreements and/or rules. In instances where Group 12 (unionized) employees are named as Respondents and/or where disciplinary action may reasonably result from the interview and/or pursuant to their rights under applicable collective bargaining agreements, the unionized employee will have the right to seek union representation during an EEO investigation at their own election and discretion.

The EEO Policy does not afford employees the right to counsel or other legal representation at an interview with an EEO personnel in connection with an investigation of an internal EEO complaint.

H. Other Places Where Complaints May Be Filed

All complainants shall be advised of their right to pursue an external complaint with an outside Civil Rights enforcement agency (see Appendix A) and/or to pursue a complaint through the judicial system. This right is not forfeited by using the System's internal procedure.

The following federal, state, or local agencies enforce laws against discrimination:

- United States Equal Employment Opportunity Commission (the "EEOC"):
<http://www.eeoc.gov/>
- New York State Division of Human Rights (the "SDHR"):
<http://www.dhr.ny.gov/>
- New York City Commission on Human Rights (the "CCHR"):
<http://www.nyc.gov/html/cchr/html/home/home.shtml>
- United States Department of Justice: <http://www.justice.gov/>

When an employee or job applicant exercises their right to file a complaint with a federal, state, or local civil rights enforcement agency (known as an "external complaint") based on or related to the same facts and circumstances of an internal complaint, the Office of EEO will cooperate with the enforcement agency with respect to the ultimate resolution of the complaint. Complaints filed with the EEOC must be filed within 300 days of the act of discrimination. Complaints filed with the SDHR or the CCHR must be filed within one year of the act of discrimination (note: individuals have up to 3 years to file a sexual harassment claim with the CCHR). In such cases, the EEO Office will respond to the internal complaint through the external complaint process. Please note that if an employee or job applicant files an external complaint prior to the

completion of the investigation of an internal complaint based on the same facts and circumstances, they will not receive a written decision pursuant to the informal complaint procedure; rather, the System's response will be to the external complaint. In addition, there may be certain instances, based on the unique circumstances of the case, where an internal complaint will not be taken and instead the Complainant will be notified of their right to file a complaint externally should they wish to proceed with a complaint.

I. Withdrawing Complaints

A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. Once a withdrawal is submitted, the assigned EEO personnel will end the investigation, with certain exceptions. In some instances, the assigned EEO personnel may continue the investigation if deemed appropriate by the Office of EEO. Investigations of complaints alleging sexual harassment will continue notwithstanding the withdrawal of a complaint.

V. REFERENCES TO REGULATIONS AND/OR OTHER RELEVANT POLICIES:

- Title VII of the Civil Rights Act of 1964;
- New York State Human Rights Law, N.Y. Exec. L. § 290 et seq.;
- New York City Human Rights Law, New York City Administrative Code § 8-101 et seq.;
- 42 U.S.C. § 1981;
- 29 U.S.C. § 206(d)(1);
- Executive Order 11246;
- §§ 503-504 of the Rehabilitation Act of 1973;
- Age Discrimination in Employment Act (ADEA), 29, U.S.C. § 623 et seq.;
- Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.;
- NYC Health + Hospitals Operating Procedure 20-18, "Corporation Policy with Respect to Requests for Religious Accommodation.

APPENDIX A

FILING A COMPLAINT WITH AN EXTERNAL CIVIL RIGHTS ENFORCEMENT AGENCY

Any employee or applicant for employment who believes that they have experienced unlawful discrimination has a right to file a formal complaint with the federal, state or local agencies listed below. A person does not give up this right when they file a complaint with the NYC Health + Hospitals Office of Equal Employment Opportunity (EEO).

The following federal, state and local agencies enforce laws against discrimination:

NEW YORK CITY COMMISSION ON HUMAN RIGHTS

40 Rector Street
New York, NY 10006
(212) 306-7450
(212) 306-7686 (TTY)
Web site: www.nyc.gov/html/cchr/home/html

NEW YORK STATE DIVISION OF HUMAN RIGHTS

One Fordham Plaza, 4th Floor
Bronx, NY 10458
(718) 741-8400

or

163 West 125th Street, 4th Floor
New York, NY 100270
(212) 961-8650
(212) 961-8999 (TTY)

or

20 Exchange Place, 2nd Floor
New York, NY 10005
(212) 480-2522

or

55 Hanson Place, 3rd Floor
Brooklyn, NY 11217
(718) 722-2856
Web site: www.nysdhr.com

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004
(212) 336-3620; (212) 336-3622 (TTY)
Web site: www.eeoc.gov

In addition to filing with the aforementioned agencies, a person with a complaint alleging discrimination based on disability may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Disability Rights Section
New York Avenue Building
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530
(202) 307-0663 (voice and TDD)
Web site: www.usdoj.gov/crt/drs/drshome/htm

A person with a complaint alleging discrimination based on citizenship or immigration status may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Office of Special Counsel for Immigration-Related Unfair Employment Practices
New York Avenue Building
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530
Voice: (202) 616-5594; (202) 616-5525; 1-800-237-2515
Web site: www.usdoj.gov/crt/osc

A person who has been discriminated against by a recipient of financial assistance from the U.S. Department of Labor may file a complaint, either with the recipient or with the Civil Rights Center (CRC). Those who wish to file complaints with CRC should mail their complaints to:

UNITED STATES DEPARTMENT OF LABOR

Director, Civil Rights Center
Frances Perkins Building, Room N-4123 200
Constitution Avenue N.W.
Washington, D.C. 20210
(202) 693-6502 (voice)
(202) 693-6515 (TTY)
Web site: www.dol.gov/dol/oasam/crhome.htm

Please Note: There are statutory deadlines for filing complaints with each of these agencies. The deadline in some instances is as short as 300 days. If you wish to file a complaint with an external administrative agency, you should contact the external agencies promptly.

EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT

NYC Health + Hospitals is committed to providing equal employment opportunities (EEO) to all employees and applicants for employment and encouraging each one to realize their full potential. It is the policy of the System to recruit, select, train and promote, into all job levels, the most qualified individuals without regard to actual or perceived race; color; national origin; alienage or citizenship status; religion/creed; gender (including sexual harassment and/or "gender identity" – which refers to a person's actual or perceived sex and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth); disability; age, pregnancy; prior record of arrest or conviction; marital status; partnership status; familial status; caregiver status; genetic information or predisposing genetic characteristics; sexual orientation; unemployment status; salary history; credit history; status as a veteran or active military member; status as a victim or witness of domestic violence, sex offenses or stalking; and/or any other protected class covered by federal, state and/or local anti-discrimination laws.

To achieve and maintain an atmosphere of opportunity and equality, the System has in place an Equal Employment Opportunity ("EEO") Office staffed by EEO personnel. The Office of Equal Employment Opportunity (EEO) is responsible for the day-to-day implementation and monitoring of the Equal Employment Opportunity Program under the supervision of the Office of Legal Affairs. However, it is the responsibility of all employees of the System to ensure compliance with the System's EEO policies and obligations, to prevent discrimination in the work place, and to ensure that all employees and applicants for employment are given the opportunity to realize their full potential.

Employees or job applicants of the System who believe that they have been subjected to any action, decision, or harassment in violation of this Policy, or who witness others being subjected to conduct covered by this Policy, are urged to promptly report the incident(s) to the Office of EEO and/or may file a complaint with an external Civil Rights Enforcement Agency. Supervisors, managers, or human resources personnel who become aware of any claimed violations of this Policy must notify the Office of EEO.



Mitchell Katz
President and CEO

9/21/18

Date



Robert F. Nolan
Chairperson, EEO Committee

11/13/18

Date



Andrea G. Cohen
Senior Vice President and General Counsel

9/17/18

Date

Exhibit 5

Attachment B



Alan D. Aviles
President

**OPERATING PROCEDURE NO. 20-18¹
CORPORATION POLICY WITH RESPECT TO
REQUESTS FOR RELIGIOUS ACCOMMODATION**

September 24, 2012

TO: Distribution "D"
FROM: Alan D. Aviles, President 

I. PURPOSE

This procedure is to establish Corporate policy for providing accommodations for religious observances.

II. SCOPE

This policy and procedure applies to all employees of the Corporation.

III POLICY

Religious Accommodation Policy Statement

The New York City Health and Hospitals Corporation (the "Corporation") recognizes and respects every employee's right to practice the religion of his or her choice. Both the law and the Corporation's policy prohibit discrimination against any employee or prospective employee on the basis of that individual's sincerely-held religious beliefs or practices. The Corporation and its networks and facilities will make efforts to grant requests by employees and prospective employees for a reasonable accommodation of the employee or prospective employee's religious beliefs, practices or observance. A request for a religious accommodation will be denied only if, after exploring reasonable alternatives, the network/facility where the employee works or has applied to work determines that granting the request will cause an undue hardship to the operation of the applicable network/facility either because it would interfere significantly with the safe and efficient operation of the network/facility (including, without limitation, its ability to

¹ This Operating Procedure supersedes Operating Procedure 20-18, dated February 3, 2003.

care for patients in a unit or division affected by the request²) or would result in significant expense in relation to the size and operating costs of the network/facility.

IV. IMPLEMENTATION: GENERAL PROCEDURES

A. Current Employees

1. Requests for religious accommodation should be made in writing and submitted to the employee's "Senior Manager."³ Such requests may include, but are not limited to, scheduling changes, exceptions from dress codes and requests for early departures, time off during a work day or a day off to attend religious service or engage in private worship. Employees should be as specific as possible in describing the precise accommodation needed and the religious practice or observance with which the employee is seeking to comply. Requests for religious accommodations should be made as far in advance as possible, and employees should maintain a copy of any such request.

2. Requests for Time Off for Religious Observance in Units with 24-Hour Coverage

While the network/facility will make reasonable efforts to accommodate all requests for religious accommodation, including employees' needs for time off for religious observance, Senior Managers will take the following specific steps to attempt to accommodate requests for scheduling adjustments from employees working in units with 24-hour coverage:

- (i) When an employee seeks an accommodation requiring an early departure, time off during a work day, or days off on a Sabbath or holy day, the Senior Manager will make reasonable efforts to accommodate that request consistent with the regular shift assignment system, which efforts may include use of the regular self-scheduling process and the granting of scheduling preferences based on seniority where appropriate. When such an accommodation is requested on a regular basis, the requesting employee's Senior Manager (or his/her designee) must meet with the employee to attempt to develop a reasonable accommodation plan in accordance with the following sub-paragraphs of this Paragraph 2.
- (ii) If the regular assignment system does not result in a satisfactory accommodation, the Senior Manager will then undertake to identify all employees who: (a) are qualified to work in the particular unit and position and who would also have the desired shift(s) or portions thereof off during the normal shift scheduling process; and (b) are willing to voluntarily switch shift(s) or portions thereof so that the

² Nothing in this policy diminishes the authority and responsibility of HHC and its hospitals and staff to make clinical and medical decisions regarding the safe and efficient operation of the HHC hospitals and their units, divisions and departments, including, without limitation, their ability to care for their patients.

³ As used herein, the "Senior Manager" of an employee making a request for religious accommodation is the Group II manager who has executive authority over the operations of the department in which the requesting employee works.

religious accommodation request may be granted. The Senior Manager shall then revise work schedules to incorporate any voluntary shift changes that would allow the network/facility to provide the requested religious accommodation.

- (iii) In the event that the processes set forth in the preceding sub-paragraphs of Paragraph 2 do not result in the requested accommodation, the Senior Manager shall then explore the possibility of providing the requesting employee with a shift on the requesting employee's unit that would accommodate the request for time off through some other manner. If the requesting employee's request cannot be accommodated pursuant to efforts taken in accordance with the preceding sentence, the Senior Manager shall determine if it is feasible to transfer the requesting employee to a position in another unit in the network/facility which is able to reasonably accommodate the employee's request for religious accommodation. In making such determination, the Senior Manager shall consult with the Human Resources Director and the network/facility shall make reasonable efforts to ensure that any transfer is to a position that is commensurate with the employee's experience, seniority, and professional expertise.⁴
- (iv) If steps (i) through (iii) do not result in a satisfactory accommodation, the Senior Manager shall then undertake to identify: (a) all employees in the unit who voluntarily would provide overtime coverage for the requested time off; and (b) all per diem, part-time, or floating employees qualified to work in the particular position and willing to provide the necessary coverage. The supervisor shall consider the use of voluntary overtime coverage and per diem, part-time, and floating coverage, as a potential means to allow the network/facility to achieve the requested religious accommodation. In any instance in which the employee requesting the accommodation is excused from working his or her full work week due either to another employee's voluntary overtime coverage or the use of per diem, part-time or floating employees to cover such requesting employee's absence, the requesting employee's absence will be charged to his or her accrued annual leave or, if a sufficient balance does not exist, will be coded as an absence without pay. The requesting employee's sick leave balance may not be used for this purpose.

3. An employee's request for a religious accommodation may be denied if granting the request would cause undue hardship to the conduct of the network/facility's operations. A requested accommodation would pose an undue hardship if it would interfere significantly with the safe and efficient operation of the network/facility (including, without limitation, its ability to care for patients in a unit or division affected by the request) or would result in significant expense in relation to the size and operating costs of the network/facility. If a Senior Manager determines that the request cannot be accommodated pursuant to Paragraph 2 above without causing undue hardship to the conduct of the network/facility's operations, the Senior Manager must forward the

⁴ As used herein, the term "Human Resources Director" means the Human Resources Director or his or her designee and/or, if applicable, the Human Resources Director or his or her Designee of the applicable network/facility.

request to the Human Resources Director of the network/facility for review. The Human Resources Director will reconsider the religious accommodation request and, after consulting with the Senior Manager and/or relevant network/facility clinical staff, determine whether he or she agrees with the decision of the Senior Manager. If the Human Resources Director concludes that granting the request would cause an undue hardship to the conduct of the network/facility's operations, the Human Resources Director will meet with the employee and other relevant staff, if any, to determine if there is any other reasonable measure, not yet explored, that can be taken to accommodate the employee.

4. As soon as is practicable, and in no case more than three weeks after the employee submits a religious accommodation request (unless the request seeks an accommodation prior to three weeks), the Senior Manager shall inform the employee in writing whether the network/facility will grant the requested accommodation, and if so, the specific terms of the accommodation. If the network/facility is unable to grant the accommodation, the supervisor will provide the employee with the reasons for the denial in writing, along with the attached Religious Accommodation Complaint Form.

5. Senior Managers receiving requests for religious accommodations shall maintain a file for each request containing the following information: (a) a copy of the written religious accommodation request; (b) the efforts undertaken by the Senior Manager to accommodate the request; and (c) a statement indicating whether the request was granted, in whole or in part, and if not, the reasons why the requested accommodation was not granted. A copy of the file shall be forwarded to the Human Resources Director.

6. If a Senior Manager is unfamiliar with the faith of the employee requesting a religious accommodation, the Senior Manager may inquire about the nature of the religious observance in order to assess the time required to accommodate the employee's participation in the observance and to determine how to accommodate the request in a manner least disruptive to the network/facility's operations. The Senior Manager shall accept the employee's assertion of the sincerity of his or her religious belief, absent plain reason to believe otherwise (such as inconsistency of practice).

7. If an employee believes that the network/facility failed to comply with the procedures detailed above, he or she may complete the Religious Accommodation Complaint Form attached hereto as Attachment A and submit it to the Human Resources Director of the applicable network/facility.

B. Prospective Employees or Employees Seeking Transfer

1. Applicants for employment or current employees applying for a transfer who wish to request a religious accommodation must submit a written request to the Human Resources Director or other Human Resources department manager managing the recruitment (the "Recruitment Manager") for the position at issue. The written request must specify the precise religious accommodation required.

2. If the applicant for employment or transfer is qualified for the position, the Recruitment Manager, working with the Senior Manager in the department at issue, shall

follow the steps outlined in Section A above to review the applicant's request. However, the Recruitment Manager may take longer than three weeks to respond to the applicant's request if circumstances warrant a longer response time. In addition, the Recruitment Manager is not required to explore alternate work areas for the applicant if an accommodation is not possible, but rather need only consider the vacant position for which hiring of the applicant is contemplated.

3. The network/facility will not consider the requested accommodation as a factor in the candidate selection process unless the network/facility determines that granting the requested accommodation would cause undue hardship to the operation of the network/facility. If the applicant's request will not pose an undue hardship, it shall be granted in the event that the applicant is hired.

4. If the applicant believes the network/facility has not complied with the procedures detailed above, the applicant may complete the Religious Accommodation Complaint Form attached hereto as Attachment A and submit it to the Human Resources Director.

V. **EFFECTIVE DATE**

This policy and procedure shall be effective with respect to all employees of the Corporation working at Jacobi Medical Center as of October 29, 2012 and with respect to all other employees of the Corporation as of January 15, 2013.

ATTACHMENT A

Religious Accommodation Complaint Form

Please complete this form if you have requested an accommodation at work to allow you to practice your religion and you believe that your request was improperly denied. Please submit this completed form with any supporting documentation to the Human Resources Director of the applicable network/facility.

Please keep a copy for your records.

Name _____

Department _____

Tel. No.: (w) _____

(h) _____

Home Address:

Describe the accommodation requested:

Reason given for refusal to accommodate:

I am making this complaint because I requested an employment accommodation at the Facility that I need so that I can practice my sincerely-held religious beliefs and I believe that the Facility improperly denied my request.

Signed

Dated: _____