



Code of Conduct and Compliance Plan

Preamble

Burke is a comprehensive behavioral healthcare system dedicated to serving the residents of our twelve-county service area. As such, the Board of Trustees and staff of Burke recognize the worth, dignity, potential and uniqueness of each individual served. While pursuing these endeavors, staff will make every reasonable effort to protect the health, safety, rights and welfare of those who seek our services, as well as the community at large. The specification of ethical standards enables the Board of Trustees to clarify to current and future Board Members and staff, as well as those served by the programs operated by Burke, the nature of ethical responsibilities held in common by the Board of Trustees, staff and clients.

1. Purpose

This Code of Conduct provides guidance to all Burke trustees, employees and independent contractors and assists us in carrying out our work within ethical and legal standards. These obligations apply to our relationships with clients,, third-party payors, subcontractors, independent contractors, vendors, consultants and one another.

This Code of Conduct is a critical component of Burke's Compliance Program, and was developed to ensure that Burke meets ethical standards and complies with applicable laws and regulations, including Stark Laws, Anti-Kickback Statute, HIPAA and the False Claims Act.

All staff members, trustees and contractors are educated on Federal and State False Claim laws, qui tam, and Anti-Kickback Laws. The False Claims Act applies when a company or person knowingly presents (or causes to be presented) to the Federal Government a false or fraudulent claim for payment, knowingly uses (or causes to be used) a false record or statement to get a claim paid by the Federal Government, conspires with others to get a false or fraudulent claim paid by the Federal Government, or knowingly uses (or causes to be used) a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Federal Government. In other words, a False Claim includes submitting a claim when no service has been provided, padding time or upcoding, as well as other actions including poor quality of services, poor substantiation of services, providing medically unnecessary services or failure to return a known overpayment. The False Claims Act contains *qui tam*, or whistleblower, provisions. Qui tam is a unique mechanism in the law that allows citizens with evidence of fraud against government contracts and programs to sue, on behalf of the Federal Government, in order to recover the stolen funds. A person who begins a False Claims Act (or qui tam) case is entitled to a proportional share of the funds that are recovered for the Federal Government. As part of the process of filing the qui tam action, the individual must provide the Federal Government with all of his or her information relevant to the case. At that time, the Federal Government investigates

the information and decides whether to intervene in the action to join the individual in his or her suit against those that committed fraud.

The Anti-Kickback Statute (AKS), expanded by the Patient Protection and Affordable Care Act (PPACA), holds that whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

- ▶ in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal healthcare program, **or**
- ▶ in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a state or Federal healthcare program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

Furthermore, whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

- ▶ to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal healthcare program, **or**
- ▶ to purchase, lease, order or arrange for, or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under a state or Federal healthcare program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

Burke has strict guidelines on what can be accepted as a gift or benefit from a vendor, potential vendor, pharmaceutical company or similar businesses. Staff may not accept gifts, including meals, from individuals or businesses attempting to solicit business, referrals or purchases from Burke staff. Honorariums or prizes offered as a result of work done for or by Burke may not be kept by the individual but may be accepted by Burke. More information on accepting gift may be found in GAM 1.12. Due to concerns with violating the AKS, employees should assume that gifts from any vendor will not be approved for acceptance. To determine if the appearance of or actual violation will occur by accepting what is being offered, the Compliance Officer will evaluate situations of vendor gifting by the individual circumstances involved. In the event the situation gives the appearance of impropriety or an actual conflict with the law, the approval will be denied.

2. Leadership Responsibilities

All staff members, trustees and independent contractors are obligated to follow this Code of Conduct. Those entrusted with leadership of Burke, including senior management, medical staff and other managers and supervisors, are expected to serve as an example of these standards, to ensure that those on their team have sufficient information to comply with laws, regulations and internal policies, and to make available any resources needed to resolve ethical dilemmas. Leadership is entrusted with the duty to create a culture within Burke that promotes the highest standards of ethics and compliance, and this culture must encourage everyone in the organization to raise concerns when ethical issues arise. Ethical and compliance behavior will not be sacrificed in pursuit of business objectives.

3. Client Rights / Confidentiality

The rights and responsibilities of clients are defined in the General Administrative Manual (GAM) Procedures. These procedures cover the client's rights to access care, to considerate and respectful treatment during care, to know about and participate in decisions about their care, to participate in ethical decision-making arising in the course of care, to security, personal privacy and confidentiality of information, to designate a decision when appropriate, to access protective services and to know when their care is affected by relationships with another healthcare organization.

Burke will comply with all State and Federal laws regarding confidentiality. Burke will comply with rules, standards and regulations promulgated by the State of Texas or the Federal Government, the Texas of Health and Human Services Commission, and Burke regarding maintenance, storage and disposal of client records. Disclosure of confidential information may only be made in accordance with a specific consent signed by the client, a properly executed court order, in an emergency in which failure to disclose information may present a risk to the client or others or under exceptions allowed by State and Federal law. When a client's condition or situation indicates that there is a clear and imminent danger to the client or others, staff must take reasonable steps to inform responsible authorities to safeguard the client or others.

Any information derived from program activities that are used in staff training will be disguised so that the client's identify is fully protected. Burke does not allow any material from a client's medical record to be used for classroom purposes. Any information that cannot be de-identified may be used only as expressly authorized by the client in writing. Burke participates in research endeavors only in accordance with Board Policy and prior approval of Senior Management.

4. Workplace / Client Relationships

Our primary obligation is to respect the integrity and to promote the welfare of the client, whether the client is served individually or in a group setting. In a group setting, staff are also responsible for taking reasonable precautions to protect individuals from physical or emotional trauma which may result from interaction within the group.

Staff must be aware of the intimacy of the therapeutic relationship, maintain respect for the client and avoid engaging in activities that seek to meet our personal needs at the expense of the client. Burke staff will not engage in nor condone sexual harassment of clients. Staff must not bring personal issues into the professional relationship, especially when the potential for harm is present. Staff will continually strive to safeguard the individual rights and personal dignity of clients. Staff will be aware of the harm that may occur due to relationships with clients outside the scope of professional practice. Staff will avoid relationships or commitments that conflict with the interest of the client, and will consult with a supervisor and comply with program requirements on any activity with individuals being served that is not part of their care or treatment. Sexual contact, not limited to sexual intercourse, between clients and Burke staff is expressly prohibited. Any allegation of sexual contact between a client and staff must be immediately reported in accordance with GAM Procedure.

Staff must terminate services to clients when such services are no longer required or are no longer in the client's best interest. However, staff will not terminate services without appropriate referral or termination procedures. Admission, transfer and discharge practices are conducted in an ethical manner consistent with applicable laws and regulations. The client's clinical needs are the primary determinant in admission, transfer or discharge. No client will be denied services based solely on inability to pay.

5. Harassment and Workplace Safety

Each Burke employee has the right to work in an environment free of harassment. Harassment by anyone based on diverse characteristics or cultural backgrounds will not be tolerated. Degrading or humiliating jokes, slurs, intimidation or other harassing conduct are not acceptable in the workplace. Any form of sexual harassment is strictly prohibited. This prohibition includes unwelcome sexual advances or requests for sexual favors in conjunction with employment decisions. Moreover, verbal or physical conduct of a sexual nature that interferes with an individual's work performance or creates or has the potential to create an intimidating, hostile or offensive work environment is forbidden.

Burke staff will not condone practices which result, or may result, in illegal or otherwise unjustifiable discrimination on the basis of race, color, sex, religion, sexual orientation, age, disability, political affiliation or national origin in hiring, promoting or training.

Harassment also includes incidents of workplace violence. Workplace violence includes robbery, stalking, violence directed at the employer or a fellow employee, terrorism and hate crimes committed by a current or former colleague. As part of the commitment to a safe workplace, all employees are prohibited from possessing a firearm on Burke premises.

If staff observe or experience any form of harassment, report the incident to a supervisor or the Human Resource Director. It is staff's responsibility as complainant to ensure concerns are acknowledged, thus, if the initial report is not met with satisfactory response, staff will then report the incident to one of the other staff members identified above.

All Burke facilities must comply with all government regulations and rules and with Burke policies that promote the protection of workplace health and safety. These procedures are described in GAM 2.8. Burke will comply with all environmental laws and operate all facilities with the necessary permits, approvals and controls.

6. Professional Conduct

Staff members who occupy positions that require licensure or certification must possess minimum qualifications required by law. Burke staff can neither claim nor imply professional qualifications that exceed those possessed, and are responsible for correcting any misrepresentation or misunderstanding of these qualifications by others. Staff must deliver only those services for which they are qualified, and for which they have been credentialed through Human Resources as appropriate. Staff must recognize personal limitations and only provide services or use techniques for which they are qualified by training and / or experience. Burke staff will seek appropriate supervision in accordance with all licensure, certification or registration that may apply, as well as internal Burke requirements. Any consultation or service provided by Burke staff through classroom instruction, public presentation, demonstrations, written articles, radio or television programs, or other types of media, must meet the criteria cited in this Code of Conduct. Staff cannot accept a private fee or any other consideration for consultation or treatment of persons who are otherwise entitled to this treatment through Burke programs. Staff may not provide a referral to their own private practice or service, or to those of a family member. "Family members" are defined in the Nepotism Policy found in the Human Resource Administrative Guide, Section 2.2. Referrals by other staff to practices of Burke staff or relatives of Burke staff, or to programs which contract with Burke, will be made only when other alternatives are also offered, when this person or program offers specialized care which is not offered in another accessible facility, or when, at the discretion of the Compliance Officer, the issue is addressed by Senior Management.

Burke staff influence the development of the service delivery system through continuous efforts to improve professional practices and services. Professional growth is continuous and must be nurtured by an active training and recruitment program jointly shared by the program and the professional and demonstrates dedication to the advancement of the services provided. Ethical behavior by Burke staff is expected at all times. Staff will comply with professional and ethical codes of conduct as dictated by the appropriate licensing agency. When information becomes available which raises doubt regarding the ethical behavior of a professional colleague, a report must be made in accordance with the Burke Compliance Plan.

Colleagues and individuals retained as independent contractors in positions which require professional licensures, certifications or other credentials are responsible for maintaining the current status of their credentials and will comply at all times with Federal and State requirements applicable to their respective disciplines. To assure compliance, Burke will require current licensure. Burke will not allow any staff or independent contractor to work without valid, current licenses or credentials.

The moral, ethical and legal standards of Burke staff are personal matters to the same degree as they are for any other citizen, except as to those which may compromise the fulfillment of our

work responsibilities, reduce the trust in Burke held by the public, or compromise the employment guidelines set forth in the Human Resource Administrative Guide. Burke staff hold a position of public trust and are responsible to the communities served. Staff must be willing not only to conduct Burke business conscientiously and openly, but also subject our own activities to public scrutiny. As visible representatives whose conduct directly affects the public's perception of Burke, they must adhere to high moral, ethical and legal standards. To protect public confidence in Burke, staff will avoid public behavior that is clearly in violation of accepted moral and legal standards. Staff will conform to the rules and regulations of service provision as outlined in the statutes of the State of Texas or the Federal Government, Rules of the Texas Health and Human Services Commission and Burke Policies and Procedures. In providing services, staff will avoid any action that may violate or diminish the legal and civil rights of clients or of others that may be affected by the action.

It is the responsibility of each Burke employee to preserve the organization's assets including time, materials, supplies, equipment and information. Organizational assets are to be maintained and operated for business-related purposes; organizational assets include staff time. Staff must not use their work at Burke in any personal capacity, to further any personal cause or to provide a service to an individual not affiliated with Burke as a client, under a contracted service or by other professional agreement that could create or has the potential to create the perception that the service was provided on behalf of Burke. As a general rule, the personal use of any Burke asset without the prior approval of the supervisor is prohibited. Any community or charitable use of organization resources must be approved in advance by the CEO or designee. Any use of organization resources for personal financial gain unrelated to Burke business is prohibited. E-mail and Internet usage of Burke equipment must comply with Burke's Acceptable Use of Technology Policy as found in Human Resources Administrative Guide (HRAG).

Procedures for accepting of donation, gifts and memorials to Burke programs are described in GAM 4.3.

All work developed or prepared for Burke by staff, using time and other resources allocated by Burke, is the exclusive property of Burke. Publication submissions made on behalf of Burke or in reference to Burke's work by staff shall be made only with approval of the CEO or designee.

7. Marketing and Billing Practices

Marketing and public relations activities are conducted with truth, accuracy and fairness, recognizing our responsibility to clients and the public. .

Burke has in place policies and procedures that assure that clients are billed only for those services and care which are provided. Both internal and external auditing of accounts verifies the accuracy of client accounting procedures. As part of our documentation effort, current and accurate medical records will be maintained. Clinical decisions are based on the healthcare needs of the client, and services are provided as described in program manuals. Burke prohibits any staff from knowingly presenting or causing to be presented claims for payment or approval that are false, fictitious or fraudulent.

Burke business involves contracts with government programs that require the submission of certain reports of operational costs. Burke will comply with Federal and State laws relating to all cost reports. These laws and regulations define what costs are allowable and outline the appropriate methodologies to claim reimbursement for the cost of services provided to program beneficiaries.

Burke will be forthright in dealing with billing inquiries. Requests for information will be answered with complete, factual and accurate information. Staff will cooperate with and be courteous to all government inspectors and provide them with the information to which they are entitled when requested and / or during an inspection.

Staff will not interfere with reviews, inspections, investigations, hearings or related activities. This includes taking action to discourage or prevent someone else from cooperating with the activity. During an audit or inspection, staff must never omit significant information, conceal, destroy or alter any documents, lie or make misleading statements. Staff will not attempt to cause another colleague to fail to provide accurate information or obstruct, mislead or delay the communication of information or records relating to possible violation of the law. Burke will provide all staff with the information and education they need to comply fully with all applicable laws and regulations.

8. Relationships with Suppliers

Burke will manage subcontractor and supplier relationships in a fair and reasonable manner, consistent with all applicable laws and good business practices, and promote competitive procurement to the maximum extent practicable. Selection of subcontractors, suppliers and vendors will be made on the basis of objective criteria, including but not limited to, quality, technical excellence, price, delivery, adherence to schedules, service and maintenance of adequate source of supply. Purchasing decisions will be made on the supplier's ability to meet needs, and not on personal relationships and friendships. Burke will always employ the highest ethical standard in business practices in source selection, negotiation, determination of contract awards and the administration of all purchasing activities. Confidential information given by suppliers will not be communicated to a third party unless directed in writing to do so by a supplier. Disclosure of information received from suppliers will be disclosed pursuant to the Texas Public Information Act (Chapter 552 of the Texas Government Code).

Burke recognizes the potential for conflict of interest in contractual relationships involving other healthcare providers, educational institutions and payors. All contracts are monitored for potential conflicts of interest. When identified, conflicts of interest are resolved during contract negotiations. Current employees of Burke who participate in Contract Management of a particular contract shall not have a conflict of interest (as defined in GAM 4.10) in that contract. It is the responsibility of Burke employees who participate in Contract Management to review their relationship with respondents and contractors to ensure that those relationships are within law and regulation and determine if conflicts of interest exist. Burke employees who participate in Contract Management will disclose any existing or potential conflicts of interest to the CFO to address as they arise.

9. Political Activities and Contributions

Burke's political participation is limited by law. Burke funds or resources are not to be used to contribute to political campaigns or for gifts or payments to any political party or any of their affiliated organizations. Organization resources include financial and non-financial donations such as using work time and telephones to solicit for a political cause or candidate, or loaning Burke property for use in a political campaign. It is important to separate personal and political activities in order to comply with the appropriate rules and regulations relating to lobbying or attempting to influence government officials.

10. The Compliance Program

Program structure

The Compliance Program is intended to demonstrate in the clearest possible terms the commitment of Burke to the highest standards of ethics and compliance. There is oversight by the CEO and Board of Trustees, a Compliance Officer and a Compliance Committee. All of these individuals and groups are prepared to support the standards set forth in this program.

The Code of Conduct and Compliance Program will be reviewed annually and revised as needed.

Reporting violations

It is mandatory that alleged violations be reported immediately. Several options are available to report violations to the standards set forth in this Code of Conduct. It is considered appropriate, but is not required, to report violations to the immediate supervisor first. The supervisor is obligated to forward concerns to the Compliance Officer. It is staff's responsibility as complainant to ensure concerns are acknowledged and addressed. Another option is to discuss the matter with another member of management or to contact the Burke Compliance Officer at 936-639-1141. Confidential on-line reporting is also an option.

Burke will make every effort to maintain, within the limits of the law, the confidentiality of the identity of any individual who reports possible misconduct. There will be no retribution or discipline for anyone who reports a possible violation in good faith. Any staff that deliberately makes a false accusation with the purpose of harming or retaliating against another colleague will be subject to the employment discipline process.

Personal obligation to report

Burke is committed to ethical and legal conduct that is compliant with all relevant laws and regulations and to correcting wrongdoing wherever it may occur within Burke. Every staff member has an individual responsibility for reporting any activity by any colleague, physician, subcontractor or vendor that appears to violate applicable laws, rules, regulations or this Code of Conduct.

Internal investigations of reports

All reports will be investigated promptly and confidentially to the extent possible. The Compliance Officer will coordinate any findings from the investigation and recommend corrective action or changes to be made. All staff members are expected to cooperate with investigation efforts.

Corrective action

When an internal investigation substantiates a reported violation, it is the policy of Burke to initiate corrective action, including, as appropriate, making prompt restitution of any overpayment amounts, notifying the appropriate governmental agency, instituting disciplinary action and implementing systemic changes to prevent a similar violation from recurring in the future at any Burke facility.

Discipline

All violators of this Code of Conduct will be subject to disciplinary action up to and including termination.

Internal auditing and other monitoring

Burke is committed to the responsible monitoring of compliance with its policies. Internal auditing is done to assure compliance with issues that have regulatory or compliance implications. Burke also routinely seeks other means of ensuring and demonstrating compliance with laws, regulations and internal policies.

Acknowledgement process

Burke requires all staff to acknowledge, be trained and demonstrate competence in the Code of Conduct. Independent contractors are also required to adhere to this Code of Conduct as a condition of the contractual agreement. Adherence to and support of this Code of Conduct and participation in related activities and training will be considered in decisions regarding hiring, promotion and compensation for all staff.