

[REDACTED] m  
**Corporate Compliance—Clinical  
Litigation Hold Policy**

**Company-Wide  
CW CC 540.1**

**Purpose**

The purpose of this policy is to define the process by which [REDACTED] will respond to potential litigation in terms of suspending [REDACTED]' formal Records Retention Policy CWCC 540 in order to preserve paper and electronic information where there is a reasonable anticipation of litigation to prevent spoliation of evidence. This policy applies to all [REDACTED] facilities, employees, records and systems.

**Policy**

It is the policy of [REDACTED] and its entities to preserve records (paper and electronic) that are or will potentially be utilized in litigation. It is the policy of the organization to place relevant records under a legal hold and suspend normal destruction practices to prevent against spoliation.

In order to comply with its legal obligations, [REDACTED] must be able to identify the location and format of electronically stored information (ESI), as well as other documents when there is anticipated litigation. [REDACTED] must have clear records retention and disposition standards that are consistently followed and executed. If a legal claim has been filed or is reasonably anticipated, [REDACTED] must preserve and suspend destruction of past and future information in its original form, regardless of what media exists, that might become relevant to the claim.

[REDACTED] will take reasonable steps to protect the privacy of all parties involved and to ensure that protected and privileged information is not disclosed, however, this privacy cannot be guaranteed because the court ultimately determines whether confidential information must be disclosed. All [REDACTED] employees are under a legal duty to preserve all evidence, whether ESI or hard copy, when notified to do so by [REDACTED].

Depending on the application, location and format of the records involved, the specific method used to preserve the records will be different. Regardless of the method used, it is critical that the integrity of all evidence is maintained and a chain of custody is established.

Failure to comply with this procedure may result in discipline for [REDACTED] employees and contractors, up to and including termination of employment or contractual relationships with [REDACTED].

**FORMS OF DATA & DEFINITIONS**

**Active Data** – active data include e-mail and electronic files that a person or business can access at present. It includes, but is not limited to, data on laptops, personal computers, networks, e-mail or web servers, portable devices (i.e., PDA; USB drives) and smart phones, as well as paper files.

**Metadata** – metadata are the hidden attributes and characteristics for each file (e.g., name of the file; dates of creation, alteration, deletion; who accessed the data; from where data was accessed; e-mail header; BCC recipients, etc.).

**Replicant Data** – replicant data are computer systems and automatically make these files, often without request or intervention. Replicant data includes auto-backup files, system audit logs, cookies, and recovered



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Procedure	ACTUAL OR ANTICIPATED LITIGATION OR GOVERNMENT INQUIRY
	<p data-bbox="418 386 1024 417"><u>Trigger Events and Application of a Legal Hold</u></p> <p data-bbox="418 432 1456 600"><b>The Litigation Response Team</b> will consist, at a minimum, of the [redacted] VP of Corporate Legal Services, the [redacted] Sr. VP of Compliance &amp; Risk Management, the [redacted] Director of Claims Management, the [redacted] Director of Corporate Compliance, the in-house attorney handling employment claims, and the [redacted] Corporate Data Security Officer.</p> <p data-bbox="418 615 1456 884">The team will identify certain trigger events that may indicate the potential threat of litigation (such as receipt of a subpoena, unexpected negative care outcome, verbal communication of pending litigation, etc.) The team member that has primary responsibility ("Primary Member") for the type of trigger event within the system will develop the communication process when the particular trigger event occurs between departments/individuals and the litigation response team. The following events, based on facts and circumstances, may trigger the litigation hold by a member of the Litigation Response Team:</p> <ul data-bbox="418 905 1456 1276" style="list-style-type: none"><li>• Any notice of a lawsuit</li><li>• Charge of discrimination</li><li>• Notice of claim</li><li>• Demand letter from a lawyer</li><li>• Meeting at which someone brings an attorney</li><li>• Challenge to a corrective action (if the employee alleges a violation of state/federal law such as discrimination, harassment, whistleblower, etc)</li><li>• Any person verbally telling the department that they intend to sue</li></ul> <p data-bbox="418 1291 1456 1459">Any [redacted] employee who becomes aware of any litigation, threat of litigation, other legal action or an investigation by any administrative, civil or criminal authority, involving [redacted] must immediately notify [redacted] Corporate Legal Services, [redacted] Risk Management or [redacted] Corporate Compliance, depending on the nature of the issue.</p> <ul data-bbox="418 1474 1456 1942" style="list-style-type: none"><li>▪ Any circumstances or events that [redacted] could reasonably anticipate have the potential to result in litigation or a government inquiry must be brought to the attention of the Local Compliance Officer for notification to [redacted] Corporate Compliance Officer.</li><li>▪ If a Litigation Hold is warranted, the Primary Member of the Litigation Response Team will determine what [redacted] paper records and ESI would reasonably be related to such litigation or government inquiry, including type, time frame, Affected [redacted] Personnel, and location. A search of [redacted] available records and electronic systems for relevant information may be conducted by the Corporate Compliance Department, Corporate Security and IT Departments.</li><li>▪ The Primary Member of the Litigation Response Team will communicate in writing the Litigation Hold Notification to involved [redacted] departments and Affected [redacted] Personnel. (See sample "Litigation Hold Notification")</li></ul>

(attached as Exhibit "A" to this Procedure).

- The IT Department will receive official notification of the Litigation Hold, a list of all Affected Personnel and their status as employees, contractors, retired or terminated, as well as the department affiliation for each Affected Personnel.
- Involved departments, including the IT Department and Affected AHS Personnel will acknowledge receipt, understanding and compliance with the Litigation Hold Notification by email communication.
- Any Affected Personnel should consult IT or Corporate Data Security Departments for assistance in securing or preserving any Relevant Records/ ESI.
- Affected Personnel will comply with the Litigation Hold Notification by preserving all Relevant Records/ESI and suspending routine disposition and destruction procedures related to the Relevant Records/ESI.
- Corporate Data Security will take steps to freeze the electronic data so the data cannot be changed, and determine whether any of the Relevant Records/ESI requested have been destroyed as authorized by CW CC 540.
- Once the Litigation Hold Notification has been issued, the Primary Member of the Litigation Response Team will continue to monitor compliance with the Litigation Hold and reissue the Litigation Hold or modify as needed.
- If Affected Personnel discontinue employment or contractual relationships with the organization during the course of a Litigation Hold, Department Heads must take possession of any and all Relevant Records or ESI under the control of the separated personnel and notify the Primary Member of the Litigation Response Team.
- The Primary Member of the Litigation Response Team will determine and communicate to Affected Personnel when the Litigation Hold is terminated.
- After the Litigation Hold has been terminated, Data Security will release all preserved ESI to the Primary Member of the Litigation Response Team for storage according to legal and/or court ordered guidelines.

**NOTE: All litigation hold communications are confidential and should be shared on a "need to know" basis only.**

#### **ESI DISCOVERY PROCEDURE**

Upon receipt of request for records, including ESI, the Primary Member of the Litigation Response Team will ensure that an appropriate Litigation Hold Notification is in place related to the requested records and any other records that the organization reasonably anticipates could be involved in the related litigation or investigation.

Upon receipt of the discovery request, the Primary Member of the Litigation Response Team will inform Corporate Data Security and the IT Department of the pending request and must include:

- Names of the plaintiff(s), defendant(s), and any other known parties

[REDACTED]

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or witnesses that may control or possess potentially relevant information

- Names of [REDACTED] departments involved
- The period of data preservation
- ESI requested

If the appropriate Litigation Hold is not in place, the Primary Member of the Litigation Response Team will follow the procedure set out above to communicate in writing the Litigation Hold to preserve Relevant Records/ESI applicable related to the discovery request and related litigation.

Corporate Data Security will meet with the Primary Member of the Litigation Response Team to determine:

- Specific requirements (e.g., search terms, data types, timeframes, etc.).
- Estimate cost(s) of compliance with the discovery request.
- Any extraordinary circumstances that may impact compliance with the discovery request.

Corporate Data Security, in conjunction with the Primary Legal Counsel, will take the necessary steps to identify and preserve all ESI related to discovery request and prepare such records and ESI in the requested format for production. As ESI is preserved, the Chain of Custody Form, attached hereto as Exhibit "B" to this Procedure, will be completed and maintained by Data Security.

[REDACTED] Legal Counsel will review and determine whether preserved data is sufficient to meet the requirements of the discovery request.

If necessary, [REDACTED] Legal Counsel and Data Security will work to retrieve records and ESI from additional central or local repositories.

Legal Counsel and Data Security will make a determination as to whether any of the requested ESI is "not reasonably accessible" and prepare to make objections to such request as allowed by law.

[REDACTED] Legal Counsel will review all retrieved records and ESI to determine legal relevance, applicable legal privileges or other protected status and will handle the discovery response.

Legal Counsel will maintain all documents and records related to such discovery requested and [REDACTED] response.

## Exhibit "A"

### Sample – Litigation Hold Notification

TO: Distribution  
FROM: Litigation Response Team Member  
RE: Litigation Hold Notice

The purpose of this memorandum is to advise you that a legal action has been filed or threatened against [REDACTED], which alleges {brief description of allegations.} As a result of this legal action, [REDACTED] has an obligation to retain and preserve all records that are relevant to this claim. **Therefore, it is imperative that you read, and follow, the instructions contained in this document and review the [REDACTED] Litigation Hold Procedure.**

This memorandum constitutes notice that a Litigation Hold has been placed on all records that relate to the <legal action>. This Litigation Hold covers documents created from <begin date> through the present as well as records created in the future. **You are directed to retain all records subject to this Litigation Hold until further notice from \_\_\_\_\_**

The term "record" is to be construed broadly and includes: (i) all relevant paper records (e.g., documents, presentations, notes, day planners, logs, lists, agendas, correspondence, photographs, facsimiles, computer print outs, etc.), (ii) microfilm; (iii) electronic mail; (iv) electronic records, including, but not limited to documents created using Microsoft Office programs (e.g., Word, PowerPoint, Excel, Access and Visio), as well as databases and websites; and (v) any audio or visual records (e.g., voice mail, video tapes or digital photographs).

The Litigation Hold Order applies to all relevant or potentially relevant records located within your office, home, or any other location, as well as any records maintained centrally by your department or the Company:

- All records located within the organization's Off-site Record Storage program; and
- All electronic mail and electronic records stored on any laptop, desktop, server or mainframe computer, personal digital assistant, Blackberry or other wireless device, or stored on any magnetic or optical storage media, including, but not limited to, hard disk drives, back up tapes, CDs, DV Ds, and Zip, Jaz or floppy disks.

You must ensure the preservation of all records in your custody, possession or control subject to this Litigation Hold which supersedes and suspends the organization's standard record retention policy with respect to records that are relevant or potentially relevant to the claims asserted by Plaintiffs. If you are a manager, you are also

responsible for ensuring the preservation of records maintained by your department.

Please bear in mind that the organization has a legal obligation to preserve all records in the form in which they were created and maintained in the normal course of business. Therefore, it is not sufficient to simply print electronic records subject to this Litigation Hold for preservation, and then to alter or destroy the electronic copy.

If you have any questions concerning the scope of the Litigation Hold Order, or whether any particular type of record is subject to it, please contact <name> at \_\_\_\_\_ [PHONE] \_\_\_\_\_ and E-mail. If you have any questions concerning the procedures for preserving electronic records subject to this Litigation Hold, please contact the Corporate Data Security Department at \_\_\_\_\_ [ADD PHONE AND E-MAIL].

After you have read this notice, please confirm your receipt, understanding and your compliance with this Litigation Hold Notification.

**Exhibit "B"**

**Sample – Chain of Custody Form**

The item(s) described below were obtained as evidence by the undersigned as directed by a member of the Litigation Response Team and an order for Discovery.

Case:

Description of item(s) obtained, where item(s) were obtained, and by whom (include location, media, title, name, phone number, etc.):

Temporary disposition of item(s): (description of where items are stored)

Release history (print name & sign):

Released by:	Released to:	Date:
Release by:	Released to:	Date:
Release by:	Released to:	Date:
Release by:	Released to:	Date:
Release by:	Released to:	Date:

Final disposition of item(s):