

POLICY STATEMENT

Name of Policy: Illegal, Unethical or Otherwise Fraudulent Conduct & Whistleblower Protection Policy

Originally Passed: June 2005

Reviewed: March 2010

Revised: October 4, 2019

As a nonprofit organization that generates financial resources from the contributing public, the American Diabetes Association (ADA) has a responsibility to ensure the stewardship of these resources. Accordingly, the ADA will take seriously and investigate allegations of illegal, unethical or otherwise fraudulent use or misuse of the ADA's resources as reported to the ADA. All ADA employees and volunteers are encouraged to report possible illegal, unethical or otherwise fraudulent conduct (i.e., a whistleblower). This policy has therefore been developed to create:

- An environment in which suspected improprieties are brought forward quickly and without fear of retaliation, and
- A process that ensures an appropriate, consistent, and timely institutional response to all reports of suspected improprieties.

Reports of Suspected Illegal, Unethical or Otherwise Fraudulent Conduct

Normally, an employee should report his or her concerns of suspected illegal, unethical, or otherwise fraudulent conduct to his/her supervisor. A volunteer should report concerns to their staff contact at a supervisor level or directly to the Human Resources Division. If a person is uncomfortable for any reason reporting a concern directly to his/her supervisor or to the Human Resources Division, information may be submitted through EthicsPoint, the ADA's independent reporting service, to report the suspected illegal, unethical, or otherwise fraudulent conduct. The use of the EthicsPoint service allows a person to report directly to the Whistleblower Program Team with the option to report anonymously.

This independent service can be reached online at www.ethicspoint.com or by phone at 1-866-ETHICS-P (866-384-4277).

All reports of suspected illegal, unethical, or otherwise fraudulent conduct should provide as much specific information as possible, including names, places, and events that took place, etc. Reports are encouraged to be made in writing; however, oral communications will also be accepted.

All supervisors and volunteer leaders should treat seriously information they receive (written or verbal, formal or informal) that may constitute a report of suspected illegal, unethical, or

otherwise fraudulent conduct. Persons who receive such information are charged with exercising appropriate judgment to elevate matters to a higher level of management, or directly to a member of the Whistleblower Program Team. All suspected incidents of financial misappropriation must be reported to the Whistleblower Program Team. In some instances, a staff supervisor will be authorized to conduct the investigation locally. There are, however, certain allegations of suspected illegal, unethical, or otherwise fraudulent conduct that must be investigated directly by the Whistleblower Program Team:

- If the matter involves financial misappropriation
- If the matter is the result of a significant internal control or policy deficiency that is likely to exist elsewhere within the ADA;
- If the matter involves the misuse of ADA resources or creates exposure or a liability in potentially significant amounts;
- If the matter involves allegations or events that have a significant possibility of being the result of a criminal act (e.g., disappearance of cash); or
- If the matter is likely to receive media or public attention

Failure by a supervisor to report misconduct within the scope of this policy may result in adverse personnel action against the supervisor, up to and including dismissal. All verbal reports of allegations that a supervisor refers to the Whistleblower Program Team should be documented in writing.

Whistleblower Program Team

The Whistleblower Program Team is comprised of the Audit Committee Chair, the Chief Financial Officer, the Chief Operating Officer, Vice President and General Counsel, and the Chief Human Resources Officer. This team will review all Whistleblower reports and agree upon the next steps, which may determine:

- Additional information is needed before concluding whether or not to begin an investigation
- Sufficient information has been provided to begin an investigation
- The report does not fall under the purview of the Whistleblower Team and will be transitioned to an appropriate member of senior staff
- The nature of the report does not require additional action

Staff or volunteers with relevant expertise will be included on the Team on an ad hoc basis as deemed necessary. The investigation and the resulting report will be kept confidential to the extent consistent with the need for a thorough investigation.

The Chief Executive Officer will be notified if a Vice President or above is named in a report, and the Chair of the Board will be notified as appropriate. The Chair of the Board will also be notified if the Chief Executive Officer or a member of the Board of Directors is named in a report. Any person named in a report will not receive automatic notification that a report has been submitted. In this case, if an investigation is initiated by the remainder of the Whistleblower

Program Team, the person named in the report will be informed and interviewed as a required step in the investigation.

If, at the conclusion of the investigation, it is determined that an employee or volunteer has been a part of illegal, unethical, or otherwise fraudulent conduct, the ADA will take appropriate action including, but not limited to disciplinary action, up to and including termination of employment, or separation from volunteer service, as well as civil or criminal prosecution when warranted.

Whistleblower Oversight Committee

The Whistleblower Oversight Committee monitors the Whistleblower Program to ensure that allegations are handled appropriately. In addition to the members of the Whistleblower Program Team, the Committee will be comprised of at least one additional member of the Audit Committee, and the Chief Executive Officer. The Whistleblower Program Team will report to the Oversight Committee at least once a year to review the following information, at a minimum:

- Number of disclosures received,
- Categorization of the allegations reported,
- Reporting avenues used by whistleblowers (e.g., conversations with supervisors, e-mails to the Whistleblower mailbox, etc.), and
- A measure of the criticality and financial impact of the allegations.

Whistleblower Protection

The ADA is committed to maintaining an environment in which people feel encouraged to report all suspected incidents of illegal, unethical, or otherwise fraudulent conduct. Accordingly, the ADA commits that no retaliatory action will be taken against any person for reporting conduct that he or she reasonably believes is illegal, unethical or otherwise fraudulent or for participating in such investigation. The ADA is committed to use its best efforts to protect whistleblowers against retaliation as defined below.

- The ADA will keep the whistleblower's identity confidential, unless (1) the person agrees to be identified; (2) identification is necessary to allow the ADA or law enforcement officials to investigate or respond effectively to the report; (3) identification is required by law; or (4) the person accused of violations is entitled to the information as a matter of legal right in disciplinary proceedings.
- The ADA may not retaliate against a whistleblower with the intent or effect of adversely affecting the terms or conditions of employment (including but not limited to, loss of job or volunteer position, punitive work assignments, or impact on salary or wages). Whistleblowers who believe that they have been retaliated against may file a written complaint with the Whistleblower Program Team. The Whistleblower Oversight Committee will review such complaints. If the Oversight Committee determines that retaliation, as prohibited by this policy, has taken place, a proper remedy for the person harmed and the initiation of disciplinary action, up to and including dismissal, against the retaliating person. This protection from retaliation is

not intended to prohibit managers or supervisors from taking action, including disciplinary action, in the usual scope of their duties and based on valid performance-related factors.

Similarly, the identity of the subject(s) of the investigation will be maintained in confidence with the same limitations.

Acting in Good Faith

Whistleblowers must be cautious to avoid baseless allegations. Disciplinary action may be initiated on a whistleblower who does not act in good faith in making a report. Persons under investigation who believe that a report or an investigation is not in good faith should communicate the concern in writing to the Whistleblower Oversight Committee. The Committee will review the concern and determine whether an adjustment to the investigation is necessary.

The protections of this Policy extend to any employee who discloses information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. An employee who believes they have been retaliated against for such a disclosure may report this to the Inspector General of the Federal agency concerned, in addition to or instead of his or her supervisor, the ADA Vice President and General Counsel, or anonymously by calling the Hotline at **866-384-4277**.

Reports of Other Inappropriate Conduct

The ADA has a published employee complaint resolution process. Employees and volunteers are encouraged to contact Human Resources directly on concerns pertaining to Sexual Harassment and/or Discrimination. However, if a report is received through EthicsPoint that is related to these topics or other areas that are typically handled confidentially by Human Resources, the report will be sent to the Chief Human Resources Officer and Vice President and General Counsel. Such a report will not be considered under the purview of the Whistleblower Program Team.

Definitions

Illegal, Unethical, or Otherwise Fraudulent Conduct: a deliberate act or failure to act with the intention of obtaining an unauthorized benefit. Examples of such conduct include, but are not limited to:

- forgery or alteration of documents
- misrepresentation as to the nature of financial transactions
- unauthorized alteration or manipulation of the ADA's documents or computer files in violation of the ADA's Records Retention and Destruction Policy

- misappropriation or misuse of the ADA's resources, such as funds, supplies, or other assets
- authorizing or receiving compensation for goods not received or services not performed
 - authorizing or receiving compensation for hours not worked
- misrepresentation of facts or improper solicitation to outside parties, including donors, on behalf of the ADA
- willful **violations** of **HIPAA** Rules, including theft of PII/PHI for personal gain or use of PII/PHI with intent to cause harm, which can result in criminal penalties for HIPAA violations

Whistleblower: anyone who informs his/her supervisor, member of the Whistleblower Program Team, or other member of senior management about an activity, which that person believes to be illegal, unethical, or otherwise fraudulent.