

Committee for Open Expression investigation report
Submitted to the Emory University Senate

Disclaimer: This confidential report is pending senate approval and subject to change as more information becomes available. This enquiry was conducted by a senate committee, Committee for open expression and the report was written under the authority granted by Emory's Respect for Open Expression Policy 8.14. This committee does not consist of subject matter experts and this report is NOT a legal document and has not been approved yet.

CONF - Pending Senate Approval

Title of the investigation: Investigation into firing of Prof. AbouYabis

Name and title of the Person preparing the Report: Prof. Ilya Nemenman, Professor of Physics and Biology, CFOE Chair

Names of participants /committee members of this report: Jonathan Craig (student, Law School), Raymond Hebert (Director of Facilities and Operations, Housing Operations), Ilya Nemenman (Professor of Physics and Biology, CFOE Chair)

Committee members voting for report:

Ilya Nemenman (Chair), ECAS
Travis Blalock, SOM
Erica Lee, SOM
Raymond Hebert, Housing Operations
Cleo Lyles, Center for Civic and Community Engagement
Ben Brodsky, ECAS
Melissa Shane, ECAS
Jonathan Craig, Law

No vote received:

Debayan Dey, SOM
Obse Ababiya, Global Strategy and Initiatives

Date of submission: January 22, 2024

Duration of the investigation: Oct 18, 2023 – Dec 15, 2023

Summary: As was broadly reported in the media on Oct 17, Dr. Abeer N. AbouYabis used her private social media platform to post a message that was interpreted as antisemitic, glorifying Hamas fighters involved in the Oct 7, 2023, terrorist attack in Israel. She was then put on leave pending an investigation by Emory School of Medicine (SOM) / Winship Cancer Center, and eventually fired. The CFOE investigation involved contacting Dr. AbouYabis, the leadership of the SOM / Emory Healthcare (EHC), and reviewing the relevant policies. Very little information was provided to CFOE by the EHC/SOM administration, which hindered the investigation. Based on the available information, CFOE believes that Dr. AbouYabis's Open Expression rights likely were violated. CFOE refers this possible violation to the Emory Senate / Faculty Council. Further, CFOE believes that the EHC Social Media Policy is inconsistent with the Respect for Open Expression Policy. Because the Respect for Open Expression policy is paramount to other Emory policies, the EHC Social Media Policy must be revised.

1. Introduction:

As was broadly reported in the media on Oct 17 (see e.g., <https://nypost.com/2023/10/17/atlanta-cancer-doctor-put-on-leave-after-pro-hamas-post-celebrating-glory-of-terrorist-group/>), Dr. Abeer N. AbouYabis used her social media platform to post a message that was interpreted as antisemitic, glorifying Hamas fighters involved in the Oct 7, 2023, terrorist attack in Israel (see screenshot). As was reported in the same media outlets, she was then put on leave pending

investigation by Emory School of Medicine (SOM) / Winship Cancer Center. This was communicated to the Emory community in various messages by the administration (see, e.g., email to all members of the Winship Cancer Institute from Dr. Ramalingam, attached). Multiple faculty members at Emory contacted the chair of the Committee for Open Expression (CFOE) in person, requesting an investigation into what was perceived as punishing a faculty member for speech protected by Emory's Respect for Open Expression Policy. The CFOE may even act in the absence of formally submitted investigation requests; it may initiate investigations on its own; and notices of potential Open Expression rights violations submitted by CFOE members or community members could be a reason to start an investigation. Thus, following consultations with CFOE and the University Senate President, Dr. Gupta, a Hearing Panel was constituted on Oct 18. The goal of the investigation was to analyze whether Dr. AbouYabis' Open Expression rights were violated. During the investigation, the Panel became aware that Dr. AbouYabis has been "no longer employed" at the university since Nov 9, 2023 at the latest (see, e.g., <https://www.wsbtv.com/news/local/dekalb-county/professor-accused-anti-semitism-no-longer-employed-emory-university/IJ6GKYNUEZHSNE723P3EKECACI/>).

2. Background:

Emory University is a private institution, and thus the First Amendment does not necessarily apply of its own force. However, the University has adopted the Respect for Open Expression Policy, Policy 8.14 (hereafter, Policy), which governs expression, protest, and dissent on campus. The Policy states that "Emory University . . . is committed to an environment where the open expression of ideas and open, vigorous debate and speech are valued, promoted, and encouraged. As a community of scholars, we affirm these freedoms of thought, inquiry, speech, and assembly." The Policy states that "Emory University respects the Constitutional rights of free speech and assembly." This has been interpreted by CFOE consistently as the University providing the same protection to its community members as afforded by the First Amendment to the U.S. Constitution to community members of U.S. public universities.

The Policy lays out the responsibilities, the composition, and the procedures of the University Senate Committee for Open Expression (CFOE), which "is a working group of community members—faculty, staff, and students—who seek to promote and protect the rights and responsibilities of community members related to issues and controversies involving speech, debate, open expression, protest, and other related matters."

The Policy additionally states that it "is paramount to other policies of the University that may conflict, except those grounded expressly in local, state, or national law." The Policy explicitly protects the rights of "persons who are employed by Emory University or Emory Healthcare as faculty or staff". The Policy explicitly notes that "nothing in this Policy prevents Emory Healthcare from managing its property with due regard for the unique needs of healthcare delivery." However, this case does not involve Emory Healthcare's (EHC's) property

management, and the Policy does not otherwise provide for any special treatment for EHC. Thus, expression by clinical faculty at EHC is protected by the Policy to the same extent that it would be protected at Emory University.

The First Amendment (and hence the Policy) generally permits speech that some may consider discriminatory, harassing, vile, or promoting violence. A good summary of the current law, aimed at a lay audience, can be found at <https://x.com/TheFIREorg/status/1720548787301585063?s=20>. Exceptions to the First Amendment are limited and narrow. At universities, Title VI and IX of the Civil Rights act prohibit harassment, which is targeted conduct that is so severe, pervasive, and objectively offensive that it denies its target access to an educational opportunity or benefit (*Davis v. Monroe County Board of Education*, 1999). The bar for what constitutes discriminatory harassment is deliberately set high.

Building on CFOE's interpretation of the Policy as paralleling the First Amendment's free speech protection, the relationship between the employees and students of the University on the one hand, and the University/EHC on the other hand, must be viewed through the same lens as the relationship between public employees or public school students and the government. The basic rules governing these come from a case called *Pickering* (1968) for employees and a case called *Tinker* (1969) for students at public schools. On the one hand, the government can have some control of its employees' and students' speech, which would give Emory some leeway in controlling speech of its employees. On the other hand, this control must be balanced against individuals' (and hence Emory employees' and students') First Amendment rights. In general, speech that is on a matter of public interest (*Pickering*) and not on-the-job (*Garcetti v. Ceballos* (2005)) enjoys stronger First Amendment protection. For example, in a recent case called *Mahanoy* (2021), the Supreme Court said that the school's interest in disciplining a student (who, recall, are subject to similar balancing tests as employees) did not entirely disappear when it was out-of-school speech, but was nonetheless severely reduced. In this context, CFOE believes that off-the-job speech by Emory employees (and students) on matters of public interest is strongly protected by the Policy.

3. Scope of the Investigation:

The Investigation aimed to understand whether Dr. AbouYabis rights under the Policy were violated. The Panel did not have access to personnel records and hence based its investigation on public sources and interviews.

4. Investigation Process:

The Panel reviewed publicly available documents and decided to reach out to Dr. AbouYabis and various leader of the Emory Medical community to seek their perspective on the situation.

On Oct 18, The Chair of the Panel sent an email on behalf of the Panel to Profs. Ramalingam (Executive Director, Winship Cancer Center), Thadani (EVP Health Affairs), and del Rio (interim Dean, SOM) requesting their comments on the situation. Dean Del Rio handled all of communications with the Panel on behalf of the Emory medical leadership. After a series of

email communications, Dr. del Rio accepted the Committee's purview in investigating the situation. However, he indicated that "the School of Medicine is conducting a review to gather the facts and to determine what action may be taken to address this situation. While that investigation is pending, however, I do not think it would be appropriate for me to speak with the Committee about the facts." A few weeks later, when the news media reported the separation of Dr. AbouYabis from Emory, the Chair contacted Dean del Rio again requesting an update on the investigation. The response from Dean del Rio read:

From: "del Rio, Carlos" <cdelrio@emory.edu>
Subject: RE: INQUIRY into the situation surrounding Prof. AbouYabis
Date: December 5, 2023 at 6:39:18 PM EST
To: "Nemenman, Ilya" <ilya.nemenman@emory.edu>
Cc: "Ramalingam, Suresh S" <ssramal@emory.edu>, "Thadhani, Ravi" <ravi.thadhani@emory.edu>, "Craig, Jonathan" <jonathan.craig@emory.edu>, "Hebert, Raymond John" <raymond.hebert@emory.edu>

Dear Ilya,
Thank you for your email, and I apologize for not responding sooner. The SOM appointed an internal committee and conducted a thorough review of the matter, which included significant information that was not reported in the media. You are correct that Dr. AbouYabis is no longer employed at Emory. Out of respect for her privacy, and given that this is a confidential personnel matter, I do not think it would be appropriate for me to provide additional details to the Open Expression Committee. However, we provided a very detailed letter to Dr. AbouYabis about the findings and the reason for our decision, and she may be willing to share it with you directly.
Thank you for your interest in this matter.
Sincerely

Carlos del Rio, MD, FIDSA
Leon L. Haley, Jr MD Distinguished Professor of Medicine
Interim Dean,
Emory University School of Medicine
Interim Chief Academic Officer,
Emory Healthcare
X: @CarlosdelRio7

Meanwhile, the Chair reached out to Dr. AbouYabis on behalf of the Panel, requesting an interview with her. While she originally was receptive to an interview, she stopped responding in early November when the Panel was still negotiating the format of the interview with her, and subsequent attempts to reach her by other means have failed.

The Panel reviewed Dr. AbouYabis's social media accounts in question (post was on X/Twitter). The X/Twitter account is no longer available. The account settings for Facebook account were changed following the incident, and most of the pre-October 2023, posts had been deleted at the time of the analysis (late October 2023, and again early January 2024). Nothing in the account identified Dr. AbouYabis as an Emory employee as of these dates, and none of the media reports

available to the Panel, which contained screenshots of the earlier versions of the account, showed an association between Dr. AbouYabis and the EHC. In other words, according to the information available, the account was a private account, with no advertised association with the University or EHC.

The Panel also reviewed the Emory Healthcare Social Media Policy with the effective date of 02/03/2023 (see attached). The policy states that “Emory Healthcare respects the legal rights of our employees and understands that employees’ time outside of work is their own.” However, in contrast to this proclamation, the Social Media Policy severely limits what EHC employees can post online, effectively censoring private social media accounts of EHC employees even outside of their working time. For example, the Social Media Policy “mandates that any employee who, at any time, participates in Social Media and is identifiable as an Emory Healthcare employee must follow the same principles and guidelines found in Emory Healthcare’s policies.” The EHC Social Media Policy similarly prohibits posting of messages in “violation of Emory Healthcare’s policies against discrimination, harassment or hostility on the account of age, race, religion, sex, ethnicity, nationality, disability or other protected class, status or characteristic.” The Social Media Policy further states that, even in private accounts, “Employees may not post content about Emory Healthcare, its management, coworkers or any other employee, patient, donor or vendor that is vulgar, obscene, threatening, intimidating, defamatory, harassing or a violation of Emory Healthcare’s policies against discrimination, harassment or hostility on the account of age, race, religion, sex, ethnicity, nationality, disability or other protected class, status or characteristic. You should not unlawfully disparage Emory Healthcare’s services or the products or services of its vendors or competitors.” A communication to all SOM faculty by Dean del Rio’s office on Oct 27, 2023 (during the investigation) reminded all SOM faculty about the Social Media Policy.

We note that EHC has over 6 million patient visits a year, so that a large fraction of the metro area residents are patients (<https://www.emory.edu/home/explore/emory-profile/facts-figures.html>). Thus, any demographic, political, or social interest group in the Atlanta metro area should be expected to have EHC patients as its members. In other words, as written, the EHC Social Media Policy prohibits employees from posting negative information about most individuals and social groups in the Atlanta metro area.

5. Findings:

While we were not provided any specific information beyond what was reported in the media, the Panel believes that Dr. AbouYabis was fired, in part, for her social media posting, interpreted through the lens of the EHC policies, including, potentially, the EHC Social Media Policy. In what follows below, we are working based on this assumption, since the SOM administration is not disputing this.

The Panel found that Dr. AbouYabis’s original social media posting was protected under the Respect for Open Expression Policy, even if many members of the University community, the University, and EHC administration, found the content of the message objectionable.

6. Analysis:

Dr. AbouYabis's social media post in question was on the topic of the Hamas-Israel war, which is clearly a matter of public interest. We have seen no evidence that she made the post while on-the-job, and the post concerned her off-the-job activities. The post itself has no explicit or even implicit tie to her job at EHC, and there is no information available to us that would suggest that her account identified her as an Emory/EHC employee. In such a situation, when someone is commenting on public affairs on their own time (assuming that this is the case here) and their own personal account, Emory/EHC's interest and ability to control the expression should be minimal, even if the University or EHC disagree with the content.

The Panel understands that a doctor's social media activity may have an adverse effect on their ability to do their job and provide care to patients from all social groups. An employee who is unable to perform their duties can, in principle, be sanctioned and even terminated – this is the point of the First Amendment balancing between the government's and employee's interests, which was introduced in the *Pickering* case (with the University acting in the role of the government under the Open Expression policy). However, the University would have to show a clear conflict – not a speculative one – between the employee's expression and their ability to do their job. The burden of proof is on the institution, and the burden is necessarily very high for off-the-job expression on matters of public concern. We find that it is not permissible under the Policy to fire an employee for exercising their OE rights, rather than for a documented, explicit inability to perform job duties. We have not been provided evidence by SOM/EHC that Dr. AbouYabis was unable to perform her duties because of her expression. Further, even such evidence exists, Dr. AbouYabis's expression should still enjoy some degree of protection if the only reason her expression became known on the job was because of media reporting on it and linking her private profile to her professional profile, rather than because of her own action.

Dr. AbouYabis may have violated additional policies, as implied in the Dec 5 letter by Dean del Rio, but it is also not disputed in that letter that the social media post was a reason for her termination at Emory. Without the cooperation of the EHC/SOM administration, we cannot ascertain for sure if Dr. AbouYabis's Open Expression rights were violated. However, the information available to us (see the attached screenshot of Dr. AbouYabis's posts) suggests that, in the Panel's view, it was clear that Dr. AbouYabis's post represented her own opinion and could not be interpreted by a reasonable reader as speaking on behalf of the University or EHC. It was on a matter of public interest and was likely off-the-job, and SOM/EHC have not shown that the post prevented her from fulfilling her job duties. Thus, this post was protected by the Respect for Open Expression Policy, and there is a strong case that Dr. AbouYabis's Open Expression rights were violated.

Further, the Committee notes that the current EHC Social Media Policy is unnecessarily restrictive and likely contradicts the Respect for Open Expression Policy, which "is paramount to other policies" of the University, including those of EHC. Specifically, the Social Media Policy should not demand that an "employee who, at any time, participates in Social Media and is identifiable as an Emory Healthcare employee must follow the same principles and guidelines found in Emory Healthcare's policies". Considering the *Pickering* balancing test above, it may be permissible to limit an employee's ability to publish controversial materials in certain

circumstances, especially when they are representing the Institution. It may also be permissible to request that employees clearly state when they are speaking on behalf of the Institution or on their own behalf whenever confusion might arise. However, it is not permissible to issue blanket restrictions on certain types of expression, especially in personal use of social media, as the current Social Media Policy does: as long as employees comment on affairs of public interest and off-the-job, their OE rights generally outweigh the interest of Emory/EHC in controlling their expression. Crucially, even if restrictions on content are present, they must be limited in scope and clearly spelled out; vague restrictions should not be used, as CFOE has previously opined in related cases. Regarding social media posts that can be classified as discriminatory harassment, the stringent criteria established by the U.S. Supreme Court must be used to avoid violation of the Respect for Open Expression policy.

7. Conclusions:

Based on the information available to us, Dr. AbouYabis's rights under the Respect for Open Expression policy are likely to have been violated by EHC/SOM administration. To the extent that her firing was triggered by her social media post, her firing was a violation of the Policy.

If additional information becomes available, the Panel may reconsider its findings and conclusions.

Further, the EHC Social Media Policy is inconsistent with the letter and the spirit of the Respect for Open Expression Policy. Since the Respect for Open Expression Policy is paramount to other policies, the EHC Social Media Policy must be rescinded and rewritten promptly.

8. Recommendations:

The Hearing Panel recommends that:

1. The University Senate assemble a committee to continue investigating the firing of Dr. AbouYabis. The committee should include a representative of CFOE and of the Faculty Council, and it must have access to all information used to substantiate the firing decision. The committee should insist on full cooperation by the SOM/Healthcare administration. Reasonable safeguards for protecting the fired faculty member's personal information and for the information to not spread outside of the committee should be implemented.
2. The University Senate should request a presentation by Dean del Rio regarding this case in the immediate future. Alternatively, a detailed report by Dean del Rio and other representatives of the administration must be circulated to the University Senate and/or Emory community. We would like to ask for these communications to reflect on how the Respect for Open Expression Policy was followed during the incident, as well as on any possible added complexity of Open Expression events within EHC.
3. EHC's Social Media Policy must be revised promptly to align with the Respect for Open Expression Policy.
4. The Panel also recommends that the Respect for Open Expression Policy should be revised to promote the cooperation of various University Community members and members of the Emory administration with hearing panel investigations.

9. Confidentiality:

The CFOE will not be releasing names of the people who originally contacted the Chair requesting an investigation, per their request.

10. Next Steps:

1. CFOE requests approval of the Emory University Senate for opening the report to the broader Emory community.
2. We request that Dean del Rio provide a detailed report to the University Senate and/or Emory community reflecting on how the Respect for Open Expression Policy was followed by the SOM /Healthcare Administration during the incident. Discussion by the Dean of how faculty members should balance their expression with the interests of EHC, consistent with the Respect for Open Expression Policy, would be appropriate as well.
3. We propose to initiate a process of re-examining and possibly amending the Respect for Open Expression Policy to address the concerns identified by this Investigation.
4. The University Senate should review Social Media policies of different University units for consistency with the Respect for Open Expression Policy.


11. Appendix:

Copy of Dr. AbouYabis' social media messages in question:

Abeer N. AbouYabis October 7 at 10:58 PM · 🌍

CAPTURED BY CANARY MISSION

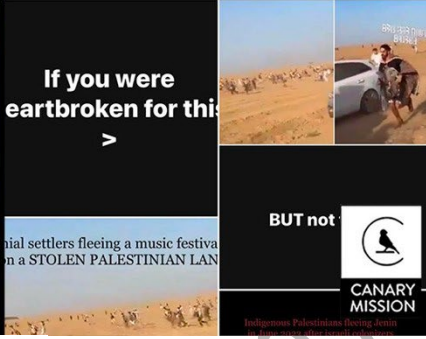
They are lonely like the basil flower
 They pick up the leaves of time alone.
 They are searching the forest, they are misguided like winter.
 Knock on my door, on my door
 May Allah be with you, Ghaza Al-Azza 🇵🇸❤️
 Good night homeland 🇵🇸🇵🇸
 See original · Rate this translation



Abeer N. AbouYabis October 8 at 5:32 PM · 🌍

CAPTURED BY CANARY MISSION

COLONIAL SETTLERS fleeing from a music festival they were enjoying on an ETHNICALLY CLEANSED STOLEN LAND where its indigenous PALESTINIANS have been besieged for more than 15 years, steps away, behind an ILLEGAL SEPARATION WALL, broke the hearts of the self proclaimed 'human' western world!
 BUT NOT that of INDIGENOUS PALESTINIANS, fleeing their camps that were raided by israeli apartheid regime 4 months ago, or the pictures of Palestinians expelled from their HOMEMLAND PALESTINE by zionist terror groups in 1948.
 Tells all you need to know about Justice, relative morality & humanity.
 To those who do not see Palestinians as equal humans, we see you.
 To those who support out killers, #wewillnotforget
 To the freedom fighters: we're praying for you 🇵🇸🇵🇸
 #gaza #relativemorality #Palestine #unequallyhuman #humanitychallenge #StopApartheid #wearealsohumans



Abeer N. AbouYabis 23h · 🌍

I needed to say it LOUD,
 So I joined those brave, well organized, passionate students from different Atlanta colleges near the israeli embassy. Thanks to Emory students for Justice in Palestine and all the other student bodies who helped me hang onto the last thread of my faith in humanity and hope for justice... one day
 One day!

They got walls we got gliders
 Glory to all resistance fighters

Palestine is our demand
 No peace on stolen land

Not another nickel not another dollar
 We will pay For israel slaughter

Not another nickel not another dime
 We will pay for israel crimes

#wearealsohumans #Gaza #palestine
 #nojusticenopeace #freedomfighter
 #endisraelapartheid #istandwithpalestine
 #istandwithpalestine 🇵🇸

Communication from the Winship Cancer Institute leadership re: putting Dr. AbouYabis on leave:

From: Winship Communications winship@EMORY.EDU
Subject: A message to the Winship community from Suresh Ramalingam, MD
Date: October 17, 2023 at 6:46 PM
To: ALL-WINSHIP@listserv.cc.emory.edu ALL-WINSHIP@LISTSERV.CC.EMORY.EDU



Dear Winship colleagues,

I am writing in support of the message sent earlier today from Drs. Thadhani, Lee and del Rio addressing inflammatory comments made on a private social media account by one of our Winship physicians. I want to add how deeply sorry we are at Winship for the pain these comments have inflicted. I also want to reaffirm that Winship Cancer Institute is committed to providing unbiased and quality patient care and to fostering an environment of respect and inclusivity.

Many members of our community are suffering right now because of the violence of the Israel-Hamas war, and many difficult conversations are taking place. We expect all members of the Winship community to treat each other and those we serve with dignity and respect at all times, no matter our different backgrounds and beliefs. We condemn any language or actions that threaten or are counter to Winship's mission of saving and improving lives.

Thank you for showing empathy for each other, our patients and community members.

Wishes for peace,

Suresh Ramalingam, MD
Executive Director, Winship Cancer Institute of Emory University

CONF - Pending Senate Approval



POLICY TITLE: Social Media	
APPLICABLE FACILITIES:	
<input checked="" type="checkbox"/> EHC <input checked="" type="checkbox"/> EDH <input checked="" type="checkbox"/> EHH <input checked="" type="checkbox"/> EHI <input checked="" type="checkbox"/> EHN <input checked="" type="checkbox"/> EJCH <input checked="" type="checkbox"/> ELTAC <input checked="" type="checkbox"/> ESJH <input checked="" type="checkbox"/> EUH <input checked="" type="checkbox"/> EUHM <input checked="" type="checkbox"/> EUHS <input checked="" type="checkbox"/> EUOSH <input checked="" type="checkbox"/> EWWH <input checked="" type="checkbox"/> RJV-ERH <input checked="" type="checkbox"/> RJV-ESOP <input checked="" type="checkbox"/> TEC/ESA	
EFFECTIVE DATE: 02/03/2023	ORIGINATION DATE: 08/01/2012

SCOPE:

This policy applies to all Emory Healthcare employees, including providers and contracted employees, whether utilizing Social Media at work or during personal time.

PURPOSE:

To outline Emory Healthcare’s requirements concerning our employees’ use of Social Media. The purpose of this policy is to outline the direction and requirements for employees, patients, visitors, donors or vendors of Emory Healthcare participating in the social media realm, and representing oneself and the organization online. Social Media can be a useful tool for sharing positive information but it also brings an increased risk to the privacy of patients, sharing of proprietary corporate information, and employee communication; both innocent and intended.

Emory Healthcare recognizes our responsibility to minimize the risk of unauthorized and inappropriate use of information technology and Social Media, as well as create a collaborative and supportive environment for employees to engage in Social Media. This policy is intended to ensure compliance with legal and regulatory restrictions and privacy of personal information, confidentiality, and breach in patient privacy and communication system policy. Nothing in this policy is intended to interfere or restrict an employee’s right to engage in protected concerted activity.

Emory Healthcare recognizes that many employees engage in social media activity while off duty. For the purposes of this Policy, “Social Media” is defined to include, **but is not limited to:** Facebook, Instagram, Twitter, YouTube, TikTok, LinkedIn, photo sharing services such as Flickr, and various Internet media, such as blogs and Web logs, Web pages, comment sections of news sources, and similar online social media pleasure or networking sites, and any other online materials made available to third parties.

Social Media can be a valuable tool. However, the lines between an employee’s personal voice and the employee’s unauthorized appearance as a representative of Emory Healthcare may become unclear for those participating in and viewing Social Media. As a result, some readers may mistakenly view you as a spokesperson for Emory Healthcare. And as an employee you represent the Emory Healthcare brand at all times.

Emory Healthcare respects the legal rights of our employees and this Policy seeks to establish parameters for employees in the creation and maintenance of an online personal presence; if they choose, in a manner that does not violate Emory Healthcare’s rules and expectations. This Policy does not and cannot cover every possible social media activity. For this reason, Emory



Healthcare relies on the professionalism and judgment of our employees to ensure that social media activity is undertaken responsibly and employees are urged to think critically about how they would like to be perceived publicly, or by a broader audience than they may initially anticipate. Avoid engaging in conduct that could be viewed by others as defamatory, harassing, or an infringement of the rights of others.

POLICY STATEMENT:

Emory Healthcare respects the legal rights of our employees and understands that employees' time outside of work is their own. Even if an employee's Social Media activities take place completely outside of work, what employees communicate can affect Emory Healthcare's legitimate business interests. For example, the information posted could be protected health information or comments that violate Emory Healthcare's policies against harassment or discrimination. Accordingly, this Policy mandates that any employee who, at any time, participates in Social Media and is identifiable as an Emory Healthcare employee must follow the same principles and guidelines found in Emory Healthcare's policies. Ultimately, employees are solely responsible for what they post online. Before creating online content, employees should consider some of the risks and rewards that are involved. Keep in mind that any of your content that adversely affects your job performance, the performance of fellow employees or otherwise affects employees, patients, visitors, donors or vendors or Emory Healthcare's legitimate business interests (such as postings that violate Emory Healthcare's Anti-Harassment and Discrimination policy, or posting content about Emory Healthcare's patients, visitors, or invitees, among other violations that are specified below) may result in disciplinary action up to and including termination.

Use of Social Media at Work:

The computers, electronic media (including e-mail and Social Media access) and data services provided by Emory Healthcare to our employees are primarily for business use, to assist employees in the performance of their jobs. Unless part of one's job responsibility; very limited, occasional, or incidental use of electronic media for personal, non-business purposes is acceptable so long as it does not interfere with the work responsibilities of the employee or the employee's co-workers, and does not negatively impact Emory Healthcare's information systems and business functions. However, employees should demonstrate a sense of responsibility and not abuse this privilege. In addition, the Emory Healthcare Email Policy must be adhered to in all respects. Employees who utilize Emory Healthcare computers, electronic media and data services should have no expectation of privacy. To appropriately manage the use of its information systems and workstation assets (i.e., computers, electronic media and data services) and enforce appropriate security measures, Emory Healthcare Information Services and leadership may log, track, review and/or monitor any data (ePHI and non-ePHI) stored or transmitted on the aforementioned information system assets. Emory Healthcare Information Services may approve the removal or deactivation of any employee's user privileges, including but not limited to, user access accounts and access to secured areas, when necessary to preserve the integrity, confidentiality and availability of Emory Healthcare information systems and workstation assets.

Not Authorized to Use Social Media on Emory Healthcare's Behalf:

Emory Healthcare employees using personal accounts, and so choose to represent themselves as employees of Emory Healthcare, should consider how they are representing themselves and the organization, and how Emory Healthcare will thus be perceived.

Where your connection to Emory Healthcare is apparent or presumed, make it clear that you are speaking for yourself and not on behalf of Emory Healthcare. In the absence of prior written authorization from Emory Healthcare's Marketing or Communications Departments, you should not represent yourself as a spokesperson for Emory Healthcare. In those circumstances, you should include this disclaimer: "The views expressed on this [blog; website] are my own and do not reflect the views of my employer."

If Emory Healthcare is a subject of the content you are creating, be clear and open about the fact that you are an employee and make it clear that your views do not represent those of Emory Healthcare, fellow employees, patients, visitors, vendors or people working on behalf of Emory Healthcare. If you do publish a blog or post online related to the work you do or subjects associated with Emory Healthcare, make it clear that you are not speaking on behalf of Emory Healthcare. It is best to include a disclaimer such as "The postings on this site are my own and do not necessarily reflect the views of Emory Healthcare." To ensure that Emory Healthcare communicates with the media in consistent, timely and professional manner. Employees should not speak to the media on Emory Healthcare's behalf without contacting your manager and Woodruff Health Sciences Center Media Relations team. Media inquiries for Emory Healthcare's positions should be directed to your operating unit's media relations lead and/or the Woodruff Health Sciences Center Media Relations team.

Guidelines on Personal Use of Social Media:

Bear in mind that the application of the line items below will vary on a situational basis, but they apply to all Emory Healthcare employees and their use of social media where that employee is identifiable as an Emory Healthcare employee based on use of first and last name, use of the Emory Healthcare brand name (or sub areas of the system), involvement in discussion of health care topics, or otherwise. Employees are expected to adhere to the following guidelines to avoid the misuse of Social Media and violation of Emory Healthcare's Social Media Policy:

- Employees' social media activity where the employee is identifiable as an Emory Healthcare employee, whether at work or during personal time, is subject to all of Emory Healthcare's policies.
- Respect federal and state laws applicable to protect patient health information. Employees may not post confidential information about Emory Healthcare's patients, including protected health information. This includes computers or PHI on screens in the backgrounds of photos.
- Respect federal and state privacy laws. Employees may not post personally identifiable information (such as telephone numbers, Social Security numbers, credit or debit card numbers or financial account numbers) of Emory Healthcare's employees, patients, donors or vendors.
- Employees may not post content about Emory Healthcare, its management, coworkers or any other employee, patient, donor or vendor that is vulgar, obscene, threatening, intimidating, defamatory, harassing or a violation of Emory Healthcare's policies against discrimination,

harassment or hostility on the account of age, race, religion, sex, ethnicity, nationality, disability or other protected class, status or characteristic. You should not unlawfully disparage Emory Healthcare's services or the products or services of its vendors or competitors.

- Maintain the confidentiality of Emory Healthcare trade secrets and private or confidential information. Trade secrets may include information regarding the development of systems, processes, products and technology. Confidential information includes but is not limited to financial reports, security procedures, potential transactions, terms of agreements, patient medical information, reports, accounting records etc. Confidential information does not include information on Emory Healthcare employees' wages, benefits, or other terms and conditions of employment, or protected concerted activity.
- Show proper respect for the laws governing copyright, fair use of copyrighted material owned by others, trademarks and other intellectual property, including Emory Healthcare's own copyrights, trademarks and brands. Employees may not use Emory Healthcare's logo, trademark or proprietary graphics in a way which suggests that they are representing Emory Healthcare or while engaging in conduct that violates any Emory Healthcare Policy. For example, employees should not create a social media page with Emory Healthcare's logo placed in a way which might suggest to readers that Emory Healthcare is sponsoring the page (not including blogs or discussions involving wages, benefits, or other terms and conditions of employment, or protected concerted activity). Employees should not start official Emory Healthcare social media channels without written consent from Emory Healthcare's Marketing Department.
- Employees must not post photographs or video of Emory Healthcare patients, visitors, employees, or invitees, even if captured in the background of a photo or video. Should an employee be interested in posting such information the employee will need to get written approval from Emory Healthcare's Market or Communications Departments and work with said departments to obtain the proper authorization of the patient, visitor, employee or invitee.
- As a reminder, employees should not create social media postings (e.g. TikTok videos) during their working time. The exception would be if the social media posting is related to employee engagement and/or at the direction of leadership and/or Marketing or Communications. If approved, employees must follow and demonstrate proper PPE and safety measures in photo and videos, this includes masking in patient care areas.

Social Media Activity

You are personally responsible for what you communicate in social media. Remember that what you publish might be available to be read by the masses for a long time. Keep this in mind before you post content.

Remember that the Internet archives almost everything; therefore, even deleted postings can be searched. Postings can be searched, saved and/or screenshots taken before they are deleted and have the ability to go viral in an instant.

ADDRESSING CONCERNS:

Always be fair and courteous to fellow employees, patients, visitors, donors and vendors. Also, keep in mind that employees are more likely to resolve concerns related to work-related complaints by speaking directly with your coworkers or taking advantage of Emory Healthcare's internal channels than by posting complaints on the Internet. Many issues can be resolved simply



by speaking directly with co-workers or an employee's direct supervisor. If this does not work or an employee is uncomfortable speaking to his/her co-workers or direct supervisor, the employee may contact any Emory Healthcare manager. Employees may also contact Human Resources, call the Office of Compliance Programs at 404-778-2757 or call the Compliance Trust Line at 1-888-550-8850 with concerns or questions.

Emory Healthcare believes that these alternatives are more likely to result in the resolution of work-related concerns than the use of social media. Nevertheless, if employees decide to post complaints or criticisms to a social media outlet, avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, threatening or intimidating, that disparage other employees, patients, visitors, donors or vendors, or that might constitute harassment or bullying. Examples of such conduct might include offensive posts meant to intentionally harm someone's reputation or posts that could contribute to a hostile work environment on the basis of race, sex, disability, religion or any other status protected by law or Emory Healthcare policy.

CONSEQUENCES OF NON-COMPLIANCE:

If you need clarification of any aspect of this Policy, contact your Human Resources Business Partner. Employees violating this Policy will be subject to disciplinary action, up to and including discharge, as well as potential legal action. Emory Healthcare respects the rights of our employees to engage in collective activity. This Policy will not be interpreted or applied in a way that would interfere with the rights of employees to self-organize, form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from engaging in such activities.

PROCEDURE:

Managers should contact Human Resources if they have concerns regarding an employee's excessive or inappropriate use of Social Media, including use of the internet during working time. Human Resources will also conduct periodic audits of internet usage to ensure that employees are abiding by the policies set forth by Emory Healthcare. Employees' questions or concerns should be referred to the Human Resources Department.

RELATED DOCUMENT(S)/LINK(S):

- Anti-Harassment and Discrimination
- Corrective Disciplinary Action
- Standards of Conduct
- Emory Healthcare Email Policy (Electronic Mailboxes)

DEFINITIONS:

N/A

REFERENCES AND SOURCES OF EVIDENCE:

N/A

12. Acknowledgments

Sasha Volokh, former Chair of CFOE, was asked to participate in discussions of the Panel and in writing the report as a non-voting member due to his unique experiences with similar situations during his tenure as the Committee Chair.

CONF - Pending Senate Approval