Considerations/Guidance for HIPAA Sanctions:

Note: The Health Insurance Portability and Accountability Act (HIPAA) classifies students, volunteers, contracted workforce members, faculty and staff as “workforce.” Pursuant to HIPAA, all workforce members must complete HIPAA training and are accountable for complying with federal health information privacy regulations.

The following provides guidance as to how HIPAA violations will be managed at MCG:

1. Review each circumstance of inappropriate use and/or disclosure (breach) uniquely and consistently apply the corrective disciplinary action policy. The following considerations may be made when determining the appropriate disciplinary action:

   A. What was the intent of the inappropriate use and/or disclosure?
      1. Unintentional.
      2. Curiosity or Concern with No Personal Gain.
      3. Personal Gain or Malice.

   B. What is the potential organizational risk associated with the inappropriate use and/or disclosure?
      1. Potential for patient harm.
      2. Potential for organizational harm.

   C. What is the history of the workforce member’s work performance?
      1. Has the workforce member been disciplined for previous patient privacy concerns?
      2. Has the workforce member been subject to a series of progressive disciplinary actions, related or unrelated to patient privacy concerns?

   D. What is the status of the workforce member’s training and education on patient privacy issues?
      1. Has the workforce member completed new workforce member orientation covering patient privacy responsibilities?
      2. Has the workforce member received job-specific privacy education and training?

   E. What is the history of the organization’s disciplinary actions for like occurrences?

2. Inappropriate use and/or disclosures (breaches) of PHI may be divided into the following three levels with recommended corresponding disciplinary action for each. If the workforce member has a history of previous corrective disciplinary actions, then the subsequent disciplinary action should be applied in a progressive manner.

   A. **Level I: Unintentional:** This level occurs when a workforce member unintentionally or carelessly accesses, reviews or reveals PHI to him/herself or others without a legitimate need to know or beyond the minimum necessary level of access assigned to his/her role. Examples may include but are not limited to:
      1. Discussions of PHI in public area.
2. Leaving PHI accessible in public area (e.g., unattended computer, medical records, surgery schedules, etc.).
3. Include PHI record in unrelated external mailing.

**Recommended Disciplinary Action:** Based on the circumstances, may include coaching, oral warning, written warning, final warning, suspension, or termination if warranted by other existing circumstances. Organization may require additional privacy education and training.

**B. Level II: Curiosity Or Concern With No Personal Gain:** This level occurs when a workforce member intentionally accesses or discusses PHI for purposes other than the care of the patient or outside their required job role, but for reasons unrelated to personal gain. Examples may include but are not limited to:

1. Accessing PHI out of concern or curiosity.
2. Referencing PHI gained in role of employment outside of the organization.

**Recommended Disciplinary Action:** Based on the circumstances, may include verbal/written warning, final warning or suspension. Organization may require additional privacy education and training.

**C. Level III: Personal Gain or Malice:** This level occurs when a workforce member accesses, reviews or discusses PHI for personal gain or with malicious intent. This is a major violation that is committed willfully and involves grossly negligent uses and/or disclosures of PHI, or destruction of PHI, or knowingly violating state or federal laws protecting the privacy and security of PHI. Examples may include but are not limited to:

1. Accessing PHI to share outside of the organization.
2. Accessing PHI to sell for profit, gain, or intentional damage to an individual’s reputation.

**Recommended Disciplinary Action:** Based on the circumstances, most often results in termination and when applicable, reporting to professional licensing board.

3. Mitigating circumstances include conditions that would support reducing the disciplinary/corrective action in the interest of fairness and objectivity. The organization may mitigate or lessen the disciplinary response, to the extent practical, based on the harmful effect that is known to be the result of the inappropriate use or disclosure of PHI in violation of internal policies and/or state and federal regulations.

4. The MCG school/program/department may also request assistance from the MCG Privacy Officer to provide information on responses to similar occurrences at other MCG organizations and/or provide guidance based on professional references and resources.

5. MCG shall not apply corrective disciplinary actions/sanctions for disclosures made by workforce members who are whistleblowers. The organization will not consider these disclosures as a violation when:
A. The workforce member is acting on good faith on the belief that the organization has engaged in conduct that is unlawful or otherwise violates professional or clinical standards; or
B. That the care, services and conditions provided by the organization potential endangers one (or more) patients, workforce members, or other members of the general public; or
C. The disclosure is made to a federal or state health oversight agency or public health authority authorized by law to oversee the relevant conduct or conditions of the organization;
D. The disclosure is made to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the organization; or
E. The disclosure is made to an attorney retained by or on behalf of the workforce member for the purpose of determining legal options regarding disclosure conduct.

6. MCG will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a workforce member who:

A. Exercises his/her rights or participates in the organizational complaint process; or
B. Files a complaint with the Secretary of Health and Human Services; or
C. Testifies, assists, or participates in an investigation, compliance review, proceeding, or hearing; or
D. Opposes any act or practice unlawful under state and federal regulations, providing that the individual acted in good faith believing that the practice was unlawful, the manner of opposition was reasonable, and did not involve disclosure of PHI in violation of regulations.