

## **Employee Speech, Expression and Social Networking**

### **1021.1 PURPOSE AND SCOPE**

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the California Department of State Hospitals (DSH).

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

#### **1021.1.1 APPLICABILITY**

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### **1021.2 POLICY**

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of DSH. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of DSH be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the

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public, DSH will carefully balance the individual employee's rights against DSH's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

### **1021.3 SAFETY**

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of DSH employees and patients, such as posting personal information or photographs in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any patient, any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.
- Disclosing identifying personal information of any other employee of DSH, similar to the examples listed above.

#### **1021.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet DSH's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of DSH or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, DSH and tends to compromise or damage the mission, function, reputation or professionalism of DSH or its employees. Examples may include:
  - 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
  - 2. Expression that demonstrates support for criminal activity.
  - 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.

- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees or patients of DSH. For example, a statement on a blog that provides specific details as to how and when patient transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
  - (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by OPS-DSH.
  - (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with DSH for financial or personal gain, or any disclosure of such materials without the express authorization of the Hospital Police Chief or the authorized designee.
  - (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of OPS logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies DSH on any personal or social networking or other website or web page, without the express authorization of the Hospital Police Chief.
  - (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or DSH- owned, for personal purposes while on-duty, except in the following circumstances:
    - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
    - 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.
  - (i) All DSH employees must comport with HIPPA regulations to ensure patient confidentiality.
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Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

#### 1021.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent DSH or identify themselves in any way that could be reasonably perceived as representing DSH in order to do the following, unless specifically authorized by the Chief of Law Enforcement. (Gov. Code, § 3206, Gov. Code, § 3302.):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with DSH, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of DSH.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off- duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes. (5 U.S.C. § 1502.)

#### **1021.5 PRIVACY EXPECTATION**

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, Twitter, Instagram, LinkedIn) that is accessed, transmitted, received or reviewed on any department technology system.

DSH reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by DSH. This includes the DSH e-mail system, computer network or any information placed into storage on any DSH system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a DSH computer or network. However, DSH may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct or employee violation of applicable laws and regulations. (Lab. Code, § 980.)

#### **1021.6 CONSIDERATIONS**

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In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Hospital Police Chief or designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of DSH or the efficiency or morale of its employees.
- (c) Whether the speech or conduct would reflect unfavorably upon DSH.
- (d) Whether the speech or conduct would negatively affect the employee's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of DSH.

#### **1021.7 TRAINING**

Subject to available resources, DSH should provide training regarding employee speech and the use of social networking to all employees of DSH.