

VOLUNTARY CODE OF ETHICAL CONDUCT

for the Recruitment of Foreign-Educated Nurses to the United States

INTRODUCTION

The following Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Nurses to the United States (the Code) reflects the mutual recognition of stakeholder interests relevant to the recruitment of foreign-educated nurses (FENs) to the United States. It is based on an acknowledgement of the rights of individuals to migrate, as well as an understanding that the legitimate interests and responsibilities of nurses, source countries, and employers in the destination country may conflict. It affirms that a careful balancing of those individual and collective interests offers the best course for maximizing the benefits and reducing the potential harm to all parties.

While the Code acknowledges the interests of these three primary stakeholder groups, its subscribers are the organizations that recruit and employ foreign-educated nurses, e.g., third party recruiting firms, staffing agencies, hospitals, long-term care organizations, and health systems. For the purposes of the Code, “Recruiters,” refers to those who contract with an FEN in a source country in order to facilitate their migration to the United States and their placement in health care employment. “Employers” refers to those health care organizations that employ FENs in the United States. Some entities provide both services, i.e., a health care employer may engage in direct recruitment and a recruiter may employ FENs under a staffing agency model in which the agency employs and contracts nurses to healthcare organizations on a short- or long-term basis. Where recruitment and employment services are the shared responsibility of two or more entities, each will be responsible for ensuring ethical conduct throughout the process.

Recruitment and employment organizations that subscribe to the Code voluntarily agree to comply with specific minimum standards, as specified in Part I of the Code, and to strive to achieve the best practices, as described in Part II of the Code. Subscription to the Code also implies full cooperation with the monitoring system that will be developed by a representative Board of Directors¹.

PART I: MINIMUM STANDARDS

SUBSCRIBERS TO THE CODE AGREE TO:

I. Comply with the laws of any foreign country in which they operate, whether through a permanent office, an agent relationship, or on an occasional basis, and comply with the laws of the United States, including relevant employment and immigration laws when operating in the United States. Examples of these laws include the following:

FAIR LABOR STANDARDS ACT (FLSA)

Also known as the “Wage/Hour” law, the FLSA provides minimum wage requirements, overtime requirements, child labor regulations, and equal pay provisions for most employees.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII prohibits discrimination on the basis of race, color, religion, sex (gender), and national origin in hiring, employment (all terms, conditions and benefits), and termination.

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

The ADEA prohibits discrimination in hiring, employment or termination against applicants and employees age 40 and over with certain very limited exceptions.

EQUAL PAY ACT (EPA)

The EPA applies to all employers covered by the FLSA, and prohibits discrimination based on gender in the payment of wages for jobs of equal skill, effort and responsibility that are performed under similar working conditions. Exceptions are provided for pay differentials based on seniority, merit, or some other bona fide factor other than sex (e.g., education, training, specialized skills, and experience).

FAMILY & MEDICAL LEAVE ACT (FMLA)

The FMLA provides up to 12 weeks of unpaid leave when an employee or covered family member has a serious health condition that requires medical care or treatment and a physician certifies that an employee's leave is necessary.

AMERICANS WITH DISABILITIES ACT (ADA)

The ADA prohibits employment discrimination against individuals with a disability if they can perform the essential functions of the job with no special accommodations, or if they can perform such functions with special accommodations which are "reasonable" based upon the size of the company; the nature of the job; and the costs of the accommodations.

NATIONAL LABOR RELATIONS ACT (NLRA)

The NLRA prohibits most employers from discriminating against employees who choose to engage in (or to decline to engage in) any union-related activities. Protected activities include joining a union or asking others to join, banding together collectively for "mutual aid and protection" (whether or not a union is involved), seeking to deal on a group basis with the employer about working conditions; and engaging in other concerted activities for the purpose of negotiating more favorable employment terms.

OCCUPATIONAL SAFETY & HEALTH ACT (OSHA)

OSHA applies to most employers and imposes a general duty to maintain a safe place to work.

IMMIGRATION AND NATIONALITY ACT (INA)

The INA makes it unlawful for any entity to employ any individual who is not authorized to work in the US.

II. Communicate and make representations to applicants in an honest, forthright, and accurate manner based upon available information.

CURRENT LABOR DEMANDS AND EDUCATION REQUIREMENTS

a. Avoid the use of knowingly false or deliberately misleading information in all forms of communication.

b. In recruitment advertising, clearly and specifically indicate the occupational level for which healthcare professional applicants are sought (e.g., RN vs. LPN vs. nursing assistants) and include the minimum standards or qualifications required for each of those occupational levels.

SPECIFIC EMPLOYER, EMPLOYMENT LOCATION, AND SERVICE DUTIES

c. Explain in writing the steps involved in the migration and licensing process and keep FEN applicants informed (by periodic written notice, for example) about their progress throughout the process and upon an applicant's request.

d. Specify the nature of employment (e.g., direct hire by a hospital or nursing home or employment by a staffing agency) as soon as such information is known. Provide a clear explanation and secure the FEN's written consent prior to making any change to the nature of employment.

e. Identify the geographic location of the future worksite at the time of recruitment whenever such information is known. If third-party recruiters and staffing agencies have not yet determined the future worksite location, this should be fully and clearly disclosed to the FEN at the time of recruitment. The precise place of employment (specific health care facility, set of facilities owned by a system or other worksite, e.g. home health agency) must be specified in writing prior to the FEN's travel to the United States.

III. Adhere to general principles of fair contract, immigration, and labor practices.

CONTRACT PRACTICES

a. Provide sufficient opportunity for FEN applicants to review and consider written contracts before signing is required (e.g., at least 48 hours).

b. Make reasonable effort to ensure that the contract terms are explained and understood by the FEN recruits. The FEN is free to consult with an attorney for contractual terms that they do not understand before signing.

c. Provide a copy of the signed employment contract for FEN applicants to keep.

d. Provide a clear explanation of any contract changes and secure the FENs written consent whenever modifying an executed contract—either at contract signing or subsequently, except when required by law to accommodate and reflect changes in relevant regulation.

e. Secure written consent from the FEN applicant to sell or transfer their contract to another agency or employer, either in the language of the original contract or prior to consummation of any transfer or sale.

f. When contracts are signed in advance of visa issuance, permit the termination of contracts by FENs if deployment is delayed for more than three years from contract execution and a) said delay is not attributable either to the FEN (e.g., failing to pass the NCLEX in a reasonable amount of time) or to changing regulatory environment (e.g., visa retrogression²), and b) all recruitment costs are reimbursed by the FEN to the Recruiter or Employer.

g. Charge no fees to FENs for recruitment services when payment for the same services (e.g., fees solely for placement and/or recruitment of healthcare professionals) is already being provided by an Employer. This provision shall not apply to fees paid solely by a FEN (e.g., additional services beyond mere placement and/or recruitment).

h. Include clear identification of financial responsibilities of all parties in contracts among FENs, Recruiters and Employers, especially as they relate to the period of transition between countries, including but not limited to transportation terms and specification of provisions upon arrival, such as housing.

i. Establish an internal administrative process to facilitate review of disputes regarding the alleged breach of contracts by either party (e.g., employee complaint policy, explicit employee notice procedure, etc).

j. Rely upon good faith and reasonableness to guide recruiters' and employers' pursuit of breach fees, where they are appropriate. In general, breach fees should not be pursued against FENs where the Recruiter or Employer can confirm with certainty that the contract termination was in good faith.

k. Give a copy of the Code to the FEN when the contract is provided to the FEN under section iii(a).

IMMIGRATION PRACTICES

l. Green cards, passports, certifications, permits, visas, or other official documents shall not be withheld from FEN applicants or employees for any coercive purpose. Custody of such documents should be transferred to the FENs as soon as the management of the certification, immigration and licensure processes reasonably allows. Recruiters and Employers shall not threaten or use immigration enforcement mechanisms to exercise control over FENs. However, if it appears that there may be fraud in procuring any of these documents (such as in cases of apparent imposter use of documents, or initial no-shows, or early abrupt departures that suggest intentional misrepresentation in employment commitments) Recruiters and Employers are free to forward such documents to issuing authorities with appropriate information about the suspected misuse.

LABOR PRACTICES

m. Provide compensation for work performed by FENs based on characteristics related to performance such as experience (both in the U.S. and in source countries), tenure, level of practice, and relevant skills, rather than the country in which they were trained. Employers may not base such compensation decisions solely on national origin or gender.

n. Respect the right of FENs to join professional associations and unions.

IV. Support FENs' transition, after arrival in the United States, into the U.S. work force so that the FENs are free to concentrate on their work.

PRACTICAL SUPPORT FOR DAILY LIVING

a. Make reasonable efforts to ensure that the "basic needs" of FENs (e.g., safe and clean housing, health care, and transportation when public services are not available) are available during an initial transition period as part of a negotiated employment package.

b. Provide or assist in the provision of orientation and placement policies and practices to educate FENs about basic facts regarding living and working (e.g., living arrangements, banking, post office, etc.) in the United States.

PROFESSIONAL SUPPORT

c. Provide or assist in the provision of clinical orientation to ensure appropriate delivery of care, particularly with regard to clinical practices and procedures that may not be familiar to FENs.

d. Provide or assist in the provision of sufficient training of FENs in cultural/linguistic appropriateness.

PART II: BEST PRACTICES

While Part I of the Code describes the minimum standards and requirements for the ethical treatment of FENs by Recruiters and Employers, Part II outlines some of the aspirational goals that should be sought by subscribers to the Code. "Best Practices" are those that are possible and achievable, but perhaps not by all Recruiters and Employers all of the time.

EXAMPLES OF BEST PRACTICES BY RECRUITERS AND EMPLOYERS INCLUDE:

I. Working jointly with local authorities in source countries to identify innovative and meaningful ways to ameliorate the impact of recruitment to local health care organizations and ensure the sustainability of qualified healthcare professionals in those communities. Some of the ways that this has been done are:

Establishing relationships with the depart-

ments of human resources in local hospitals, so that the training and departure processes have an agreed upon time frame.

Pursuing health facilities partnership agreements (e.g., between schools of nursing and hospitals in the U.S. and source country schools and hospitals). Such partnerships, often called twinning, provide source country facilities with visiting faculty, and in some instances medical supplies. They may also allow recruited healthcare professionals to return for temporary periods (two weeks or more) to work in source country health facilities.

Matching a portion of the remittances sent by recruited FENs and channeling the funds directly to source country health care organizations.

Offering the FENs the option of periodic home leave to provide technical assistance to their home communities. This option is especially appropriate where there is a critical lack of human resources for health in the source country.

Establishing scholarship funds in source country nursing schools.

II. Respecting agreements in which the FENs have contractual obligations to serve their home country health system in return for public education or scholarships provided in the source country. Encourage healthcare professionals to honor these obligations. Where appropriate, require that a FEN applicant provide evidence that his or her public obligations have been satisfied.

III. Avoiding active overseas recruitment in those countries or areas within countries that are experiencing either a temporary health crisis during which health professionals are in dire need, or a chronic shortage of health workers.³ Chronic shortages have been defined by the World Health Organization as nations in which there are fewer than 2.5 health workers (nurses, midwives and physicians) per 1,000 population. Additional factors to consider include nurse vacancy rates, nurse unemployment levels and the number of graduating nurses per year. Among the many sources of information that re-

cruiters can use to inform their decisions include the following:
The World Health Organization's Global Atlas of the World Health Workforce: (www.who.int/globalatlas/default.asp)

The World Health Organization's map highlighting countries experiencing health crisis ([www.reliefweb.int/rw/fullMaps_Wd.nsf/luFullMap/136D397D22D0A878852573BB005A467F/\\$File/who_HLT_wrl071220.pdf?OpenElement](http://www.reliefweb.int/rw/fullMaps_Wd.nsf/luFullMap/136D397D22D0A878852573BB005A467F/$File/who_HLT_wrl071220.pdf?OpenElement))

The Kaiser Family Foundation's table of nurse and physician to population ratios (www.globalhealthfacts.org/topic.jsp?i=54)

The Doctors Without Borders Annual Report with descriptions of specific country situations (www.doctorswithoutborders.org/publications/ar/i2007/MSF.ActivityReport.07.pdf)

ENDNOTES

1 The Board of the Alliance for Ethical International Recruitment Practices was formally seated in November 2009.

2 Visa retrogression describes the delay in obtaining an immigrant visa when there are more people applying for immigrant visas in a given year than the total number of visas available.

3 This recommendation relates to active overseas recruitment. As indicated in "Part I, iii, m" the Code clearly states that "Employers may not discriminate solely on the bases of national origin or gender."

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