



# ABP Corporate Policy

## Legal Hold Policy

### POLICY PURPOSE

The purpose of this Policy is to establish the necessary actions for the preservation of records, information, and data when there is a reasonable anticipation of litigation, an audit, or an investigation or when a subpoena or discovery request is received.

### POLICY SCOPE

This Policy addresses the operational steps and communication process when litigation, an audit, or an investigation is reasonably anticipated by the ABP or a subpoena or discovery request is received by the ABP.

This Policy details the process to issue a Legal Hold notice so that relevant ABP records, information, and data, whether paper-based or electronic, will be appropriately preserved during the extent of the Legal Hold notice.

This policy applies to all employees, vendors, and agents operating on behalf of the ABP.

### POLICY STATEMENT

It is the policy of the ABP to preserve records, information, and data that are or will potentially be utilized in litigation, an audit, or an investigation. It is furthermore the policy of the ABP that it has the duty to preserve relevant records and information under a Legal Hold notice and suspend any normal destruction practices.

In the event that litigation, an audit, or an investigation is reasonably anticipated by the ABP or a subpoena or discovery request is received by the ABP, the ABP Legal Counsel (Legal Counsel), shall determine if a Legal Hold is required and, if so, will advise the ABP Vice-President of Operations (VP of Operations) to issue a Legal Hold notice. The Legal Hold notice shall remain in place until Legal Counsel advises the VP of Operations that the duty to preserve the relevant records, information, and data no longer exists.

For guidance in carrying out the requirements of the ABP Legal Hold process, please refer to the ABP Legal Hold Procedures (see Appendix A: ABP Legal Hold Procedures).

### ROLES

The VP of Operations follows the advice of Legal Counsel, as to whether a Legal Hold notice is necessary, when and to whom to communicate the Legal Hold notice, and when to release the Legal Hold. The VP of Operations works closely with the Senior Management Team (SMT) member(s) relevant to the legal situation to manage the Legal Hold process. The SMT member updates, as necessary, the ABP's SMT on the status of the legal situation.

Legal Counsel monitors the ABP legal environment for potential litigation, audit, or investigation events or the actual receipt of a subpoena or discovery request. Legal Counsel then advises the VP of Operations of the need to issue a Legal Hold notice. In some cases (e.g., internal administrative issues), the VP of Operations may contact Legal Counsel regarding concern of a potential Legal Hold "triggering event." Legal Counsel also advises the VP of Operations on other aspects of Legal Hold



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requirements, including when to release a Legal Hold notice.

A SMT member(s) may be involved with the circumstances relating to the legal situation and will work closely with the VP of Operations (and Legal Counsel as necessary) to manage the Legal Hold process as it relates to the particulars of the legal situation.

The Legal Administration Manager will assist the VP of Operations as necessary to manage the Legal Hold process.

The ABP Manager, Records & Information Management (Manager of RIM), in consultation with the VP of Operations, shall work with ABP staff to determine the location of records, information, and data to be preserved under the Legal Hold.

The Manager of RIM will work with the ABP staff and the Information Technology (IT) Department to ensure the preservation of records, information, and data.

**ABP Staff:** All ABP staff members are responsible for reading and understanding the ABP Legal Hold Policy, as well as what her/his potential duties may be under an issued Legal Hold notice.

In addition, ABP staff should notify the VP of Operations and the Legal Administration Manager if they become aware of any circumstance/issue which may necessitate the issuance of a Legal Hold notice.

Finally, ABP staff must comply with all requirements of a Legal Hold notice if relevant to records, information, and/or data under the direct control of the staff person.

#### **ASSOCIATED PROCEDURES AND FORMS**

Appendices to this Policy contains:

- Appendix A: ABP Legal Hold Procedures
- Appendix B: ABP Legal Hold Notice Form
- Appendix C: ABP Legal Hold Release Form

#### **ENFORCEMENT**

Any employee, vendor, or agent, operating on behalf of the ABP, found to have violated this policy may be subject to disciplinary action, up to and including termination of employment or engagement with ABP.



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### APPENDIX A: ABP LEGAL HOLD PROCEDURE

1. Legal Counsel identifies a potential “triggering” event and advises the VP of Operations that a “duty to preserve” records and information exists.
  - a. A potential “triggering” event can be:
    - i. The receipt of a lawsuit, subpoena, discovery notice, etc.
    - ii. Verbal or written threat of litigation
    - iii. Knowledge of related investigations or litigation, and/or
    - iv. Reasonable anticipation of litigation or audit
- 1a. Alternatively, if a potential “triggering” event comes to the attention of the ABP prior to Legal Counsel (e.g., an internal administrative issue), then:
  - a. The VP of Operations consults with Legal Counsel to determine whether a “duty to preserve” records and information exists.
  - b. If it is determined that a “triggering” event necessitates a Legal Hold notice be issued, proceed to Step 2.
2. Determine scope of Litigation Hold
  - a. Working with Legal Counsel, the VP of Operations, Manager of RIM, and IT shall define which types of records and information are relevant to the Litigation Hold (i.e., need to be preserved)
  - b. Identify ABP staff who may be in possession of relevant records and information or may have knowledge of the “triggering” event
3. Issue Legal Hold notice
  - a. The Legal Administration Manager will send an email notice to all ABP staff affected by the Legal Hold. Attached to the email will be the ABP “Legal Hold Notice Form” for the specific Legal Hold (see Appendix B: Legal Hold Notice Form).
    - i. Other or additional forms of communication will be used if required (e.g., formal letter, fax, etc.)
4. Preservation of Records and Information
  - a. The Manager of RIM, in consultation with the VP of Operations, shall work with ABP staff to determine the format and location of records and information to be preserved under the Legal Hold.
  - b. The Manager of RIM shall work with the ABP staff, IT, the Operations Department (Operations), and any other ABP departments and staff and/or outside vendors and contractors to ensure the preservation of records and information per the Legal Hold requirements.
5. Review of Legal Hold
  - a. It is necessary for the Legal Hold to be reviewed periodically, not to exceed 6 months since the original Legal Hold issuance or last review.
  - b. If the Legal Hold review results in the release of the Legal Hold, proceed to Step 7.
  - c. If the Legal Hold review does not result in the Legal Hold being released, a reissuance of the Legal Hold notice should occur. The reissuance of the Legal Hold notice may be in its original form or an amended form if necessary.



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6. Release of Legal Hold
  - a. The VP of Operations and Legal Counsel review Legal Hold circumstances to determine if the “duty to preserve” no longer exists (refer to Step 5).
  - b. The Legal Administration Manager will send email notice to all ABP staff affected by the Legal Hold notice currently or in the past. Attached to the email will be the ABP “Legal Hold Release Form” for the specific Legal Hold (see Appendix C: Legal Hold Release Form).
    - i. Other or additional forms of communication will be used if required (e.g., formal letter, fax, etc.)
  - c. The Manager of RIM shall resume the application of routine retention to records that have not met their retention period. The Manager of RIM shall implement, at the appropriate time, the disposition process for any records that have met their retention period.
  - d. IT shall identify any data and/or backup tapes that can be deleted or destroyed per the normal retention process. Upon consultation with the Manager of RIM, IT shall delete and/or destroy the necessary data and backup tapes.
7. Compliance: If non-compliance with the Legal Hold notice is identified, the non-compliance incident should be:
  - a. Reported to the VP of Operations, Legal Administration Manager, and Manager of RIM,
  - b. Addressed by appropriate corrective actions and/or training, and
  - c. Properly documented (including any remedial steps).
8. Documentation: Proper documentation of the Legal Hold process is maintained by the Manager of RIM in the ABP’s official records repository. Documentation may include:
  - a. The date of the Legal Hold issuance and by whom;
  - b. The initial scope of information and locations/systems involved;
  - c. Subsequent scope changes as new data is identified;
  - d. Original Legal Hold notice sent;
  - e. Legal Hold notice reminders sent;
  - f. Legal Hold notices sent to ABP staff added after the initial notice;
  - g. Confirmations of compliance (if applicable);
  - h. Handling of exceptions (if applicable);
  - i. Release of Legal Hold notice; and
  - j. Any additional documentation pertinent to issuing, managing, and releasing the Legal Hold.



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#### APPENDIX B: LEGAL HOLD NOTICE FORM

**TO:** <Relevant ABP staff or other party>

**FROM:** <name>, ABP Vice-President of Operations

**RE:** LEGAL HOLD

Preservation of Relevant Records and Information:

All records, information and data, regardless of format (i.e., physical or electronically stored), in any way relating or referring to a(n) <anticipated> lawsuit entitled **<Name of Lawsuit and, if filed, location of filing>**.

**DATE:** <DATE>

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**This is a matter of utmost importance.** Please be advised that the ABP is required and hereby directed to preserve and otherwise maintain, until further notice, any and all information in or relating to the above-referenced matter.

**Background:** <Description of the lawsuit> Therefore, in connection with the above-referenced matter, you are advised of the ABP's legal obligation to preserve all records, information, and data concerning this matter. Accordingly, it is critical that you take affirmative steps to preserve the records, information, and data that are relevant to this Legal Hold Notice and that are in your custody or control.

**What you should do:** A(n) <anticipated> lawsuit in this matter requires the ABP to preserve all records, information, and data, whether stored electronically, in hard copy or otherwise, in any way relating, relevant or referring to the following:

<Specific list of records/information or the types of records/information that should be retained>

"Records, information, and data" as used here means not only hard copy documents, but also audio recordings, videotape, e-mail, instant messages, word processing documents, spreadsheets, databases, calendars, telephone logs, Internet usage files, and all other electronically stored information maintained and created, received, and/or maintained by the ABP on computer systems.

"Sources" include all hard copy files, computer hard drives, removable media (e.g., CDs, DVDs, flash/thumb drives), laptop computers, mobile devices, and any other media or locations where hard copy and electronic data are stored. Keep in mind that any of the above mentioned sources of relevant records, information, and data may include personal computers you use or have access to at home or other locations. It also includes inaccessible storage media, such as back-up tapes that may contain relevant electronic information that does not exist in any other form.

In order to comply with its legal obligations, the ABP must immediately preserve all existing records, information, and data relevant to the claim/investigation described above and suspend deletion, overwriting, shredding, or any other possible destruction of relevant records, information, and data.



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**Do not discard or destroy in any manner records, information and data that is relevant to this Legal Hold.** You must take every reasonable step to preserve these records, information, and data until further notice. *Failure to do so could result in penalties against the ABP.*

The ABP's RIM Program and IT Department have been notified of this Legal Hold Notice and will implement the Legal Hold. Please note that the ABP's Records Retention Schedule has been suspended for the duration of this Legal Hold for all relevant records, information, and data.

We will follow up with more information as the Legal Hold proceeds, including when the Legal Hold has been released (per the ABP's Legal Hold Release Form).

If you have any questions about how to comply with this Legal Hold Notice, please contact the ABP Vice-President of Operation.



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#### APPENDIX C: LEGAL HOLD RELEASE FORM

**TO:** <Relevant ABP staff or other party>

**FROM:** <name>, ABP Vice-President of Operations

**RE:** RELEASE OF LEGAL HOLD  
All records, information and data, regardless of format (i.e., physical or electronically stored), in any way relating or referring to a(n) <anticipated> lawsuit entitled **<Name of Lawsuit and, if filed, location of filing>**.

**DATE:** <DATE>

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The Legal Hold related to **<Name of Lawsuit and, if filed, location of filing>** has been released.

You are now permitted to resume the normal management of records, information, and data per the ABP's Records and Information Management Policy, including disposition activities outlined in the ABP's Records Retention Schedule with regard to all records, information, and data, whether stored electronically, in hard copy or otherwise, in any way relating, relevant or referring to **<Name of Lawsuit, and if filed, location of filing>**.

The ABP's RIM Program and IT Department have been notified of this Legal Hold Release and will follow up with any necessary records, information, or data disposition activities per the ABP's Records Retention Schedule.

If you have any questions on how to comply with this Legal Hold Release, please contact the ABP Vice-President, Operations.