

# SUNY DOWNSTATE MEDICAL CENTER

UNIVERSITY HOSPITAL OF BROOKLYN  
POLICY AND PROCEDURE

<b>Subject:</b> <u>MENTAL HEALTH INFORMATION</u>	<b>No. HIPAA-14</b>
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## I. PURPOSE

To ensure that SUNY Downstate complies with both New York State laws and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations in regard to protecting mental health information.

## II. POLICY

For HIV- related information in mental health records, refer to the guidelines in the policy on HIV- Related Information

## III. DEFINITIONS

**Mental Health Director-** The director of the ward, unit, floor or clinic providing mental health services (and would be the individual who currently has oversight of the mental health services.

**Mental Health Information-** Refers to:

- Clinical records or clinical information tending to identify mental health patients (protected under Sections 33.13 and 33.16); and
- Any mental health information protected under HIPAA.

## IV. RESPONSIBILITY

It is the responsibility of all medical staff members and hospital staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Hospital staff members include all employees, medical or other students,

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trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the hospital.

### V. PROCEDURE/GUIDELINES

#### A. Use & Disclosure of Mental Health Information

1. Disclosures to Attorneys for Involuntary Hospitalization Proceeding- Mental health information should not be released to an attorney in an involuntary hospitalization proceeding with a HIPAA Patient Authorization, unless the:
  - a. Attorney is the patient's personal representative; or
  - b. Disclosure is required by law or by court order.
2. Disclosures to the Medical Review Board of the State Commission of Correction
  - a. Disclosures to a medical review board when required by law or when necessary for the board's mental health oversight purposes would not require a HIPAA Patient Authorization when the information is about a deceased patient. If the patient is still living, the patient must consent to the disclosure.
  - b. Disclosures made to a medical review board for all other purposes would require a HIPAA Patient Authorization, unless another exception to the authorization requirement applies.
3. Disclosures to a Third Party with Consent of the Patient
  - a. Mental health information may be disclosed to persons or entities other than the patient who have a demonstrable need for such information as long as a HIPAA Patient Authorization has been obtained.
  - b. If the disclosure is to family and friends involved in the patient's care, the patient must be provided with an opportunity to object to the disclosure, but a written HIPAA Patient Authorization is not required.
  - c. When a HIPAA Patient Authorization has been obtained, SUNY Downstate should not refuse to disclose the information on the ground that doing so would be detrimental to the patient.
4. Disclosures to Locate Missing Person or Conduct Criminal Investigation- Prior to any such disclosure, the consent of the mental health director must be obtained.
  - a. Disclosures of limited identifying data concerning hospitalization to law enforcement officers for purposes of locating a missing person is permitted as long as only the following information is disclosed:
    - i. Name and address;
    - ii. Date and place of birth;
    - iii. Social security number;
    - iv. ABO blood type and rh factor;
    - v. Type of injury;
    - vi. Date and time of treatment;
    - vii. Date and time of death (if applicable); and
    - viii. Description of distinguishing physical characteristics.
  - b. Disclosures may not be made to other government agencies for the purpose of locating a missing person or to any government agencies for the purpose of a criminal investigation without a HIPAA Patient Authorization, unless the information is limited to the identifying data listed in Section III.A.4.a. and meets any of the following exceptions:

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- i. Disclosures to government agencies authorized to receive reports of child abuse or neglect;
  - ii. Disclosures to government agencies authorized to receive reports of other instances of abuse, neglect or domestic violence (provided that certain protective requirements are met);
  - iii. Disclosures to government agencies authorized to conduct criminal investigations as part of their health oversight activities (subject to limitations when the patient is the subject of the criminal investigation);
  - iv. Disclosures to law enforcement when required by law (including laws that require reporting of certain types of wounds or other physical injuries);
  - v. Disclosures to law enforcement in compliance with a court order;
  - vi. Disclosures to law enforcement pursuant to a grand jury subpoena;
  - vii. Disclosures to law enforcement pursuant to an administrative request (under limited circumstances);
  - viii. Disclosures of limited identifying information in response to a request from law enforcement (as provided above);
  - ix. Disclosures to law enforcement about victims of crime (if certain protective requirements are met);
  - x. Disclosures to law enforcement to report a patient's death which may have resulted from criminal conduct;
  - xi. Disclosures to law enforcement to report a crime on the premises of the hospital;
  - xii. Disclosures to law enforcement to report a crime discovered in an off-site medical emergency;
  - xiii. Disclosures to law enforcement when necessary to identify or apprehend a patient whom the facility has learned, through conversation with the patient, may have caused serious physical harm to a victim (except if this information was learned during counseling or treatment to affect the propensity to commit the crime);
  - xiv. Disclosures to government agencies which are reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
  - xv. Disclosures to government agencies authorized to conduct criminal investigations as part of their health oversight activities.
5. Disclosures to Qualified Researchers upon Approval of IRB- Disclosure of mental health information to qualified researchers without a HIPAA Patient Authorization is permitted under the following circumstances, provided that the mental health director consents to the disclosure and the researcher does not re-disclose any information tending to identify the patient:
  - a. The researcher will receive only a limited data set which the researcher agrees to protect in accordance with the terms of a valid Data Use Agreement;
  - b. The researcher has obtained an IRB/Privacy Board waiver of authorization;
  - c. The information is disclosed for research on the patient information of decedents (where certain conditions are met);
  - d. The information is disclosed for a review preparatory to research (where certain conditions are met).

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6. Disclosures to Prevent Imminent and Serious Harm to the Patient or Another Person- Disclosures under these circumstances may be made without a HIPAA Patient Authorization when the:
  - a. Disclosure is made to persons who are reasonably able to prevent or lessen the threat, such as the target of the threat and proper law enforcement authorities; and
  - b. Consent of the mental health director is obtained prior to the disclosure.
7. Disclosures to District Attorneys for a Criminal Investigation of Patient Abuse
  - a. Mental health information may be disclosed without a HIPAA Patient Authorization to a district attorney when such request for information is in connection with, and necessary to the furtherance of, a criminal investigation of patient abuse when the crime was committed on SUNY Downstate's premises.
  - b. If the patient abuse did not occur on the premises, mental health information may be disclosed without a HIPAA Patient Authorization in a report of patient abuse or neglect to law enforcement officers (including officers who prosecute crimes) if SUNY:
    - i. Obtains the patient's verbal permission;
    - ii. Determines that the disclosure is authorized by law and that the disclosure is necessary to prevent serious harm to the patient or other potential victims; or
    - iii. Determines that the disclosure is authorized by law, the patient is unable to agree to the disclosure because of incapacity and a law enforcement officer has represented that the information will not be used against the patient and an immediate law enforcement activity would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.
  - c. Consent must be obtained from the mental health director before any disclosures are made.
8. Disclosures to a Correctional Facility or Division of Parole
  - a. An inmate's mental health information may be disclosed to the correctional facility without a HIPAA Patient Authorization if the correctional facility certifies that the information is needed for one of the purposes below and the inmate is still in the custody of the correctional institution:
    - i. To provide healthcare to the inmate;
    - ii. To protect the health and safety of the inmate, other inmates or other persons at the correctional institution;
    - iii. To protect the health and safety of persons responsible for transporting the inmate or other inmates;
    - iv. To facilitate law enforcement on the premises of the correctional institution; or
    - v. To maintain the safety, security and good order of the correctional institution.
  - b. If the disclosure is made after the inmate has been released on parole, probation or supervised release, the inmate's information may only be disclosed to the correctional institution or division of parole with a HIPAA Patient Authorization.

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9. Disclosures to a Qualified Person Pursuant to NY Mental Hygiene 33.16= Disclosure of mental health information is permitted to the patients or their personal representatives.
10. Disclosures to the Department or its Licensed Facilities (until June 30, 2005)- Disclosures between and among the department of mental hygiene, any of its licensed or operated facilities or facilities providing services pursuant to a local or unified services plan or an agreement with the department may only be made in accordance with SUNY Downstate's general HIPAA policies and procedures.
11. Disclosures to other Licensed Hospital Emergency Services (until June 30, 2005)- Information exchanged with other hospital's emergency services without a HIPAA Patient Authorization must comply with SUNY Downstate's general HIPAA policies and procedures.
12. Limiting Disclosures to Necessary Information- Disclosures of mental health information must be limited to the minimum amount of information necessary to accomplish the purpose of the disclosure.
  - a. Policies and procedures must be developed to address the application of the minimum necessary standard in routine situations;
  - b. Policies and procedures must be developed to address the application of the minimum necessary standard in non-routine situations.

### **B. Patient Rights**

1. Notice of Confidentiality and Privacy Practices
  - a. All patients must receive a general Notice of Privacy Practices.
  - b. Patients with mental health information should also be provided with a separate notice regarding SUNY Downstate's confidentiality practices regarding mental health information. See attached Notice of Privacy-Confidentiality of Mental Health Information.
2. Right to Request Access to Mental Health Information- Patients and other qualified persons must generally be provided access to mental health information, per the requirements delineated in the policy on Patient Requests for Access.
  - a. Any patient 18 years of age or older must be notified when a committee for the incompetent or a guardian of a mentally retarded or developmentally disabled patient requests access to the incompetent or disabled patient's mental health information.
  - b. The denial of access to records prepared in anticipation of litigation that may be contained in the patient's mental health records is permitted.
  - c. Patients must be granted access to a provider's personal notes and observations (whether in the patient's clinical record or general medical record) unless they are psychotherapy notes which are maintained separate from the patient's medical and clinical records.
3. Right to Request Amendment of Mental Health Information- The guidelines delineated in the policy on Patient Requests for Amendment should be followed.
4. Right to Request an Accounting of Disclosures of Mental Health Information- All disclosures of mental health information must be recorded in accordance with the

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guidelines delineated in the policy on Accounting of Disclosures with the following modifications:

- a. Disclosures to mental hygiene legal services must be recorded.
  - b. Disclosures to a private insurance company for payment purposes must be recorded for only the first disclosure.
  - c. Disclosures to insurance companies for non-payment purposes must be recorded on each occasion.
  - d. Disclosures to persons reviewing information or records in the ordinary course of ensuring that a facility is in compliance with applicable quality of care standards need not be recorded.
  - e. Disclosures to governmental payers need not be recorded.
5. Right to Request Additional Privacy Protections- The guidelines delineated in the policy on Patient Requests for Additional Privacy Protections should be followed.
- C. Confidentiality of Psychotherapy Notes-** The guidelines delineated in the policy on Uses & Disclosures of Psychotherapy Notes should be followed.
- D. NYS Provisions Not Affected by HIPAA-** The following NYS laws regarding the confidentiality of mental health information should continue to be followed without modification by HIPAA:
1. New York law permitting a hospital to disclose mental health information pursuant to a court order. [NY Mental Hygiene Law § 33.13(c)(1)]
  2. New York law permitting a hospital to disclose mental health information to government agencies, licensed insurance companies, and other third parties for payment purposes, as long as the consent of the mental health director has been obtained. [NY Mental Hygiene Law §§ 33.13(9)(i), 33.13(e)]
  3. New York law permitting a hospital to disclose mental health information to the mental hygiene legal service. [NY Mental Hygiene Law §§ 33.13(c)(2), 33.13(e)]
  4. New York law permitting a hospital, or a treating psychiatrist or psychologist within a hospital, to disclose mental health information to an endangered person or a law enforcement agency when necessary to prevent a serious or imminent threat to the patient or another person. [NY Mental Hygiene Law §§ 33.13(c)(6), 33.13(c)(9)(v), 33.13(e)]
  5. New York law permitting hospitals to disclose mental health information to the state board for professional medical conduct or the office of professional discipline when such entities request such information in the exercise of their statutory duties. [NY Mental Hygiene Law §§ 33.13(c)(8), 33.13(e)]
  6. New York law permitting hospitals to disclose mental health information to the “commission on quality of care for the mentally disabled” and any person or agency under contract with the commission to provide protection and advocacy services. [NY Mental Hygiene Law §§ 33.13(c)(4), 33.13(e)]
  7. New York law permitting a hospital to disclose mental health information to a coroner, a county medical examiner, or the chief medical examiner for New York city

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- if the mental health director requests that an investigation be conducted into the death of the patient. [NY Mental Hygiene Law §§ 33.13(c)(9)(iv), 33.13(e)]
8. New York law permitting inspection of a hospital's records by the commissioner of mental health and the commissioner on quality care for the mentally disabled. [NY Mental Hygiene Law § 32.17(d)]
  9. New York law permitting a patient who received services for mental illness to seek a court order sealing records held by any public or private entity. [NY Mental Hygiene Law § 33.14]
  10. New York law permitting a hospital to disclose mental health information to a court evaluator who is appointed to assess the competency of the patient (assuming disclosure to the court evaluator is court-ordered). [NY Mental Hygiene Law § 81.09]
  11. New York law permitting a hospital to disclose mental health information to a director of community services who requests such information in order to carry out his or her statutory duties. [NY Mental Hygiene Law §§ 33.13(c)(12), 33.13(e)]
  12. New York law permitting a hospital to disclose mental health information to the state division of criminal justice services for the sole purpose of providing, facilitating, evaluating or auditing access by the commissioner of mental health to criminal history information. [NY Mental Hygiene Law §§ 33.13(c)(13), 33.13(e) and NY Mental Hygiene Law § 7.09(j)]

## VI. ATTACHMENTS

Notice of Privacy Practices- Confidentiality of Mental Health Information

## VII. REFERENCES

Standards for Privacy of Individually Identifiable Health Information, 45 CFR; NY Mental Hygiene Law §33.13 and §33.16

Date Reviewed	Revision Required (Circle One)		Responsible Staff Name and Title
12/07	(Yes)	No	Shoshana Milstein /AVP, Compliance & Audit
9/2013	(Yes)	No	Shoshana Milstein /AVP, Compliance & Audit
9/2016	(Yes)	No	Shoshana Milstein /AVP, Compliance & Audit
12/2016	Yes	(No)	Shoshana Milstein /AVP, Compliance & Audit



**NOTICE OF PRIVACY PRACTICES- CONFIDENTIALITY OF MENTAL HEALTH  
INFORMATION AND PSYCHOTHERAPY NOTES**

Effective Date: September 23, 2013

The privacy and confidentiality of mental health information and psychotherapy notes maintained by SUNY Downstate Medical Center is protected by Federal and State law and regulations. These protections go above and beyond the protections described in SUNY Downstate Medical Center's general Notice of Privacy Practices.

We recommend that you also take time to review SUNY Downstate Medical Center's general Notice of Privacy Practices. Our general Notice of Privacy Practices also provides information about how you may obtain access to your health information, including mental health information. If there is any conflict between the general Notice of Privacy Practices and this notice, the protections described in this notice will apply instead of the protections described in the general Notice of Privacy Practices.

**CONFIDENTIALITY OF MENTAL HEALTH INFORMATION**

Mental health information about you may be used by personnel within SUNY Downstate Medical Center (or its business associates) in connection with their duties to provide you with treatment, obtain payment for that treatment or conduct SUNY Downstate Medical Center's business operations. Generally SUNY Downstate Medical Center may not reveal mental health information about you to external individuals, *except in the following situations*:

- When we have obtained your written authorization;
- To a personal representative who is authorized to make health care decisions on your behalf;
- To government agencies or private insurance companies in order to obtain payment for services we provided to you;
- To comply with a court order;
- To appropriate persons who are able to avert a serious and imminent threat to the health or safety of you or another person;
- To appropriate government authorities to locate a missing person or conduct a criminal investigation as permitted under Federal and State confidentiality laws;
- To other licensed hospital emergency services as permitted under Federal and State confidentiality laws;
- To the mental hygiene legal service offered by the State;
- To attorneys representing patients in an involuntary hospitalization proceeding;
- To authorized government officials for the purpose of monitoring or evaluating the quality of care provided by SUNY Downstate Medical Center or its staff;
- To qualified researchers without your specific authorization when such research poses minimal risk to your privacy;
- To coroners and medical examiners to determine cause of death; and
- If you are an inmate, to a correctional facility which certifies that the information is necessary in order to provide you with health care, or in order to protect the health or safety of you or any other persons at the correctional facility.

**CONFIDENTIALITY OF PSYCHOTHERAPY NOTES**

Psychotherapy notes are notes by a mental health professional that document or analyze the contents of a conversation during a private counseling session – or during a group, joint, or family counseling session. If these notes are maintained separate from the rest of your medical records, they can only be used and disclosed as follows. In general, psychotherapy notes may not be used or disclosed without your written authorization, except in the following circumstances.



*Psychotherapy notes about you may be used and disclosed without your written authorization in the following situations:*

- The mental health professional who created the notes may use them to provide you with further treatment;
- The mental health professional who created the notes may disclose them to students, trainees or practitioners in mental health who are learning under supervision to practice or improve their skills in group, joint, family, or individual counseling;
- The mental health professional who created the notes may disclose them as necessary to defend his or herself or SUNY Downstate Medical Center in a legal proceeding initiated by you or your personal representative;
- The mental health professional who created the notes may disclose them as required by law;
- The mental health professional who created the notes may disclose the notes to appropriate government authorities when necessary to avert a serious and imminent threat to the health or safety of you or another person;
- The mental health professional who created the notes may disclose them to the United States Department of Health and Human Services when that agency requests them in order to investigate the mental health professional's compliance, or SUNY Downstate Medical Center's compliance, with Federal privacy and confidentiality laws and regulations; and
- The mental health professional who created the notes may disclose them to medical examiners and coroners, if necessary, to determine your cause of death.

*All other uses and disclosures of psychotherapy notes require your special written authorization.*

#### **HOW TO OBTAIN A COPY OF THIS NOTICE**

You have a right to a paper copy of this notice. You may request a paper copy of this notice at any time, even if you have previously agreed to receive this notice electronically. A copy of our current notice will always be posted in our registration areas. You will also be able to obtain your own copies by accessing our website at "[www.downstate.edu](http://www.downstate.edu)", calling the Admitting Department at 718-270-2862 or asking for one at the time of your next visit. We may change our privacy practices from time to time. If we do, we will revise this notice so you will have an accurate summary of our practices and will provide you with a copy upon request. The revised notice will apply to all of your information held by this program, and we will be required by law to abide by its terms. The effective date of the notice will always be located in the top right corner of the first page.

#### **HOW TO FILE A COMPLAINT**

If you believe your privacy rights have been violated, you may file a complaint with us or with the Secretary of the Department of Health and Human Services. *No one will retaliate or take action against you for filing a complaint.*

To file a complaint with us, please contact a Patient Relations representative at 718-270-1111. You can also contact SUNY Downstate Medical Center's Compliance Line at **877-349-SUNY (7869)** or make a web report by clicking the "Compliance Line" on the bottom of SUNY Downstate Medical Center's website [www.downstate.edu](http://www.downstate.edu).

To file a complaint with the Department of Health and Human Services, you can write or call:

US Department of HHS Government Center  
John F. Kennedy Federal Building- Room 1875  
Boston, Massachusetts 02203

Telephone number: 617-565-1340  
Fax number: 617-565-3809  
TDD: 617-565-1343