

UNIVERSITY PHYSICIANS OF BROOKLYN, INC.

POLICY AND PROCEDURE

No: _____

Subject: MENTAL HEALTH INFORMATION Page 1 of 6

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- I. **Purpose:** To ensure that UPB 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. **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.

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

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, UPB 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:
 - 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 practice;
- 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 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.

6. 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 UPB'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 UPB:
 - 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.
7. 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.
8. 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.
9. 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 UPB's general HIPAA policies and procedures.
10. Disclosures to Licensed Hospital Emergency Services (until June 30, 2005)- Information exchanged with a hospital's emergency services without a HIPAA Patient Authorization must comply with UPB's general HIPAA policies and procedures.
11. 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- All patients must receive a Notice of Privacy Practices, which includes an appendix for 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 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. 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 practice to disclose mental health information pursuant to a court order. [NY Mental Hygiene Law § 33.13(c)(1)]

2. New York law permitting a practice 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 practice 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 practice, or a treating psychiatrist or psychologist within a practice, 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 practices 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 practices 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 practice to disclose mental health information to a coroner, a county medical examiner, or the chief medical examiner for New York city 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 practice’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 practice 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 practice 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 practice 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)]

IV. Responsibilities: It is the responsibility of all medical staff members and practice staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Practice staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the practice.

V. Reasons for Revision- Regulatory changes

VI. Attachments- None

VII. References- Standards for Privacy of Individually Identifiable Health Information, 45 CFR; NY Mental Hygiene Law §33.13 and §33.