

UNIVERSITY PHYSICIANS OF BROOKLYN, INC.

POLICY AND PROCEDURE

No: _____

Subject: PERSONAL REPRESENTATIVES **Page** 1 **of** 3

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Distribution:

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I. **Purpose:** To ensure that personal representatives are treated as the patient, when applicable, in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), NYS Law and their accompanying regulations.

II. **Policy-** Personal representatives must at all times present appropriate documentation attesting to their authority over the patient before the personal representatives can be treated as the patient.

A. Qualified Persons- Under NYS law, the following individuals qualify as personal representatives:

1. Healthcare Proxy or Agent- The healthcare agent's authority only commences upon a determination that the patient lacks the capacity to make healthcare decisions. The following individuals are exempt from serving as healthcare agents:
 - a. An operator, administrator or employee of UPB appointed as a healthcare agent by a patient of UPB;
 - b. A physician acting as the patient's attending physician; and
 - c. Non-relatives of the patient who are presently appointed healthcare agents for at least 10 other individuals.

2. Guardian appointed pursuant to Article 81 of the Mental Hygiene Law;
3. Committee for an incompetent individual appointed pursuant to Article 78 of the Mental Hygiene Law- The committee should be treated as the patient's personal representative only to the extent that the committee is empowered to make healthcare decisions on behalf of the incompetent.
4. Parent or guardian of a minor (<18 years of age) acting in loco parentis;
5. Distributee of a deceased subject for whom no personal representative (defined as a person who has received letters to administer the decedent's estate) exists;
Note: A distributee is considered any person entitled to take or share in the property of a decedent.
6. Attorney holding a power of attorney from a qualified person or the patient's estate which explicitly authorizes the holder to execute a written request for patient information.

The definitions of "Qualified Persons" specified in II.A.1.6. and 7. above are only applicable to activities relating to accessing patient information (as defined in NYS Public Health Law Section 18).

B. Unemancipated Minors- A parent or guardian acting in loco parentis may obtain health information about a minor child. There are three exceptions:

1. When State law does not require the consent of parent before a minor can obtain a particular healthcare service and the minor consents to the service;
2. When the minor obtains care at the direction of a court; or
3. When a parent agrees to a confidential relationship between the minor and the physician.

The policy on Privacy Rights of Minors should be referred to for additional guidelines.

C. Deceased Patients- There are two instances where a surviving family member can obtain the protected health information of a deceased relative:

1. Disclosures for treatment purposes- Decedents' protected health information may be disclosed for treatment purposes, without an authorization, to another healthcare provider.
2. Disclosures to one of the qualified persons listed in Section III.A.

D. Denials of Personal Representative's Rights

1. Access may be denied when its provision is reasonably likely to cause harm to the patient or another person.
2. Abuse, Neglect or Endangerment Situations- A personal representative may not be treated as such if a UPB staff member:
 - a. Has a reasonable belief that the patient has been, or may be, subjected to domestic violence, abuse or neglect by this person or treating this person as the personal representative could endanger the patient; and
 - b. In the exercise of professional judgment, decides that it is not in the best interests of the patient to treat this person as the patient's personal representative.

III. Procedure

The development of the procedure section is the responsibility of the respective practice. It is dependent upon the unique needs of each practice's operating structure and shall be advanced and customized accordingly.

- 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 §164.502(g), NY PHL §2980