

# UNIVERSITY PHYSICIANS OF BROOKLYN, INC.

## POLICY AND PROCEDURE

No: \_\_\_\_\_

**Subject:** USES & DISCLOSURES NOT  
REQUIRING PATIENT  
AUTHORIZATION

**Page** 1 **of** 7

**Prepared by:** Shoshana Milstein

**Original Issue Date:** **NEW**

**Reviewed by:** Renee Poncet

**Supersedes:** **NONE**

HIPAA Policy & Procedure  
Team

**Approval Date:** **11/02**

**Approved by:** HIPAA Oversight  
Committee

**Distribution:**

**Issued by:**

- I. **Purpose:** To establish a policy and procedure to ensure that permitted and required uses and disclosures can be made pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

### II. Definitions

**Correctional institution-** Any correctional facility, jail, reformatory, detention center or residential community program center for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody, including juvenile offenders, aliens awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses or others awaiting charges or trial.

**Health Oversight Agency-** A public or private agency or authority that is authorized by law to oversee the healthcare system, government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

**Inmate-** Person incarcerated in or otherwise confined to a correctional institution.

**Law Enforcement Official-** An officer or employee of any agency who is empowered by law to investigate and conduct an official inquiry into a potential

violation of the law or to prosecute and conduct a criminal, civil or administrative proceeding arising from an alleged violation of the law.

**Public Health Authority-** An agency or authority that is responsible for public health matters as part of its official mandate.

**Required By Law-** A mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law; including court orders, an administrative body authorized to require the production of information and Medicare conditions of participation and regulations.

**III. Policy:** UPB may use or disclose PHI without the patient's authorization in the following circumstances:

**A. Required By Law-** PHI may be used or disclosed to the extent that:

1. Such use or disclosure is required by law;
2. The use or disclosure complies with and is limited to the relevant requirements of such law.

**B. Public Health Activities-** PHI may be disclosed for public health activities to:

1. A public health authority, or a foreign government agency official acting in collaboration with a public health authority, authorized by law to collect or receive such information for the purpose of preventing or controlling a disease, injury or disability. This includes reporting diseases, injuries and conducting public health surveillance, investigations and interventions.
2. A public health authority or other government authority authorized by law to receive reports of child abuse or neglect.
3. A person, subject to the jurisdiction of the FDA, who is responsible for the activities relating to the quality, safety or effectiveness of an FDA- regulated product or activity, including:
  - a. Collecting or reporting adverse events, product defects and problems or biological product deviations;
  - b. Tracking FDA- regulated products;
  - c. Enabling product recalls, repairs, replacement or lookback (including locating and notifying patients who have received products that have been recalled);
  - d. Conducting post marketing surveillance.
4. A person who may have been exposed to a communicable disease or may be at risk of contracting or spreading the disease, if UPB or the public health authority is authorized by law to notify the person as part of the public health intervention or investigation
  - a. Under NYS law, physicians attending to patients with a communicable disease must inform the patient and any contacts of the precautions necessary to prevent the spread of the disease. Contacts are defined as:
    - i. A person who lives in the same premises as the patient; or
    - ii. A person who has been in such close, prolonged or repeated association with the patient as, in the opinion of the Department of Health, to risk contracting the communicable disease.
5. An employer about a patient who is a member of the employer's workforce, if the:

- a. Healthcare provider is a member of the employer's workforce or provides healthcare to the patient at the request of the employer:
  - i. To conduct an evaluation relating to medical surveillance of the workplace;
  - ii. To evaluate whether the patient has a work-related injury or illness.
- b. PHI consists of findings concerning a work-related injury or illness or a workplace related medical surveillance;
- c. Employer needs such findings in order to comply with its obligations to record such injury or illness or to carry out responsibilities for workplace medical surveillance; and
- d. Healthcare provider provides written notice to the patient that PHI relating to medical surveillance of the workplace and work-related injuries and illnesses is disclosed to the employer by:
  - i. Giving a copy of the notice to the patient at the time the healthcare is provided;
  - ii. Posting the notice in a prominent location at the site of the healthcare, if the care is provided on the worksite of the employer.

**C. Victims of Abuse, Neglect or Domestic Violence**

- 1. UPB may disclose PHI about a patient believed to be a victim of abuse, neglect or domestic violence to a government authority, including a social service or protective services agency authorized by law to receive such reports;
  - a. To the extent that the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of the law;
  - b. If the patient agrees to the disclosure; or
  - c. To the extent the disclosure is expressly permitted by regulation and:
    - i. The healthcare professional, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the patient or other potential victims; or
    - ii. The patient is unable to agree because of incapacity and a law enforcement or public official authorized to receive the report represents that:
      - The PHI is not intended to be used against the patient; and
      - An immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.
- 2. Upon making the disclosure, the healthcare professional must promptly inform the patient that such a report has been or will be made, except if the healthcare professional:
  - a. In the exercise of professional judgment, believes that informing the patient would place him/her at risk of serious harm; or
  - b. Would be informing a personal representative and it is reasonably believed that the personal representative is responsible for the abuse, neglect or other injury and informing the person would not be in the best interests of the patient.

**D. Health Oversight Activities**

1. UPB may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative or criminal investigations or proceedings; inspections, licensure or disciplinary actions; or other activities necessary for appropriate oversight of:
  - a. The healthcare system;
  - b. Government benefit programs for which health information is relevant to beneficiary eligibility;
  - c. Entities subject to government regulatory programs for which PHI is necessary for determining compliance with program standards; or
  - d. Entities subject to civil rights laws for which PHI is necessary for determining compliance.
2. A health oversight activity does not include instances where the patient is the subject of the investigation or activity and does not arise out of or directly related to:
  - a. The receipt of healthcare;
  - b. A claim for public benefits related to health;
  - c. Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

**E. Judicial and Administrative Proceedings-** UPB may disclose PHI in the course of any judicial or administrative proceeding:

1. In response to an order of the court;
2. Provided that only the PHI expressly authorized by the order is disclosed.

**F. Law Enforcement Purposes-** PHI may be disclosed:

1. As required by law (See Section III.A.) or in compliance with a court order (See Section III.E.);
2. In response to a law enforcement official's request for the purpose of identifying or locating a suspect, fugitive, material witness or missing person, provided that only the following information is disclosed:
  - a. Name and address
  - b. Date and place of birth
  - c. Social security number
  - d. ABO blood type and rh factor
  - e. Type of injury
  - f. Date and time of treatment
  - g. Date and time of death, if applicable; and
  - h. Description of distinguishing physical characteristics, including height, weight, gender, race, hair, eye color, presence or absence of facial hair (beard or moustache), scars and tattoos.
3. The request must be referred to the patient's healthcare provider for his/her release of the pertinent information.

PHI related to the patient's DNA or DNA analysis, dental records or typing, sampling or analysis of body fluids or tissue is **not permitted**.

3. In response to a law enforcement official's request about a patient who is or is suspected to be a victim of a crime, if:
  - a. The patient agrees to the disclosure;
  - b. The patient's agreement cannot be obtained because of incapacity or an

emergency circumstance and:

- i. Law enforcement official represents that the PHI is needed to determine whether a violation of the law by a person other than the victim has occurred and the information is not intended to be used against the victim;
  - ii. Law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient can agree to the disclosure; and
  - iii. In exercise of professional judgment, it is determined that the disclosure is in the best interests of the patient.
4. To a law enforcement official to alert him/her of the death of the patient if it is suspected that the death may have resulted from criminal conduct;
  5. To a law enforcement official that constitutes evidence of criminal conduct occurring on UPB's premises.
  6. To a law enforcement official to report a crime discovered during an offsite medical emergency to alert law enforcement to the:
    - a. Commission and nature of the crime;
    - b. Location of the crime or victims of the crime; and
    - c. Identity, description and location of the perpetrator of the crime.
- If the medical emergency is the result of abuse, neglect or domestic violence, Section III.C. should be followed.

#### **G. Decedents**

1. Coroners and medical examiners- PHI may be disclosed for the purpose of:
  - a. Identifying a deceased person;
  - b. Determining a cause of death;
  - c. Other duties required by law.
2. Funeral directors- PHI may be disclosed to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. PHI may be disclosed prior to and in reasonable anticipation of a patient's death.

**H. Cadaveric Organ, Eye or Tissue Donation-** PHI may be disclosed to organ procurement organizations or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating donation and transplantation.

#### **I. Averting Serious Threat to Health or Safety**

1. PHI may be disclosed when it is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or public and it is:
  - a. Disclosed to a person able to prevent or lessen the threat, including the target of the threat;
  - b. For law enforcement authorities to identify or apprehend a patient:
    - i. Because of a statement by a patient admitting participation in a violent crime that it is reasonably believed to have caused serious physical harm to the victim. The disclosure is not permitted if the information is learned:
      - In the course of treatment to affect the criminal conduct, counseling or therapy; or
      - Through the patient's request to be initiated or referred for treatment, counseling or therapy.

- ii. Where it appears that the patient escaped from a correctional institution or lawful custody.
- 2. UPB must act in good faith by basing the disclosure on actual knowledge of its own or credible representation of another individual; and
- 3. Only the following information may be disclosed:
  - a. Patient's statement admitting participation;
  - b. PHI delineated in Section III.F.2.

**J. Specialized Government Functions**

- 1. Military and veterans activities- PHI of Armed Forces and foreign military personnel may be disclosed to appropriate military command authorities to assure the proper execution of a military mission;
- 2. National security and intelligence activities or protective services for the President- PHI may be disclosed only to authorized federal officials.
- 3. Correctional institutions and other law enforcement custodial situations- PHI can be disclosed to a correctional institution or a law enforcement official of an inmate or other individuals in its lawful custody (who is not released on parole, probation or supervised release) that is necessary for:
  - a. The provision of healthcare to the patient;
  - b. The health or safety of the patient or other inmates;
  - c. The health or safety of the officers or employees of the correctional institution;
  - d. The health or safety of the officers or other people responsible for the transporting of inmates;
  - e. Law enforcement on the premises of the correctional institution; or
  - f. The administration and maintenance of the safety, security and good order of the correctional institution.

**K. Worker's Compensation-** PHI may be disclosed as authorized by and to the extent necessary to comply with laws relating to worker's compensation or other similar programs, established by law, that provide benefits for work-related injuries or illnesses without regard to fault.

**IV. Procedure:**

**A. Verification-** Verify the authority of unknown requestors before disclosing any information.

**B. Minimum Necessary-** Limit the PHI disclosed to the minimum necessary to accomplish the specified purpose.

**C. Accounting of Disclosures-** Document all disclosures so they can be properly accounted for when requested by the patient.

**V. 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.

**VI. Reasons for Revision:** Institutional/regulatory changes

**VII. Attachments:** None

**VIII. References:** Standards for Privacy of Individually Identifiable Health Information- 45 CFR Parts 160 and 164; 164.512