

# UNIVERSITY PHYSICIANS OF BROOKLYN

## POLICY AND PROCEDURE

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

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

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### 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. POLICY

It is the policy of UPB not to use or disclose PHI for purposes other than treatment, payment or healthcare operations (TPO) without a valid authorization, except under certain circumstances permitted or required by the Privacy Rule or other State or Federal law where University Physicians of Brooklyn may use or disclose PHI without the patient's authorization.

### III. DEFINITION

None

### 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. 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.

University Physicians of Brooklyn 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 diseased, injuries and vital events 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 University Physicians of Brooklyn or the public health authority is authorized by law to notify the person as part of the public health intervention or investigation

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- 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. University Physicians of Brooklyn 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:

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- 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. University Physicians of Brooklyn 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-** University Physicians of Brooklyn 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

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- 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**.

- 4. 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.
- 5. 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.
- 6. To a law enforcement official that constitutes evidence of criminal conduct occurring on SUNY Downstate's premises.
- 7. 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.

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3. PHI regarding a person who is deceased for more than 50 years is no longer protected information and can be used without authorization.

**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. Research-** PHI may be disclosed under the following circumstances:

1. The IRB Committee approved a waiver of authorization;
2. Review is preparatory to research;
3. Research is on decedent's information.

See HIPAA- 28, Uses and Disclosures for Research Purposes for further information.

### **J. 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. University Physicians of Brooklyn 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.

### **K. 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.

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- 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 of 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.
  
- L. **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.

**VI. ATTACHMENTS**

None

**VII. REFERENCES**

Standards for Privacy of Individually Identifiable Health Information- 45 CFR Parts 160 and 164; 164.512

| 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 |
|               |                                |      |  |