

PRIVACY POLICIES AND PROCEDURES

Use and Disclosure of PHI

Protected Health Information (“PHI”) may not be used or disclosed in violation of the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Rule (45 C.F.R. parts 160 and 164) (hereinafter, the “Privacy Rule”) or in violation of state law. The neuropsychologists employed by Joanne M. Hamilton, Psychologist, A Professional Corporation, and doing business as Advanced Neurobehavioral Health (hereinafter, the “Practice”) adhere to the HIPAA Privacy Rule.

As such, I am permitted, but not mandated, under the Privacy Rule to use and disclose PHI without patient consent or authorization in limited circumstances. However, state or federal law may supersede, limit, or prohibit these uses and disclosures.

Under the Privacy Rule, these permitted uses and disclosures include those made:

- To the patient
- For treatment, payment, or health care operations purposes, or
- As authorized by the patient.

Additional permitted uses and disclosures include those related to or made pursuant to:

- Reporting on victims of domestic violence or abuse, as required by law
- Court orders
- Workers’ compensation laws
- Serious threats to health or safety
- Government oversight (including disclosures to a public health authority, coroner or medical examiner, military or veterans’ affairs agencies, an agency for national security purposes, law enforcement)
- Health research

I do not use or disclose PHI in ways that would be in violation of the Privacy Rule or state law. I use and disclose PHI as permitted by the Privacy Rule and in accordance with state or other law. In using or disclosing PHI, I meet the Privacy Rule’s “minimum necessary requirement,” as appropriate.

Procedure Guidance

The procedures needed to protect PHI are included, consistent with this policy, in the next section, Minimum Necessary Disclosure.

Use and Disclosure of PHI—Minimum Necessary Requirement

When using, disclosing or requesting PHI, I make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. I

recognize that the requirement also applies to covered entities that request my patients' records and require that such entities meet the standard, as required by law.

The minimum necessary requirement does not apply to disclosures for treatment purposes or when I share information with a patient. The requirement does not apply for uses and disclosures when patient authorization is given. It does not apply for uses and disclosures as required by law or to uses and disclosures that are required for compliance with the Privacy Rule.

Procedure Guidance

- **Access to PHI:** Joanne M. Hamilton, PhD, and her employees have access to PHI to the extent required to carry out their job responsibilities.
- **Compliance with the Minimum Necessary Requirement:** PHI are only released with a signed consent form from the patient or patient's representative. Even when a signed consent is received, the patient or patient's representative is contacted to ensure that consent has not been revoked. Only neuropsychological reports are released unless mandated by the Court. No raw data is released to non-psychologists unless required by the Court.
- **Limitation of disclosure of PHI:** All non-routine disclosures require case-by-case evaluation. Specifically, Joanne Hamilton (or consulting neuropsychologist) contacts patient to understand the purpose of the release and exactly what information is needed.
- **Request for PHI:** I only request information pertaining to the referral question, for example brain imaging, recent progress notes, neurological progress notes. I will not use, disclose, or request an entire medical record, except when the entire medical record is justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

Use and Disclosure of PHI—Psychotherapy Notes Authorization

I abide by the Psychotherapy Notes authorization requirement of the Privacy Rule, unless otherwise required by law. In addition, authorization is not required in the following circumstances--

- For my use for treatment
- For use or disclosure in supervised training programs where trainees learn to practice counseling
- To defend myself in a legal action brought by the patient, who is the subject of the PHI
- For purposes of HHS in determining my compliance with the Privacy Rule
- By a health oversight agency for a lawful purpose related to oversight of my practice
- To a coroner or medical examiner
- In instances of permissible disclosure related to a serious or imminent threat to the health or safety of a person or the public.

I recognize that a patient may revoke an authorization at any time in writing, except to the extent that I have, or another entity has, taken action in reliance on the authorization.

Procedure Guidance

- **Psychotherapy Notes:** In the rare case that psychotherapy notes are kept, they are maintained in a file separate from the patient’s neuropsychological record.
- **Signed authorization:** All patients or their personal representatives provide authorization for release of the neuropsychological evaluation to the referring physician and other healthcare providers at the outset of the evaluation. If a patient revokes authorization before the report has been forwarded to the permitted entities, the patient is contacted and revocation is clarified. If the report has already been forwarded, the patient is provided with an account of which providers received a copy per the original authorization.
- **Steps taken to evaluate validity of authorization.** Each request for records is examined for the following:
 - Must be completely filled out with no false information.
 - May not be combined with another patient authorization.
 - Must be written in plain language.
 - Must contain a statement adequate to put the patient on notice of his or her right to revoke the authorization in writing and either exceptions to such right and a description of how to revoke, or a reference to revocation in the notice provided to the patient.
 - Must contain a statement adequate to put the patient on notice of the inability to condition treatment, payment, enrollment, or eligibility for benefits on the authorization.
 - Must contain a statement adequate to put the patient on notice of the potential for information to be redisclosed and no longer protected by the rule.
 - A description of the information to be used and disclosed that identifies the information in a specific and meaningful fashion.
 - The name or other specific identification of the person(s), or class of persons, authorized to make the requested use and disclosure.
 - The name or other specific identification of the person(s), or class of persons, to whom the requested use and disclosure will be made.
 - A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when a patient initiates the authorization and does not, or elects not to, provide a statement of the purpose.
 - An expiration date that relates to the individual or the purpose of the use or disclosure.
 - A signature (or if signed by a personal representative, a description of authority to sign) and date.
- Patients are provided a copy of the authorization.

Patient Rights—Notice

As required under the Privacy Rule, and in accordance with state law, I provide notice to patients of the uses and disclosures that may be made regarding their PHI and my duties and patient rights with respect to notice. I make a good faith effort to obtain written acknowledgment that my patient receives this notice. This is part of my consent process.

Procedure Guidance

- **Privacy officer:** Joanne M. Hamilton, PhD
- **Acknowledgement of Notice Form.**
 - I provide notice to my patients on the first date of the consultation. We review the consent form and privacy practices together. The patient acknowledges receipt of the privacy practices and the signed consent form is kept in the patient's folder.
 - Except in emergency situations, I make a good faith effort to obtain from a patient written acknowledgement of receipt of the notice. If the patient refuses or is unable to acknowledge receipt of notice, I document why acknowledgement was not obtained.
 - I promptly revise and distribute notice whenever there is a material change to uses and disclosures, patient's rights, my legal duties, or other privacy practices stated in the notice.
 - I make notice available in my office for patients to take with them and post the notice in a clear and prominent location.
- This Notice can be found on our website.

Patient Rights—Restrictions and Confidential Communications

The Privacy Rule permits patients *to request* restrictions on the use and disclosure of PHI for treatment, payment, and health care operations, or to family members. While I am not required to agree to such restrictions, I will attempt to accommodate a reasonable request. Once I have agreed to a restriction, I may not violate the restriction; however, restricted PHI may be provided to another health care provider in an emergency treatment situation.

A restriction is not effective to prevent uses and disclosures when a patient requests access to his or her records or requests an accounting of disclosures. A restriction is not effective for any uses and disclosures authorized by the patient, or for any required or permitted uses recognized by law.

The Privacy Rule also permits patients *to request* receiving communications from me through alternative means or at alternative locations. As required by the Privacy Rule, I will accommodate all reasonable requests.

Procedure Guidance

- **Requests to restrict the use and disclosure of information:** A request to restrict use and disclosure of information must be made to Joanne M. Hamilton, PhD, APC in writing. The document can be received via mail or fax.
 - I am not required to accommodate requests to restrict the use and disclosure of information, but once agreed upon, I may not violate the agreement.
 - Restricted PHI may be provided to another health care provider in an emergency treatment situation.
 - A restriction is not effective to prevent uses and disclosures when a patient requests access to his or her records or requests an accounting of disclosures.
 - A restriction is not effective for any uses and disclosures authorized by the patient, or for any required or permitted uses recognized by law.
- I permit patients *to request* receiving communications through alternative means or at alternative locations and I accommodate reasonable requests. I may not require an explanation for a confidential communication request, and reasonable accommodation may be conditioned on information on how payment will be handled and specification of an alternative address or method of contact.
- **Terminate of a restriction:** Restrictions can be terminated in writing and sent to Joanne M. Hamilton, PhD.

Patient Rights—Access to and Amendment of Records

In accordance with state law, the Privacy Rule, and other federal law, patients have access to and may obtain a copy of the medical and billing records that I maintain. Patients are also permitted to amend their records in accordance with such law.

Procedure Guidance

Patient Rights—Accounting of Disclosures

I provide my patients with an accounting of disclosures upon request, for disclosures made up to six years prior to the date of the request. While I may, I do not have to provide an accounting for disclosures made for treatment, payment, or health care operations purposes, or pursuant to patient authorization. I also do not have to provide an accounting for disclosures made for national security purposes, to correctional institutions or law enforcement officers, or that occurred prior to April 14, 2003.

Procedure Guidance

- **Requests for an accounting of disclosures:** Patients may request an account of disclosures by submitting a request in writing. The request must state the time period for which the accounting is to be supplied, which may not be longer than six years. The request must state whether the patient wishes to be sent the accounting via postal or electronic mail.

Tracking of, and processing, requests for disclosures:

- A written accounting will be provided. For each disclosure in the accounting--the date, name and address (if known) of the entity that received the PHI, a brief description of the PHI disclosed, and a brief statement of the purpose of the disclosure that “reasonably informs” the patient of the basis of the disclosure—is provided. In lieu of the statement of purpose, a copy of a written request for disclosure for any of the permitted disclosures in the Privacy Rule or by HHS for compliance purposes may be provided.
- Joanne Hamilton keeps a copy of the accounting and Kim Legoretta or Laura Hamilton are responsible for receiving and processing accounting requests.
- If multiple disclosures have been made for a single purpose for various permitted disclosures under the Privacy Rule or to HHS for compliance purposes, the accounting also includes the frequency, periodicity, or number of disclosures made and the date of the last disclosure.
- I provide an accounting within 60 days of a request, and that I may extend this limit for up to 30 more days by providing the patient with a written statement of the reasons for the delay and the date that the accounting will be provided.
- The first accounting is provided without charge. For each subsequent request I may charge a reasonable, cost-based fee. I will inform the patient of this fee and provide the patient the option to withdraw or modify his or her request.
- I must temporarily suspend providing an accounting of disclosures at the request of a health oversight agency or law enforcement official for a time specified by such agency or official. The agency or official should provide a written statement that such an accounting would be “reasonably likely to impede” activities and the amount of time needed for suspension. However, the agency or official statement may be made orally, in which case I will document the statement, temporarily suspend the accounting, and limit the temporary suspension to no longer than 30 days, unless a written statement is submitted.

Business Associates

I rely on certain persons or other entities, who or which are not my employees, to provide services on my behalf. These persons or entities may include accountants, lawyers, billing services, and collection agencies. Where these persons or entities perform services, which

require the disclosure of individually identifiable health information, they are considered under the Privacy Rule to be my business associates.

I enter into a written agreement with each of my business associates to obtain satisfactory assurance that the business associate will safeguard the privacy of the PHI of my patients. I rely on my business associate to abide by the contract but will take reasonable steps to remedy any breaches of the agreement that I become aware of.

Procedure Guidance

- I enter into and maintain a business associate contract with any person and entity that provides services on my behalf, which require the disclosure of individually identifiable health information.
- If I know of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the agreement, I will take reasonable steps to cure the breach. If such steps are unsuccessful, I will terminate the contract, or if termination is not feasible, I will report the problem to HHS.

Administrative Requirement—Privacy Officer

Policy

I am responsible for the development and implementation of the policies and procedures to protect PHI, in accordance with the requirements of the Privacy Rule. As the contact person for my practice, I receive complaints and fulfill obligations as set out in notice to patients.

Procedure Guidance

- I am the contact person for my office to receive complaints and fulfill obligations set out in notice to patients.

Administrative Requirement—Training

As required by the Privacy Rule, I train all members of my staff, as necessary and appropriate to carry out their functions, on the policies and procedures to protect PHI. I have the discretion to determine the nature and method of training necessary to ensure that staff appropriately protects the privacy of my patients' records.

Procedure Guidance

- I train all members of my staff, as necessary and appropriate to carry out their functions, on the policies and procedures to protect PHI.

- I train new members of my staff within a reasonable time after joining my staff. I provide training to staff whose function is impacted by a material change in the Privacy Rule within a “reasonable time” from the effective date of the material change.

Administrative Requirement—Safeguards

To protect the privacy of the PHI of my patients, I have in place appropriate administrative, technical, and physical safeguards, in accordance with the Privacy Rule.

Procedure Guidance

- All PHI is maintained in locked filing cabinets. Electronic versions of PHI (reports) are maintained on PIN protected computers with updated firewalls and virus detectors. Reports are stored on cloud servers with updated encryption. A signed business associates agreement is current.
- I reasonably safeguard PHI from any intentional or unintentional use or disclosure that would violate the Privacy Rule.
- I reasonably safeguard PHI to limit incidental uses or disclosures.

Administrative Requirement—Complaints

The privacy of my patients’ PHI is critically important for my relationship with my patients and for my practice. I provide a process for my patients to make complaints concerning my adherence to the requirements of the Privacy Rule.

Procedure Guidance

Procedure for a Complaint Process

1. Patients may file privacy complaints by submitting them in one of the following ways:
 - a. In person, using the Privacy Complaint form.
 - b. By mail, either on the Privacy Complaint form or in a letter containing the necessary information. All complaints should be mailed to:

Joanne M. Hamilton, PhD, APC
Attn: Privacy Officer
15644 Pomerado Road, Suite 305
Poway, CA 92064
 - c. By telephone at **858-693-3113**.
 - b. By fax at **858-312-8460**.
2. All privacy complaints should be directed to the **Joanne M. Hamilton, PhD**.

3. The complaint must include the following information:
 - a. The type of infraction the complaint involves
 - b. A detailed description of the privacy issue
 - c. The date the incident or problem occurred, if applicable
 - d. The mailing/email address where formal response to the complaint may be sent.

4. When a privacy complaint is filed by a patient the following process should be followed:
 - a. Validate the complaint with the individual.
 - c. If appropriate, attempt to correct any apparent misunderstanding of the policies and procedures on the patient's part; if after clarification, the patient does not want to pursue the complaint any further, indicate that "no further action is required." Record the date and time and file under dismissed complaints.
 - d. If not dismissed, log the complaint by placing a copy of the complaint form in both the complaint file and in the patient's record.
 - e. Investigate the complaint by reviewing the circumstances with relevant staff.
 - f. If it is determined that the complaint is invalid, send a letter stating the reasons the complaint was found invalid. File a copy of the letter and form in an investigated complaints file.
 - g. If the investigative findings are unclear, get a second opinion either from my lawyer, the APA Insurance Trust, or the APA Practice Organization.
 - h. If it is determined that the complaint is valid and linked to a required process or an individual's rights, follow the office sanction policy to the extent that an individual is responsible. If the complaint involves compliance with the standards that do not involve a single individual, then begin the process to revise current policies and procedures.
 - i. Once an appropriate sanction or action has been taken with respect to a complaint with merit, or if the response will take more than 30 days, send a letter explaining the findings and the associated response or intended response. Document the disposition of the complaint and file the letter and form in an investigated complaints file.
 - j. Place a copy of the complaint form in the patient's record.
 - k. Review both invalid and investigated complaint files periodically, to determine if there are any emerging patterns.

Administrative Requirement—Sanctions

I have and apply appropriate sanctions against a member of my staff who fails to comply with the requirements of the Privacy Rule or my policies and procedures. I may not apply sanctions against an individual who is testifying, assisting, or participating in an investigation, compliance review, or other proceeding.

Procedure Guidance

- The first infraction will result in a warning to the offending party and the warning will be placed in the employee's official folder. Additional training will be provided to the staff if the disclosure resulted from a misunderstanding of policy or lack of awareness of a policy.

- The second intentional infraction could result in further training or termination, depending on the nature of the infraction.

Administrative Requirement—Mitigation

Policy

I mitigate, to the extent possible, any harmful effect that I become knowledgeable of regarding my use or disclosure, or my business associate's use or disclosure, of PHI in violation of policies and procedures or the requirements of the Privacy Rule.

Procedure Guidance

If PHI is accidentally released, every effort will be undertaken to retrieve the information.

Administrative Requirement—Retaliatory Action and Waiver of Rights

I believe that patients should have the right to exercise their rights under the Privacy Rule. I do not take retaliatory action against a patient for exercising his or her rights or for bringing a complaint. Of course, I will take legal action to protect myself, if I believe that a patient undertakes an activity in bad faith.

I will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a patient for exercising a right, filing a complaint or participating in any other allowable process under the Privacy Rule.

I will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a patient or other person for filing an HHS compliance complaint, testifying, assisting, or participating in a compliance review, proceeding, or hearing, under the Administrative Simplification provisions of HIPAA.

I will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a patient or other person for opposing any act or practice made unlawful under the Privacy Rule, provided that the patient or other person has a "good faith belief" that the practice is unlawful and the manner of opposition is reasonable and does not involve disclosure of PHI.

I will not require a patient to waive his or her rights provided by the Privacy Rule or his or her right to file an HHS compliance complaint as a condition of receiving treatment.

Administrative Requirement—Policies and Procedures

To ensure that I am in compliance with the Privacy Rule, I have implemented policies and procedures to ensure compliance with the privacy rule.

Procedure Guidance

- My policies and procedures demonstrate my compliance with the Privacy Rule.
- I will promptly change my policies and procedures in accordance with changes to the Privacy Rule. I will promptly change the notice to my patients in accordance with changes to the Privacy Rule, unless the change does not materially affect the notice.

Administrative Requirement--Documentation

I meet applicable state laws and the Privacy Rule's requirements regarding documentation.

Procedure Guidance

- I maintain policies and procedures in written or electronic form.
- All written communication required by the Privacy Rule is maintained (or an electronic copy is maintained) as documentation.
- If an action, activity, or designation is required by the Privacy Rule to be documented, a written or electronic copy is maintained as documentation.
- Documentation is maintained in the patient's chart for a period of six years from the date of creation or the date when it last was in effect, whichever is later.