

Section 6	Compliance Policies	- Effective
Subject 6.2	Privacy and Disclosure	- Revised
<b>Policy 6.2.1</b>	<b>Use and Disclosure of PHI Based on Patient Authorization</b>	- Reviewed
		Compliance Office - Author

## Use and Disclosure of PHI Based on Patient Authorization

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### Audience

The information in this document applies to all UTMB faculty, staff, students, volunteers, and any other contractors or agents granted access to Protected Health Information (PHI).

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### Definitions

**Authorization:** An "authorization" allows for the use and disclosure of PHI for purposes other than Treatment, Payment, and health care Operations (TPO).

**Medical Record Custodian:** The person or department responsible for the maintenance, retention, access, data integrity, and data quality of PHI; including protecting patient privacy and providing information security, analyzing clinical data for research and public policy, preparing PHI for accreditation surveys, and complying with standards and regulations regarding PHI.

**Referring Physician:** The source behind a particular episode of health care. The referring physician may be the primary care physician, may be a faculty member, and may be the consulting physician to whom the primary care physician referred the patient.

**Case Management Record/Shadow Medical Record (CMR):** The medical record maintained by a specific physician or department, other than Health Information Management (HIM), that includes patient care information also included in the Unit Medical Record (UMR). A CMR does not contain any pertinent patient care information that cannot be found in the UMR. A CMR is considered a "convenience copy" only and has no record retention schedule.

**Unit Medical Record (UMR):** The UTMB medical record maintained by the HIM Department that is designed to contain a composite of all significant hospital and clinical information gathered on a given patient, whether as an inpatient, outpatient, or emergency care patient. Portions of the UMR may be housed at various locations throughout the UTMB system. The UMR has a permanent retention schedule.

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### **Policy**

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Confidentiality of health information is the right of each patient seeking health care through UTMB. All protected health information (both written and verbal) is strictly confidential. Use and disclosure of PHI based on patient authorization shall be done only after completion of a valid authorization and obtaining the patient's signature.

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### **Core Elements of a Valid Authorization**

A valid authorization must contain at least the following elements and must be written in plain language:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
2. The name or other specific identification of the person or class of persons, authorized to make the requested use or disclosure.
3. The name or other specific identification of the person or class of persons, to whom UTMB may make the requested use or disclosure.
4. Description of each purpose of the requested use and disclosure. The statement "at the request of the individual" is sufficient description when an individual initiates the authorization and does not, or elects not to, provide a statement of purpose.
5. An expiration date or event that relates to the authorization. Under Texas law, which is more restrictive than the HIPAA privacy regulations, an authorization is valid until the 180<sup>th</sup> day after the date it is signed unless the authorization provides otherwise or unless it is revoked.
6. A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization.
7. A statement that the information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer be protected by the HIPAA Privacy Regulations.
8. Signature of the individual and the date.

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### **Core Elements of a Valid Authorization (cont'd)**

9. If a personal representative of the individual signs the authorization, a description of individual's authority to act for the individual.
10. If the authorization is for marketing UTMB must include a statement acknowledging if direct or indirect remuneration is given to UTMB.

The authorization may contain elements or information in addition to the required elements, provided that such additional elements or information are not inconsistent with the required elements.

### **Compound Authorizations**

An authorization for use and disclosure of PHI may not be combined with any other document to create a compound authorization, except for the following.

1. An authorization for the use or disclosure of PHI created for research that includes the treatment of the individual may be combined as permitted by the HIPAA Research Policies.
2. An authorization for the use and disclosure of psychotherapy notes may only be combined with another authorization for use and disclosure of psychotherapy notes.

An authorization, other than that for a use and disclosure of psychotherapy notes, may be combined with any other such authorization unless UTMB has conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits as prohibited by the section outlining Conditional Authorizations.

### **Conditioning Treatment Upon an Authorization**

UTMB may not condition treatment on an authorization except in the event of:

1. Provision of research-related treatment upon receiving an authorization for such research.
2. Provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on the provision of an authorization to such third party (e.g., for life insurance or disability evaluation).

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### **Defective Authorizations**

An authorization is considered defective and invalid if any material information in the authorization is known to be false by UTMB or its employees or if any of the following defects exist:

1. The expiration date has passed or the expiration event is known by the covered entity to have occurred;
2. The authorization has not been filled out completely with respect to an element described as a core element;
3. The authorization is known by the covered entity to have been revoked;
4. The authorization violates the compound authorizations requirement or the prohibition of authorizations requirement.
5. Any material information in the authorization is known by UTMB to be false.

### **Authorizations Requiring Special Instructions**

#### **Authorizations and Psychotherapy Notes**

For specific rules governing the use and disclosure of psychotherapy notes, see IHOP Policy 6.2.7, *Use and Disclosure of Psychotherapy Notes*.

#### **Authorizations for Marketing and Fundraising Purposes**

For specific rules governing the use and disclosure of PHI for marketing and fundraising purposes, see IHOP HIPAA policies, Use and Disclosure of PHI for Marketing Purposes (policy #) or Use and Disclosure of PHI for Fundraising.

#### **Research Authorization**

For specific rules governing the use and disclosure of PHI for research purposes, see IHOP HIPAA policy, Use and Disclosure of PHI for Research Purposes (policy #).

#### **Revocation of Authorizations**

For specific rules governing the Revocation of Authorizations, see IHOP HIPAA policy, *Revocation of Authorization to Release PHI*.

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### **Authorizations Requiring Special Instructions (cont'd)**

**Personal Representatives, Minors, and Deceased Individuals** For information regarding who the proper person is to sign authorizations for the release of information about incapacitated individuals, minors, and deceased individuals, see IHOP Policy 6.2.3, *Uses and Disclosures of PHI by and for Personal Representatives, Minors, and Deceased Individuals*.

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### **Enforcement**

All supervisors are responsible for enforcing this policy. Individuals who violate this policy will be subject to the disciplinary process for faculty, staff, students, or volunteers.

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