

Section 6	Compliance Policies		- Effective
Subject 6.2	Privacy and Disclosure		- Revised
<b>Policy 6.2.3</b>	<b>Use and Disclosure by and for Personal Representatives/Minors and Deceased Individuals</b>	Compliance Office	- Reviewed - Author

## Use and Disclosure of PHI by and for Personal Representatives, Minors and Deceased Individuals

### 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).

### Definitions

**Personal representative:** any adult who has decision-making capacity and who is willing to act on behalf of a patient. A personal representative would include an individual who has authority, by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents, like those identified in documents like Medical Power of Attorney, or individuals designated by state law.

**Minor:** an individual under the age of 18 and has not been legally emancipated by a court and is:

1. not legally or previously married;
2. not serving in the armed forces;
3. not presently an offender in the Texas Department of Criminal Justice or other correctional facility; or
4. not at least 16 years old **and** living away from home and managing his or her own financial affairs.

### Policy

As a general rule, minors, incapacitated and deceased individuals must have a personal representative identified in order to provide acknowledgment of the *Notice of Privacy Practice* or *Authorization to Use and Disclose PHI*. For the purposes of this policy, UTMB must recognize a personal representative as the individual responsible for providing:

1. Acknowledgement of the receipt of the Notice of Privacy Practice, and
2. Authorization for any other use and disclosure of PHI (Policy 6.2.1, *Uses and Disclosures of PHI based on Patient Authorization*).

Note: UTMB does not have to recognize a personal representative as the individual if the personal representative is suspected of abusing, neglecting or endangering the individual.

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### **Emancipated Minors and Adults**

If a person has authority by law in making decisions related to use and disclosure of PHI on behalf of an individual who is an adult or an emancipated minor, UTMB will treat such person as a personal representative. Once a minor is emancipated, a guardian or a parent cannot be recognized as a personal representative.

Absent a legal document (e.g., a Medical Power of Attorney or formal guardianship documents), the following individuals, in order of priority, will have the right to act as the individual for HIPAA purposes. These individuals will have the ability to acknowledge the receipt of the Notice of Privacy Practices and provide authorization for release of PHI. This includes both providing the HIPAA acknowledgement based on *Policy #.#.# General Policy on Uses and Disclosures of PHI* and authorizing the release of PHI on behalf of the patient. The following individuals, in order of priority, are:

1. patient's spouse;
2. an adult child of the patient who has the waiver (agreement) and the consent of all other qualified adult children of the patient to act as the sole decision-maker;
3. a majority of the patient's reasonably available adult children;
4. patient's parent(s); or
5. the individual clearly identified to act for the patient (before the patient's incapacity), the patient's nearest living relative, or a member of the clergy.

For guidance on who may consent for medical treatment, see IHOP Policy 9.3.17, *Patient Consent-Overview and Basic Requirements*.

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### **Unemancipated Minors**

If a parent, guardian, or other person has authority by law to act on behalf of an individual who is an unemancipated minor in making decisions related to use and disclosure of PHI, UTMB must recognize such person as a personal representative. However if the parent, guardian, or other person assents to an agreement of confidentiality between UTMB and the minor, UTMB is no longer required to treat the patient, guardian or other person as the personal representative. If the minor has been emancipated, UTMB can no longer recognize the minor's personal representative, unless there is a reason other than minority justifying the appointment of a personal representative.

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### Unemancipated Minors (cont'd)

If a minor does not require the consent of an adult and may consent to treatment, as stated in IHOP Policy 9.3.18, *Consent for Treatment of a Minor*, the minor will be treated as an individual instead of the parent or guardian and may provide acknowledgement of the *Notice of Privacy Practice or Authorization to Release of PHI*.

Examples of where a minor, with authority by law, can act as an individual may include:

1. Diagnosis and treatment of a sexually transmitted disease
2. Family planning services
3. Some outpatient surgeries
4. Alcohol/drug abuse treatment
5. Abortion

If UTMB treats the unemancipated minor as an individual as described above, UTMB must follow state law to the extent state law either grants or prohibits parents, guardians, or other person acting in *loco parentis* access to the unemancipated minor's PHI. If UTMB treats the unemancipated minor as an individual as described above and state law does not address whether or not the parent, guardian, or other person acting in *loco parentis* has access to the minor's PHI. UTMB may make a decision regarding the release of the minor's PHI if the decision is made by a licensed health care provider exercising professional judgment.

### Abuse, Neglect, Endangerment Situations

Notwithstanding a state law or any requirement of this paragraph to the contrary, UTMB may elect not to recognize a person as the personal representative of a patient. If UTMB chooses not to recognize a person as a personal representative, UTMB must believe that it is not in the best interest to treat the person as the patient's personal representative **and** believes that one of the following conditions exist:

1. The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian or personal representative.
2. Treating such person as the personal representative could endanger the patient.

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### **Deceased Individuals**

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If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, UTMB must recognize such person as a personal representative under this policy.

Absent an executor, administrator or other court-appointed representative for the deceased individual's estate, the following individuals listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (no people in the category exist or still alive) before moving to the next category. Legal Affairs should be contacted for questions.

1. Spouse
  2. Adult children
  3. Adult grandchildren
  4. Parents
  5. Adult descendants of parents (brothers and sisters)
  6. Brothers and sisters' adult children
  7. Brothers and sisters' adult grandchildren
  8. Grandparents
  9. Adult descendants of grandparents (uncles and aunts)
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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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### **References**

Texas Health & Safety Code Ann. §241.153

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45 C.F.R. §164.502(g)

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