

<b>Institutional Handbook of Operating Procedures</b> <b>Policy 06.02.03</b>	
Section: Compliance Policy	Responsible Vice President: Sr VP and General Counsel
Subject: Privacy	Responsible Entity: Office of Institutional Compliance

**I. Title**

*Use and Disclosure of PHI by Personal Representatives of Minors, Incapacitated, and Deceased Individuals*

**II. Policy**

As a general rule, [minors](#), incapacitated, and deceased patients must have a [personal representative](#) who is authorized to execute an Authorization Form allowing for the use and disclosure of Protected Health Information (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 Practices, and
2. Authorization to use and disclose PHI from UTMB (Policy 6.2.1, *Uses and Disclosures of PHI Based on Patient Authorization*).

UTMB can elect to not treat a person as a personal representative of a patient, as outlined in a later section in this policy.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution.

**III. Emancipated Minors and Adults**

This policy does not address who may consent to treatment, for guidance on who may consent for medical treatment; see IHOP Policy 9.3.17, *Patient Consent-Overview and Basic Requirements*. If a person has been granted authority by law for making healthcare related decisions for an incapacitated patient who is an adult or an emancipated minor, UTMB must treat such person as a personal representative for all HIPAA Privacy Regulation purposes.

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 patient’s personal representative for HIPAA purposes. These individuals will have the ability to acknowledge the receipt of the Notice of Privacy Practices and provide authorization for use or disclosure of PHI. The following individuals, in order of priority, are:

1. A 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. A patient's parent(s); or
5. An 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.

#### **IV. Un-emancipated Minors**

If a parent, guardian, or other person has been granted authority by law to make healthcare related decisions for a patient who is an un-emancipated minor, UTMB must recognize this individual as the patient's 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.

In some circumstances, state law allows a minor to consent to on their own behalf to treatment for healthcare services. Examples of where a minor, with authority by law, can act as on their own behalf may include:

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

If the minor consents to their own treatment as stated above, UTMB must treat the un-emancipated minor as if they were not a minor and grant the minor the ability to acknowledge the receipt of the Notice of Privacy Practices and provide authorization for use or disclosure of PHI.

If a parent, guardian, or other person acting in *loco parentis* requests access to the un-emancipated minor's medical records, billing records, or healthcare provider for a situation discussed above, please contact the Department of Legal Affairs.

#### **V. Abuse, Neglect, and Endangerment Situations**

In some situations, UTMB may elect not to recognize a person as the personal representative of a patient. UTMB may, based on the professional judgment of a licensed healthcare professional, determine that it is not in the best interest of the patient to treat the person as the patient's personal representative. In such cases, UTMB must have a reasonable belief that:

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

#### **VI. Deceased Individuals**

UTMB must comply with all HIPAA requirements with respect to the PHI of a deceased individual except when the individual has been deceased more than 50 years. Otherwise, if under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased patient or of the patient'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 adult patient’s estate, certain individuals may authorize the release of PHI. In general, if there is a legal spouse, the spouse may do so. In the absences of a current spouse, an adult child, if there is one can give authorization, and if there are no children, the deceased’s parents. An entire category must be exhausted (no people in the category exist or still alive) before moving to the next category. If questions arise, contact the Department of Legal Affairs.

**VII. Relevant Federal and State Statutes**

[Texas Health & Safety Code Ann. §241.153](#)  
[45 C.F.R. §164.502\(g\)](#)

**VIII. Dates Approved or Amended**

<i>Originated: 04/11/2003</i>	
<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>
07/18/2013	03/03/2017

**IX. Contact Information**

Office of Institutional Compliance  
 (409) 747-8700