

## **PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION<sup>1</sup>** **NOTICE OF PRIVACY PRACTICES**

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.**

In December 2000, the Federal Government finalized Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164).

The Standards are complex, and there is no clear language or information which has been developed for professionals or for health care consumers to help you understand your privacy rights. I have done my best to understand the Standards and to inform you with this notice of your rights, limits to privacy, and my obligations. While these are government regulations, in some cases the ethical principles for psychologists and/or state (Tennessee) regulations regarding confidentiality and privileged communication may be more stringent than regulations outlined in the Health Insurance Portability and Accountability Act (HIPAA; the standards requiring this privacy notice), and my practice will adhere to the more stringent requirements for privacy. In fact, the Psychology Licensing Law in Tennessee provides extremely strong privileged communication protections for communication between a psychologist and client within a professional relationship, and this privilege is based upon attorney-client privilege.

HIPAA provides privacy protection of your personal health information, which is called “protected health information” (PHI), information that can personally identify you. PHI consists of three components: treatment, payment, and health care operations, and these terms (and others) are defined below.

### **Definitions:**

“PHI” means “Protected Health Information” and is that information in your psychological record that could identify you.

When using ‘I’ and ‘me’ in this Notice, this references your psychologist, Ed Nottingham, PhD, ABPP. ‘You’ and ‘your’ mean you and/or anyone who is legally allowed to act on your behalf.

“Individually identifiable health information” means information created or received about you that relates to your past, present or future health or payment for your health care and that

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<sup>1</sup>This form is based on the work of Gordon Herz, PhD, Ed Zuckerman, PhD, Lance Laurence, PhD, and the American Psychological Association’s online course entitled “HIPAA for Psychologists.” It has been modified to be consistent with my solo practice.

identifies you or for which there is a reasonable basis to believe the information can be used to identify you.

“Treatment” means providing, coordinating, or managing your care and related services including managing your care with a third party; consulting with other health care providers relating to your care; or receiving a referral from another health care provider to us for your care or our making a referral for your care to another health care provider. Examples include psychotherapy sessions, psychological testing, or talking to your primary care physician about your medication or overall medical condition.

“Payment” means activities I undertake to obtain reimbursement for your care. Examples include billing and collection activities, or providing information about your care to an insurance company which may be covering all or part of the cost of your services.

“Health care operations” are activities related to the performance of my practice such as quality assurance. In mental health care, one of the best examples of health care operations is when an insurance company or managed care company reviews treatment records or our work together to see if your care is “medically necessary,” and of course, this only applies if you are requesting that I file insurance for you. Other activities might include assessing the quality of my services and client outcomes, reviewing the competence or qualifications of staff or students (if applicable), arranging for my legal, accounting, and similar services, and business planning and development, and administrative activities of my practice. For example, I may compile overall statistics about clients with whom I work and treatment outcomes, and if I do, such data will not include any personally identifiable information.

“Use” refers to activities within my office. Examples include using your protected health information in order to file insurance claims, scheduling appointments, keeping records, and other tasks *within* my office related to your case. Since I am a solo practitioner and have no specific staff, I will not be sharing information that identifies you. Please note that the staff of the Executive Business Center (EBC) has no access to your information, files, or protected health information. The only information they have is that which you provide, e.g., your name, telephone number, etc., and the fact that you have an appointment with me. (This is also outlined in the Registration/Informed Consent document you read and signed when you began treatment.)

“Disclosure” refers to release of information or activities *outside* of my office such as releasing, transferring, or providing access to information about you to other individuals. An example would be my sending your records to your primary care physician after you have signed an authorization for me to do so.

### **Uses and Disclosures of PHI Requiring Authorization**

As noted, Tennessee requires authorization and consent for treatment, payment and healthcare operations. HIPAA does nothing to change this requirement in Tennessee. I may disclose PHI for the purposes of treatment, payment and healthcare operations with your consent. You have signed this general consent (Registration Form/Informed Consent) to care and authorization to conduct payment and health care operations that authorizes me to provide treatment and to conduct the administrative steps associated with your care (i.e., file insurance for you).

Additionally, if you ever want me to send any of your protected health information of any sort to anyone outside my office, you will always first sign a specific **authorization** to release information to this outside party. A copy of that authorization form is available upon the request. The requirement that you sign an additional authorization form is an added protection to help insure your protected health information is kept strictly confidential. An example would be if you requested me to speak with or release records to your primary care physician.

An “authorization” is a written document describing the information to be released, to whom the information is being released, for what purpose the release is made, the length of time the authorization is valid (e.g., one year), and is signed by you and witnessed. You may, in writing, revoke all authorizations to disclose protected health information at any time. You cannot revoke an authorization for an activity already done that you instructed me to do or if the authorization was secured as a condition for obtaining insurance and Tennessee law provides the insurer the right to contest the claim under the policy. Should you wish to revoke an authorization needed to pursue third party reimbursement, no future claims would be filed, and you would be responsible for all financial obligations, and if you no longer desire that I provide the insurance company/managed care company (MCO) with **ANY** information, you would also be responsible for those services that the insurance company/MCO refused to pay due to the lack of needed information. (Note that if the consent involved an MCO and the consent/authorization were revoked, any discounted fees associated with the MCO contract would no longer apply; that is, my usual and customary fee would become effective.)

There is another, special authorization provision potentially relevant to the privacy of your records: **psychotherapy notes**. In recognition of the importance of the confidentiality of conversations between psychologist and client/patient in treatment settings, HIPAA permits keeping separate "psychotherapy notes" separate from the overall "designated medical record." "Psychotherapy notes" cannot be secured by insurance companies nor can they insist upon their release for payment of services as has unfortunately occurred over the last two decades of managed mental health care. Under HIPAA Regulations, “*Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session **and that are separated from the rest of the individual’s medical record**. *Psychotherapy notes* **excludes** medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date” (45 C.F.R. § 164.501 (65 Fed. Reg. At 82805) (emphasis added).

Any “psychotherapy notes” I may maintain would not be considered part of a “medical record,” are for my use only, and I may deny access to these (unless forced to respond to a court order). Otherwise, medication prescription and monitoring (which applies to MDs, not to my practice other than my notation of such prescriptions), counseling session start and stop times, modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date **are** maintained in your record, and you may request access to and disclosure of this protected health information.

### **Uses and Disclosures Not Requiring Consent Nor Authorization**

Circumstances and laws exist in which I am required to release or use PHI without your consent or authorization including:

- **Child Abuse:** Citizens of Tennessee including health care professionals are required by law to report knowledge of child abuse or neglect to the TN Department of Children's Services (DCS), or other agencies/officials as outlined in TN statutes (e.g., a judge having juvenile jurisdiction, office of the sheriff, or chief law enforcement official of the municipality where the child resides).
- **Suspected sexual abuse of a child:** Tennessee law requires that if there is suspicion of child sexual abuse, this must be reported (to DCS, etc.) regardless of whether the child has sustained any injury.
- **Adult and Domestic Abuse:** Tennessee Code includes provides for Adult Protective Services that requires reporting if there is reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, and such reports are made to the TN Department of Human Services. An example of adult abuse (71-6-102) might be abuse that occurred in a nursing home, while domestic abuse (36-3-621) might be found in cases of domestic violence. TCA 36-3-621 is voluntary (versus mandatory) reporting and may be done without disclosing the name or identity of the client/patient.
- **Judicial or Administrative Proceedings:** Communication between a client and a TN-licensed psychologist is not only confidential and private, but also considered a "privileged communication." Consequently, such information can only be released if you have provided a written authorization *or* a court order has been issued. Privilege would not apply if you were being evaluated for a third party or if the evaluation were court ordered (e.g., child custody evaluations), but if such were the case, I would inform you of these circumstances.
- **Health Oversight:** Should a complaint be filed against me with the TN Board of Examiners in Psychology, the Board can subpoena confidential mental health information from me relevant to that complaint, and I would be required to release that information.
- **Serious Threat to Health or Safety:** If an actual threat of bodily harm is made against a clearly identified victim, or if you are threatening to harm or kill yourself, and if I determine or should have determined that you have the apparent ability to commit such an act and are likely to do so unless prevented from doing so, I am required to take reasonable steps to predict, warn of, or take precautions to protect the identified victim (or yourself) from such violent behavior. This is Tennessee's "Duty to Warn" Law and is also associated with national security threats.
- **Workers' Compensation:** Although rarely applicable to my practice, in the event that you file a worker's compensation claim and I am providing psychological care that is relevant to that claim, I am required if requested to provide the insurance company or your employer and to you a complete report regarding the claimed injury. Further, this report would address the effect upon you, the treatment prescribed, estimated duration of treatment, and a statement of charges.

As noted, I have a specific form to be used for your written authorization to use or disclose your health information. Just ask for this form if you want information disclosed to you or to another

person, or contact me if you want to authorize disclosure after you have finished with your treatment here so that this form can be mailed to you or you can stop by in order to complete and sign the release form. Please note, in the event a release form is mailed to you, I request that this form be signed and notarized in order to confirm that the signature is in fact yours.

### **Business Associates Disclosures**

HIPAA requires that I train and monitor the conduct of those performing ancillary administrative services for my practice and refers to these people as "Business Associates." In my practice, "business associates" include **only** the staff of Executive Business Center, Inc. (EBC), from whom I rent my office space and utilize the shared waiting room area and Signius Communications, my "live" telephone answering service. As noted in my general registration/consent form, the staff of EBC does not have access to any PHI information, other than that information which you provide when you call asking to speak to me, request to leave a message, or initially called to make an appointment. It is possible that an emergency situation might arise in which I requested that the EBC staff call you regarding an appointment if I needed to cancel or rescheduled an appointment due to a family emergency of some sort. Otherwise, I handle actual scheduling of appointments, filing insurance, etc., have no "clerical staff," all "paper records" are in file drawers locked when I leave my office, etc.

My answering service, Signius, in taking such messages, may be provided with protected health information including but not limited to: client's name, telephone numbers, nature of the call, status as a client of Dr. Nottingham, the fact that the call represents a clinical emergency with specific information, etc. As noted above, you would be providing this PHI, and I do not generally provide any information about clients to Signius. (Although it has not happened, an exception might be if I had special concerns about an individual, and called and requested that Signius staff call, rather than page, me immediately if a call is received from a certain person.)

### **Client's Rights and Psychologist's Duties**

#### **Client's Rights:**

You have a right to the following:

- The right to request restrictions on certain uses and disclosures of your protected health information which I may or may not agree to but if I do, such restrictions shall apply unless our agreement is changed in writing;
- The right to receive confidential communications by alternative means and at alternative locations. For example, you may not want your bills sent to your home address so I will send them to another location of your choosing;
- The right to inspect and copy of your protected health information in my designated mental health record set and any billing records for as long as protected health information is maintained in the record;
- The right to amend material in your protected health information, although I may deny an improper request and/or respond to any amendment(s) you make to your record of care.
- The right to an accounting of nonauthorized disclosures of your protected health information;

- The right to a paper copy of notices/information from me, even if you have previously requested electronic transmission of notices/information; and
- The right to revoke your authorization of your protected health information except to the extent that action has already been taken.

### **Psychologist's Duties:**

- I am required by law to maintain the privacy of PHI and to provide you with a notice of my legal duties and privacy practices with respect to PHI.
- I reserve the right to change the privacy policies and practices described in this notice. Unless I notify you of such changes, however, I am required to abide by the terms currently in effect.
- If I revise my policies and procedures, I will post notice of this change on my website ([www.DrEdNottingham.com](http://www.DrEdNottingham.com)) as well as a notice in my office. Should a change occur and I receive a request for PHI, I will contact you to discuss the request and any impact of the policy change.

### **Complaints**

As a solo practitioner, I am the appointed "Privacy Officer" for my practice per HIPAA regulations. If you are concerned that I have violated your privacy rights, or you disagree with a decision I made about access to your records, you may contact me (Ed Nottingham, PhD, ABPP, 901.818.5410), and/or you may also send a written complaint to the Secretary of the U.S. Department of Health and Human Services. Complaints can be filed online at <http://cms.hhs.gov/hipaa/hipaa2/default.asp>, and can be mailed to: HIPAA Complaint, 7500 Security Blvd., C5-24-04, Baltimore, MD 21244.

### **Effective Date, Restrictions and Changes to Privacy Policy**

This notice will go into effect on 14 April 2003.