

**PROFESSIONAL DISCLOSURE STATEMENT FOR
MARTHA R. DURHAM, PhD, LLC
and
CLIENT RIGHTS UNDER HIPAA**

**THIS NOTICE DESCRIBES HOW YOUR MENTAL HEALTH RECORDS MAY BE USED AND
DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION
PLEASE READ**

I. Preamble

The Psychology Licensing Law provides extremely strong privileged communication protections for conversations between you and your therapist in the context of your established professional relationship. There is a difference between privileged conversations and documentation in your mental health records. Records are kept documenting your care as required by law, professional standards, and other review procedures. HIPAA very clearly defines what kind of information is to be included in your “designated medical record” as well as some material, known as “Psychotherapy Notes,” which is not accessible to insurance companies and other third-party reviewers and, in some cases, not to the client himself/herself.

HIPAA provides privacy protection about your personal health information, which is called “protected health information” (PHI), which could personally identify you. PHI consists of three (3) components: *treatment, payment, and health care operations.*

Treatment refers to activities in which I provide, coordinate, or manage your mental health care or other services related to your mental health care. Examples include a psychotherapy session, psychological testing, or talking to your primary care physician about your medication or overall medical condition.

Payment is when I obtain reimbursement for your mental health care. The clearest example of this parameter is filing insurance on your behalf to help pay for some of the costs of the mental health services provided for you.

Health care operations are activities related to the performance of my practice such as quality assurance. In mental health care, the best example of health care operations is when utilization review occurs, a process in which your insurance company reviews our work together, to see if your care is “really medically necessary.”

The *use* of your PHI refers to activities my office conducts for filing your claims, scheduling appointments, keeping records, and other tasks *within* my office related to your care. *Disclosures* refer to activities you authorize which occur *outside* my office, such as sending of your PHI to other parties (i.e., your primary care physician, the school your children attend, etc.).

II. Uses and Disclosures of Protected Health Information Requiring Authorization

South Carolina requires authorization and consent for treatment, payment, and healthcare operations. HIPAA does nothing to change this requirement by law in South Carolina. I may disclose PHI for the purpose of treatment, payment, and healthcare operations with your consent. You have signed this general consent to care and authorization to conduct payment and healthcare operations, authorizing me

to provide treatment and to conduct administrative steps associated with your care (i.e., file insurance for you). Additionally, if you ever want me to send any of your PHI 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 request. The requirement of you signing an additional authorization form is an added protection to help ensure your PHI is kept strictly confidential. An example of this type of release of information might be your request that I talk to your child's schoolteacher about his/her ADHD condition and what this teacher might do be of help to your child. Before I talk to that teacher, you will have to have first signed the proper authorization for me to do so. There is a third, special authorization provision potentially relevant to the privacy of your records: my psychotherapy notes. In recognition of the importance of the confidentiality of conversations between therapist and client 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. "Psychotherapy notes" are *my* notes "recorded in any medium by a mental health provider documenting and analyzing the contents of a conversation during a private, group, or joint family counseling session and that are separate from the rest of the individual's medical record." "Psychotherapy notes" are not the same as "progress notes," which provide the following information about your care each time you have an appointment at my office: medication prescriptions and monitoring, assessment/treatment start and stop times, the modalities of care, frequency of treatment, results of clinical tests, and any summary of your diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date. Certain payers of care, such as Medicare and Worker's Compensation, require the release of both your progress notes and my psychotherapy notes in order to pay for your care. If I am forced to submit your psychotherapy notes in addition to your progress notes for reimbursement for services rendered, you will sign an additional authorization directing me to release my psychotherapy notes. Most of the time I will be able to limit reviews of your PHI to only your "designated record set," which includes the following: all identifying paperwork you completed when you first started your care here, all billing information, a summary of our first appointment, your mental status examination, your individualized, comprehensive treatment plan, your discharge summary, progress notes, reviews of your care by managed care companies, results of psychological testing, and any authorization letters or summaries of care you have authorized me to release on your behalf. Please note that the actual test questions or raw data of psychological tests which are protected by copyright laws and the need to protect clients from unintended, potentially harmful use, are not part of your "designated mental health record." You may, in writing, revoke all authorizations to disclose your protected health information at any time. You cannot revoke an authorization for an activity already done that you instructed me to do or if authorization was obtained as a condition for obtaining insurance and South Carolina law provides the insurer the right to contest the claim under the policy.

III. 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 my secretaries who provide services such as typing, making phone calls, and filing insurance claims - all activities which may bring them into some measure of contact with your PHI. My clerical staff does periodically have access to those sections of your designated medical record that contains the particulars of your mental health concerns. The only other "business associates" in my office are the cleaning crews. In compliance with HIPAA, I have a signed formal contract with these business associates, which very clearly spells out to them the importance of them protecting your mental health information as an absolute condition for employment. I train them in my privacy practices, monitor their compliance, and correct any errors, if they should occur.

IV. Uses and Disclosures Not Requiring Consent or Authorization

By law, PHI may be released without your consent or authorization under the following conditions:

- Child abuse
- Suspected sexual abuse of a child
- Adult and domestic abuse
- Health oversight activities (i.e., Licensing Board for Psychology in South Carolina)
- Judicial or administrative proceedings (i.e., if you are ordered here by the court for an independent child custody evaluation in a divorce)
- Serious threat to health or safety (i.e., our “Duty to Warn” Law, national security threats, etc.)
- Worker’s Compensation claims (if you seek to have your care reimbursed under Worker’s Compensation, all of your care is automatically subject to review by your employer and/or insurers)

I never release any information of any sort for marketing purposes.

V. Client’s Rights and My Duties

You have a right to the following:

- *The right to request restrictions* on certain uses and disclosures of your PHI, 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 your PHI* in my designated mental health record set and any billing records for as long as PHI is maintained in the record
- *The right to amend material in your PHI*, although I may deny any improper request and/or respond to any amendment(s) you make to your record of care
- *The right to an accounting of unauthorized disclosures* of your PHI
- *The right to a paper copy of notices/information* from me, even if you have previously requested electronic transmission of notices/information
- *The right to revoke your authorization* of your PHI except to the extent that action has already been taken

For more information on how to exercise each of these rights, please do not hesitate to ask me for further assistance on these matters. I am required by law to maintain privacy of your PHI and to provide you with a notice of your Privacy Rights and my duties regarding your PHI. I reserve the right to change my privacy policies and practices as needed with these current designated practices being applicable unless you receive a revision of my policy when you come for your future appointments. My duties as a therapist in these matters include maintaining the privacy practices with respect to your PHI and to abide by the terms of this notice unless it is changed, and you are so notified. If for some reason you desire a copy of my internal policies for executing privacy practices, please let me know and I will get you a copy of these documents I keep on file for auditing purposes.

VI. Complaints

I, Martha R. Durham, PhD, am the appointed “Privacy Officer” for my practice per HIPAA regulations. If you have any concerns that my office may have somehow compromised your privacy rights, please do not hesitate to speak to me immediately about this matter. You will always find me willing to talk to you

about preserving the privacy of your protected mental health information. You may also send a written complaint to the Secretary of the U.S. Department of Health and Human Services.

VII. Effective Date

This notice shall go into effect August 5, 2020 and remain so unless new notice provisions effective for all protected health information are enacted.