

SUNY DOWNSTATE MEDICAL CENTER
POLICY AND PROCEDURE

No: HIPAA- 37

Subject: Privacy of Psychotherapy Notes

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Distribution: **Administrative Manual**
 Department Manual
 Patient Care Manual
 AOD Manual

I. Purpose:

Psychotherapy notes receive special protections under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The purpose of this policy is to differentiate the records considered to be “psychotherapy notes” versus those that are “behavioral medicine clinical notes” and to ensure that the appropriate protocols are followed for each type of record.

II. Policy:

It is SUNY Downstate Medical Center’s policy that psychotherapy notes should be given heightened privacy protection because of the sensitivity of their contents and the atmosphere of trust between therapist and patient that is required for effective psychotherapy. This policy lists the situations in which psychotherapy notes may be used or disclosed without patient authorization. *Except in the specific situations listed below, patient authorization is required before using or disclosing these notes.* In addition, patients are not permitted to access or amend psychotherapy notes.

III. Definitions

Psychotherapy Notes- Psychotherapy notes are notes by a mental health professional that document or analyze the contents of a conversation during a private counseling session – or during a group, joint, or family counseling session. The notes capture the mental health professional’s impressions about a patient and contain details of the psychotherapy conversation considered to be inappropriate for inclusion in the medical record. Such notes are intended to be used by the mental health professional to help him or her recall the therapy discussion and are of little or no use to others not involved in the therapy. Information in these notes is not intended to communicate to, or even be seen by, persons other than the mental health professional who created them. These notes are, therefore, kept separate from the rest of the patient’s medical record.

Behavioral Medicine Clinical Notes- Mental health records that are included in the patient’s medical record and are necessary for the proper treatment of the patient or the payment and healthcare operations of SUNY Downstate Medical Center do NOT qualify for the special protections given to psychotherapy notes. This includes:

- Medication prescription and monitoring;
- Counseling session start and stop times;
- Modalities and frequencies of treatment;
- Results of clinical tests;

- Any summaries of the patient's diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date; and
- Any mental health information typically needed for treatment, payment, or health care operations.

IV. Responsibilities:

This policy applies to all medical staff members and SUNY Downstate staff members who provide mental health services. Medical staff members include physicians as well as allied health professionals such as psychotherapists. SUNY Downstate staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the medical center.

V. Guidelines

A. Maintenance of Psychotherapy Notes in Paper & Electronic Records

If mental health professionals keep psychotherapy records, those professionals are expected to maintain any and all psychotherapy notes separate from the patient's medical record. Only such notes are entitled to the special protections set forth in this policy. If for any reason psychotherapy notes are inadvertently included in the patient's medical record, they will no longer be subject to the protections of this policy. Hospital staff should likewise make all reasonable efforts to ensure that these notes are not mistakenly included in the patient's medical record. When utilizing an electronic record system, psychotherapy notes must be entered in a separate section that is not part of the designated record set. Information in a designated record set is subject to ordinary privacy protections which generally (1) permit use and disclosure for treatment, payment and the hospital's health care operations as long as the hospital has obtained a patient's general written consent, and (2) permit patient access unless denied for another ground under the hospital's policies. Medical staff and hospital staff providing mental health services should use and disclose these records in accordance with hospital policies concerning the privacy of all other types of protected health information about patients.

B. Use & Disclosure of Psychotherapy Notes

1. Patient Authorization Not Required

- a. **Creator of Notes-** Psychotherapy notes may be used by the mental health professional who created them in order to treat a patient who is the subject of the notes.
 - i. A mental health professional is not permitted, however, to use *another* mental health professional's psychotherapy notes in order to provide treatment to a patient, even if the other mental health professional is a member of the hospital's medical staff or hospital staff.
 - ii. The creator of the psychotherapy notes is also not permitted to use them for payment or health care operations (except for training discussed below). The patient's specific authorization for such uses and disclosures is required.
- b. **Students and Trainees-** Psychotherapy notes may be used by, or disclosed to, students, trainees, or practitioners in mental health who are learning under supervision to practice or improve their skills in group, joint, family, or individual counseling.

- i. A mental health professional, however, is not permitted to share his or her psychotherapy notes with medical students or trainees who are *not* in training to provide mental health services. For example, a mental health professional may not share his or her psychotherapy notes with a medical student interning generally in the emergency department of the hospital.
- c. **Threat to Health or Safety-** Psychotherapy notes may be used or disclosed when a mental health professional who created the notes determines that such use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, so long as any disclosure is made to a person who is reasonably able to prevent or lessen the threat.
- d. **Legal Action-** Psychotherapy notes may be used or disclosed to defend a legal action or other proceeding brought by the patient against the creator of the notes, SUNY Downstate or a SUNY Downstate staff member. This includes disclosures to outside legal counsel.
 - i. This exception does not permit the use or disclosure of psychotherapy notes in a legal action brought by the patient against another health care provider outside SUNY Downstate.
 - ii. This exception also does not permit the use or disclosure of psychotherapy notes to defend the creator of the notes or SUNY Downstate or its staff in a legal action brought by someone other than the patient who is the subject of the psychotherapy notes.
- e. **Required By Law-** Psychotherapy notes may be used or disclosed without patient authorization when such use or disclosure is required by law.
- f. **Health Oversight Agencies-** Psychotherapy notes maintained by the hospital may be used or disclosed without patient authorization when such use or disclosure is required to provide information requested by the United States Department of Health and Human Services in order to investigate whether the hospital or the mental health professional who created the notes has complied with federal health information privacy regulations.
- g. **Medical Examiners and Coroners-** Psychotherapy notes may be used or disclosed when such use or disclosure is necessary to provide information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law.

2. Patient Authorization Required

- a. **Patient Authorization Form-** In all other cases, SUNY Downstate's Authorization Form for Psychotherapy Notes is required to be completed by the patient before using or disclosing psychotherapy notes. This authorization is specific to psychotherapy notes and is in addition to any other consent or authorization the patient must provide to use or disclose his or her other health information.
- b. **Prohibition on Combining HIPAA Authorization Forms-** Staff may *not* combine a patient's specific authorization to use or disclose psychotherapy notes with any other document except for another authorization to use and disclose psychotherapy notes.

C. Patient Access & Amendment

- 1. **Patient Requests for Access-** Patients shall not be granted access to psychotherapy notes. The Health Information Management (HIM) Department should deny such a request, in accordance with SUNY Downstate’s Policy HIPAA-17, “Patient Requests for Access”.
- 2. **Patient Requests for Amendment-** Patient requests for amendment of psychotherapy notes should be denied by the HIM personnel in accordance with SUNY Downstate’s Policy HIPAA- 19, “Patient Requests for Amendment”.

VI. Attachments

Authorization Form for Psychotherapy Notes

VII. References

45 C.F.R. § 164.501, 45 C.F.R. § 164.508

Date Reviewed	Revision Required (Circle One)		Responsible Staff Name and Title
	Yes	(No)	
01/17	Yes	(No)	Shoshana Milstein /AVP, Compliance & Audit

HIPAA AUTHORIZATION FOR PSYCHOTHERAPY NOTES

Check the name of the person/organization disclosing the information:		
<input type="checkbox"/> University Hospital of Brooklyn – Main Campus	<input type="checkbox"/> SUNY Downstate Medical Center at Bay Ridge	<input type="checkbox"/> Student/Employee Health
<input type="checkbox"/> University Hospital of Brooklyn – Lefferts	<input type="checkbox"/> University Hospital of Brooklyn – Dialysis Center	<input type="checkbox"/> Other; Specify _____
<input type="checkbox"/> University Hospital of Brooklyn – Midwood	<input type="checkbox"/> Research Foundation (RF)	
Patient Last Name, First Name: _____ Maiden or Other Name: _____ Patient Date of Birth: _____		
Patient Address: _____		
City, State & Zip: _____	Telephone: (Area Code and Number) _____	Medical Record Number: _____
Name, address and telephone number of person or entity to whom this information will be sent: _____		
Specific psychotherapy notes to be disclosed: -----		
This information is being used or disclosed for the following purposes:		
	<input type="checkbox"/> Treatment <input type="checkbox"/> Legal <input type="checkbox"/> Other: _____	
<ul style="list-style-type: none"> • By signing this authorization form, you authorize the use or disclosure of your protected health information as described above. This information may be re-disclosed if the recipient(s) described on this form is not required by law to protect the privacy of the information. • You have a right to refuse to sign this authorization. Your healthcare, the payment for your healthcare and your healthcare benefits will not be affected if you do not sign the form. • You have a right to receive a copy of this form after you sign it. • You have the right to revoke this authorization at any time, except to the extent that action has already been taken based upon your authorization. To revoke this authorization, please write to: SUNY Downstate Medical Center, Department of Health Information Management Correspondence Unit – Box #119, 450 Clarkson Avenue, Brooklyn, NY 11203 		
I understand that this authorization will expire in 6 months from the date this form is signed, unless otherwise stated below: Expiration Date/Event: _____		
By signing below, I certify that I am requesting disclosure of my health information in the manner described above.		
_____ Print Name of Patient/Personal Representative	_____ Signature of Patient/Personal Representative	
_____ Description of Personal Representative's Authority	_____ Date	

THE PATIENT OR HIS/ HER PERSONAL REPRESENTATIVE SHOULD BE PROVIDED WITH A COPY OF THIS FORM AFTER IT HAS BEEN SIGNED.