

## **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 THIS NOTICE CAREFULLY**

**Effective Date: September 1, 2019**

#### **My Duty Regarding Your Health Information:**

This Notice of Privacy Practices (this “*Notice*”) is provided by Lyss (Alyssa) de la Torre, LPCC, LPC (“*Counselor*”). Any questions related to this Notice may be directed to Counselor.

With limited exceptions, information about you and your health is confidential. Confidential information includes all individually identifiable information, whether in electronic or physical form, that is in my possession or is derived from information you share in confidence with me regarding your past medical or mental health history, a current or potential future mental or physical health condition, your mental or physical health treatment or payment for treatment. More specifically, the health information I create and maintain in my possession is information that relates to your participation in outpatient counseling with a licensed professional clinical counselor. All such information is “*Confidential Information.*” Your Confidential Information is sometimes referred to as “Protected Health Information” or “PHI.” I am committed to protecting the privacy of this information. This notice tells you about some of the ways in which I may use and disclose health information about you, as well as certain obligations I have regarding the use and disclosure of your health information. It also describes your rights regarding your health information.

#### **My Responsibilities:**

It is my responsibility to safeguard your health information. I am also required to give you this Notice and to follow the terms of the Notice currently in effect. I will notify you if I become aware of an unauthorized access, use or disclosure of your health information.

#### **Changes to this Notice:**

I reserve the right to change this Notice at any time. I reserve the right to make the revised or changed notice effective for health information I already have about you as well as any information I receive in the future. I am providing you with a copy of this Notice as part of your initial intake documentation.

#### **How I Protect Your Confidential Information:**

I will protect your Health Information by:

- Treating all information about you that I collect as confidential. This means that with limited exceptions, as discussed below, I will not share your information with anyone without your consent or written authorization; and when I am either permitted or required to share your Confidential Information, whether with or without your written authorization, I will disclose only the minimum information necessary under the circumstances.
- Restricting access to your Health Information to those clinical staff only who have a legitimate need for access in order to provide services to you;
- Only disclosing when required or permitted, that information which is necessary under the circumstances;

- Obtaining reasonable assurances in writing through a Business Associate Agreement with any outside services or other business associates which I may use in order to provide you with services or conduct necessary business operations; and
- Maintaining physical, electronic, and procedural safeguards to comply with federal and state regulations guarding your Health Information. More specifically, I will maintain your health information using a HIPAA compliant electronic health record (“*EHR*”) which complies with state and federal laws requiring the protection and security of patient information. These laws include California’s Confidentiality of Medical Information Act, and the federal Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”) and its implementing regulations including the federal privacy, security and enforcement rules, the Health Information Technology for Economic and Clinical Health Act of 2009 (“*HITECH*”) and its implementing regulations including the Breach Notification Rule, and the HIPAA Omnibus Rule of 2013 requiring Business Associates to comply with the Privacy and Security Rules, and making Business Associates liable for HIPAA violations. Business Associates are third parties who are not my employees, contractors or volunteers but who are otherwise involved in the provision of treatment or healthcare operations. “Business Associate” is explained more fully below.

### **How I May Use and Disclose Health Information About You:**

The following categories describe different ways that I may use your health information and disclose your health information to other persons and entities. Not every use or disclosure in a category will be listed. However, all the ways I am permitted to use and disclose your health information will fall within one of the following categories. If you have any specific concerns, please bring them to my attention, and I will be happy to discuss them with you.

- **Treatment:** Your Confidential Information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment.<sup>1</sup> This means, for example, that your Confidential Information may be shared and discussed with trainees and interns who are involved in your treatment, or if you have a treating psychiatrist or other involved physician, information may be shared with them in order to coordinate care. However, as a practical matter, I will request authorization from you before I disclose your Confidential Information to a health care provider, or to any other third-party. In some cases, such as when an interpreter may be needed, I may have to disclose sufficient information to the interpreter, even without your consent, for the purpose of having the interpreter determine whether you want an interpreter, or for the purpose of providing treatment when communication barriers exist. I may also disclose your health information to a family member, other relative, domestic partner or a close personal friend, or any other person identified by you, if the information is directly relevant to that person’s involvement with your care or payment related to your care, after obtaining your consent or providing you with the opportunity to object to the disclosure and you express no objection.<sup>2</sup> Note that in the event of an emergency, I may disclose such information which I determine based upon my professional judgment to be in your best interest without obtaining your consent or providing you with the opportunity to object.
- **Payment:** I may use and disclose your health information to bill for services and to obtain payment, including, if necessary, the reporting of limited information necessary to pursue collection through a collection agency. With your consent, I may also disclose health information to your insurance company, health plan or other third-third party payer or guarantor. This may include the disclosure of health information to obtain prior authorization

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<sup>1</sup> Cal. Civil Code section 56.10(c)(1); 56.104(e).

<sup>2</sup> Cal. Civil Code section 56.1007.

for treatment. Your health information may also be disclosed in response to requests from your insurer, health plan, employee benefit plan or any governmental authority responsible for paying for health care services provided to you, to the extent necessary to allow responsibility for payment to be determined. In such cases you have a right to be provided with a copy of the request in writing within 30 days of the requestor's receipt of the information requested. Any information disclosed pursuant to this section will be limited to the minimum information necessary, and generally includes the nature of the services provided, the dates of services, the amount due and other relevant financial information.

You should be aware that should you choose to use your insurance company, health plan or other third-party payer or guarantor to reimburse you for services, certain personal health information may be shared with the Medical Insurance Bureau ("MIB"), which may make your information available through the use of codes to its member insurers.

You may request a copy of your MIB file at: [https://www.mib.com/request\\_your\\_record.html](https://www.mib.com/request_your_record.html) or by calling 1-866-692-6901.

- **For Health Care Operations:** I may use or disclose your health information for health care operations. For example, I may use a billing service, IT support, document management services, storage providers or other essential services. These uses and disclosures are necessary for the internal operation of my practice. When these operations involve third parties who are not my employees, they are called "Business Associates" (as discussed below) and I will enter into agreements with them to protect your confidentiality.
- **Marketing.** I will not use or disclose your health information for marketing purposes or sell your health information for any reason.

#### **Written Authorization Required:**

Generally, I am not permitted to use or disclose your health information without your written authorization, except where disclosure is required or permitted by law. Your authorization must state what information can be released, to whom, and for what purpose. It must be dated. You have the right to refuse to consent to disclosure without fearing retaliation. However, be aware that if you refuse to allow me to exchange health information with your other healthcare providers and I believe that your decision may interfere with my ability to provide care, I reserve the right to terminate my services and refer you to another provider. If you authorize me to use or disclose health information about you, you may limit the information to be used and/or disclosed and you may revoke the authorization in writing at any time. You also have the right to revoke your written authorization by providing me with notice, except to the extent that I have already acted in reliance on your authorization.

*Psychotherapy Notes.* I may at my discretion keep "Process Notes," (also known as "Psychotherapy Notes") in addition to your treatment record. Process Notes means notes recorded (in any medium) by 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. In other words, Process Notes are my personal notes and are not part of your treatment records. Process Notes exclude 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 your diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.<sup>3</sup> To be considered "process notes," the notes must be separate from the treatment record. These notes may capture my impressions about you, contain details of counseling conversations considered to be inappropriate for the treatment record, and are used by me for future sessions. It is because of the sensitivity of these notes that they are kept separate from your treatment record and not included in records which may be sent to insurers for payment.

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<sup>3</sup> 45 CFR 501.164.

Process Notes cannot be disclosed without your written authorization, including disclosure for treatment purposes to a health care provider, except where used by me for (i) treatment; (ii) for training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; (iii) to defend myself in a legal action or other proceeding brought by or on behalf of the patient; or (iv) where otherwise required by law.<sup>4</sup>

### **When Disclosure Is Required by Law:**

There are times when I am required by law to disclose certain Confidential Information about you whether I want to or not. Some of the circumstances where disclosure is required by law are:

- Where I reasonably suspect neglect or physical, emotional or sexual abuse of a child, or neglect or physical, emotional, sexual or financial abuse of a dependent adult or person 65 or older. You should know that sexual abuse of a child includes the creation of or streaming, downloading, storing or transmitting electronic images sexually depicting a child. This law is implicated even when a minor creates, streams, stores or transmits images of themselves such as when sexting with a friend.
- Where I have reason to believe that you may present a danger to others. If I believe that you are threatening serious bodily harm to another, I am required to take protective actions. These actions may include notifying the potential victim, contacting the police, or seeking hospitalization for you.
- Where I have reason to believe that you present a danger to yourself. If you threaten to harm yourself, I may be obligated to seek hospitalization for you or to contact family members or others who can help provide you with protection.
- For Workers Compensation to the extent necessary to comply with state workers compensation laws governing job-related injuries or illnesses.
- Upon a request by certain legal representatives on your behalf such as a conservator who is authorized to access behavioral health records, or a person having durable powers of attorney for healthcare decisions under circumstances where you have been determined to lack capacity to make healthcare decisions. Legal representatives also include, upon your death, any personal representative (as statutorily defined), executor, or administrator of your estate or beneficiary potentially including any person who may have a present or future interest under a trust. Note that the Confidential Information of a deceased person ceases to be “PHI,” and loses its privacy protection 50 years from the date of a patient’s death.
- When required by the Secretary of the Department of Health and Human Services or any of its offices, including the Office of Civil Rights to investigate or determine my compliance with HIPAA or any of its implementing regulations.
- In response to a lawfully executed search warrant from a law enforcement agency.
- In response to a request by a medical examiner, forensic pathologist, or coroner when requested for the purpose of identifying you or locating your next of kin, or when investigating your death if it involves a public health concern, organ or tissue donation, child abuse, elder abuse, suicide, poisoning, or an otherwise unknown or suspicious death, or when otherwise authorized by the decedent’s representative.

### **When Disclosure May Be Required:**

Some of the circumstances where disclosure may be required are:

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<sup>4</sup> 45 CFR 164.508(a)(2).

- Pursuant to a legal proceeding that is initiated by or brought against you. For example, if you place your mental status at issue in litigation, such as in a lawsuit seeking damages for severe emotional distress, the defendant may have the right to obtain your counseling records and/or my testimony at trial or deposition by issuing a subpoena. Your personal health information may then be shared with retained experts in the case and shared with other parties in the litigation. Potentially that information may even be shared with a jury or other fact finder. Please note that I will not release your protected health information in response to a subpoena without your written authorization, unless ordered to do so by a court order, except in cases where the records are sought for a workers' comp determination or proceeding, and even then, such release of information shall be reasonably limited to only that information necessary for the determination or proceeding.
- For certain specialized governmental functions related to the military, national security and intelligence.

For example, if you are a member of the military, the disclosure of patient communications may be compelled in proceedings brought under the Uniform Code of Military Justice, 1) if the communication is evidence of child abuse or neglect, or in a proceeding in which one spouse is merely charged with a crime against a child of either spouse; or 2) if the communication reflects your intent to commit a future fraud or crime or if the services of the counselor are sought to enable or aid anyone to commit or plan to commit what the patient knows or reasonably should know is a crime or fraud; or 3) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information or the accomplishment of a military mission. I am not under the jurisdiction of the military and therefore will not voluntarily disclose such information, although you should know that disclosure may be compelled in a military proceeding. If any of the exceptions in this paragraph are of concern to you, you should discuss them with me.

- Health oversight activities. While California law is more protective of your right to confidentiality than HIPAA, in that California law requires your written authorization for a licensing board to access your health records as part of any investigation into a complaint against a licensee, there may still be health oversight situations in which your information may be accessed without the need to first obtain your authorization. Health oversight agencies include federal, state and local government agencies authorized by law to oversee the public and private healthcare care system or government programs in which health information is necessary for determining eligibility or compliance, or to enforce civil rights laws for which health information is relevant. Uses and disclosures for healthcare oversight must be limited to the minimum information necessary to accomplish the oversight objective.

For example, the Department of Managed Health Care (“DMHC”) in California is a health oversight agency authorized to oversee HMOs and certain other health plans within the state. HIPAA permits covered health plans to disclose private health information to the DMHC for oversight activities including audits, civil, administrative or criminal investigations, inspections, and other activities necessary for the oversight of the healthcare system, government benefit programs, compliance with governmental regulation or compliance with civil rights laws.

Health oversight investigators generally do not seek access to individual patient records, but instead review large numbers of records to determine whether a health care provider or organization may be violating the law. In the course of their efforts to protect the healthcare system, health oversight investigators may at times uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. However, law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities, for

unrelated civil, administrative, or criminal investigations, against that individual unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the psychotherapist patient relationship, and to the treatment services.

- **Business Associates.** I may obtain some services in my practice through contracts with business associates. For example, I may contract with outside companies to provide legal services, accounting services, or billing services. When I contract with a business associate, I may disclose health information to the business associate so it can do the job I have asked it to do. To protect your health information, I enter into “Business Associate” agreements with them to require them to appropriately safeguard your health information.
- **For Data Breach Notification Purposes.** I may use limited Confidential Information such as your contact information to provide legally required notices of unauthorized acquisition, access or disclosure of your Confidential Information, if such were to occur. I may send notices directly to you or provide notice to the sponsor of a health plan through which you receive coverage.
- **Comply with the law.** I may disclose health information about you if otherwise required by state or federal laws.

### **Minors in Therapy**

In the event that you are under 18 years of age, the law may grant your parents or guardians the right to obtain information about your treatment and/or examine your treatment records. It is my policy to request an agreement from your parents or guardians indicating that they consent to waive access to such information and/or access to your records. If they agree, I will provide them only with general information about our work together subject to your approval. If I feel it is important for them to know something to make sure that you and others around you are safe, I will encourage you to share the information with them during a family session, or I will share the information with them with your permission in the context of a scheduled session. However, if I think it is clinically necessary, I will involve them even without your permission if we have reason to believe there is a risk of harm to yourself or others or if another is harming you in any way.

### **Emergencies**

Confidential treatment information may also be disclosed in the rare event of a medical or psychological emergency, meaning a sudden change in condition that may result in physical or psychological harm to you if left untreated.

### **Your Rights Regarding Medical Information About You:**

You have the following rights regarding medical information I maintain about you:

- To obtain a copy of our Notice of Privacy Practices.
- To request a restriction on certain uses and disclosures of your information. This request must be in writing.
- To inspect and request a copy of your health record other than Process Notes so long as the record is maintained.<sup>5</sup> Your request must be in writing and specify the records to be copied. Upon receipt of your request, together with a fee, if required, to defray the costs of producing the copy, I shall ensure that the copies are transmitted within 15 days after receiving the request.<sup>6</sup> The following are some important exceptions:

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<sup>5</sup> 45 CFR 164.5249(a).

<sup>6</sup> Health & Saf. Code §123110(b).

- 1) The representative of a minor is not entitled to inspect or obtain copies of the minor's patient records either i) with respect to which the minor has the right of inspection; or ii) where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being.<sup>7</sup>
  - 2) A health care provider may deny a request by a patient where the provider determines there is a substantial risk of significant adverse or detrimental consequences to the patient in seeing or receiving a copy of the mental health records requested by the patient. However, the health care provider shall (i) make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted; and (ii) permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor, designated by request of the patient.<sup>8</sup>
  - 3) Your health care provider may confer with you in an attempt to clarify your purpose in obtaining a copy of your record and may choose to prepare a summary. If they choose to prepare a summary rather than allowing access to the entire record, they will make the summary available to you within 10 working days from the date of your request. If more time is needed, such as because of the length of the record or because you were discharged from a licensed health facility within the 10 days preceding your request, your provider will notify you that more time is needed and provide you with the date it will be completed. In no case may more than 30 days elapse between the date of your request and the delivery of the summary.<sup>9</sup>
- To request an amendment to your health record if you feel the information is incorrect or incomplete. Your request must be made in writing and it must include a reason that supports the request.
  - To obtain an accounting of disclosures to others of your health information. The accounting will provide information about disclosures made for purposes other than treatment, payment, health care operations, disclosures required by law or those you have authorized.
  - To request confidential communications. You have the right to request that I communicate with you about medical matters in a certain way or at a certain location. For example, you may ask that I only contact you at work or by mail. Your request must be in writing and specify the exact changes you are requesting.
  - To revoke your authorization. You have the right to revoke your authorization for the use or disclosure of your health information except to the extent that action has already been taken.
  - To choose someone to act for you. If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information. I will make sure the person has this authority and can act for you before we take any action.

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<sup>7</sup> Health & Saf. Code §123115(a).

<sup>8</sup> Health & Saf. Code §123115(b).

<sup>9</sup> Health & Saf. Code §123130.

- Complain about any aspect of our health information practices to the United States Department of Health and Human Services without fear of retaliation. Complaints should be in writing and may be directed to:

Lyss (Alyssa) de la Torre, LPC, LPCC  
Alyssa de la Torre Counseling, PLLC  
PO Box 271182, Fort Collins, CO 80527  
4629 Cass St. #202, San Diego, CA 92109  
(970) 305-4101  
[www.lyssdelatorre.com](http://www.lyssdelatorre.com)

OR:

Office for Civil Rights, Region IX  
U.S. Department of Health and Human Services  
50 United Nations Plaza, Room 322  
San Francisco, CA 94102  
Voice Phone (415) 437-8310  
Fax (415) 437-8329  
TDD (415) 437-8311