

Divisions: All Divisions	Policy Number 179.10.22
Subject: USES AND DISCLOSURES FOR REPRESENTATIVES, MINOR, & DECEASED	
Approved: Executive Director	
Approved: Associate Director	
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**Purpose**

The purpose of this policy is to provide information for management and workforce members regarding the use and disclosure of a patient's protected health information (PHI) for personal representatives, minors and deceased individuals.

**Policy**

As a general rule, minors, incapacitated and deceased individuals must have a personal representative identified in order to provide consent or authorization to use and disclose protected health information. Center for Advanced Dental Education does not have to recognize a personal representative as the individual if the personal representative is suspected of abusing, neglecting or endangering the individual.

**Adults and Emancipated Minors**

If a person has authority by law to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to use and disclosure of PHI, Center for Advanced Dental Education will treat such person as a personal representative. Once a minor is emancipated, a guardian or a parent cannot be recognized as a personal representative.

Absent a legal document like a Durable Power of Attorney for Health Care or formal guardianship documents, the following individuals, in order of priority, will have the right to act as the individual for HIPAA consent and authorization to release PHI. This includes both providing the HIPAA consent based on General Policy on Uses and Disclosures of PHI and authorizing the release of PHI on behalf of the patient. The following individuals, in order of priority, are:

- Patient's spouse;
- 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;
- A majority of the patient's reasonably available adult children;
- Patient's parent(s); or
- The 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.

**Un-emancipated Minors**

If a parent, guardian, or other person has authority by law to act on behalf of an individual who is an un-emancipated minor in making decisions related to use and disclosure of PHI, Center for Advanced Dental Education must recognize such person as a personal representative. If a minor does not require the consent of an adult and may consent to treatment the minor will be treated as an individual and may provide HIPAA consent or authorization for release of PHI. Examples of where a minor, with authority by law, can act as an individual may include:

- Diagnosis and treatment of a sexually transmitted disease
- Family planning services

- Some outpatient surgeries
- Alcohol/drug abuse treatment
- Abortion

### **Abuse, Neglect, Endangerment Situations**

Notwithstanding a state law or any requirement of this paragraph to the contrary, Center for Advanced Dental Education may elect not to recognize a person as the personal representative of a patient. If the University chooses not to recognize a person as a personal representative, it must decide that it is not in the best interest to treat the person as the patient's personal representative and believes that one of the following conditions exist:

- The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian or personal representative.
- Treating such person as the personal representative could endanger the patient.

### **Deceased Individuals**

PHI generated during the life of an individual is protected from disclosure after death unless disclosure is for treatment, payment or health care operations. The University and its employees cannot release PHI regarding a deceased individual unless a valid personal representative has been established and the individual has requested the PHI through the proper authorization process.

If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, Center for Advanced Dental Education must recognize such person as a personal representative under this policy.

Absent an executor, administrator or other court-appointed representative for the deceased individual's estate, the following individuals listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (no people in the category exist or still alive) before moving to the next category.

#### **In the case of a deceased, married individual survived by a spouse with or without descendants:**

- Spouse
- Adult children
- Adult grandchildren
- Parents
- Adult descendants of parents (brothers and sisters)
- Brothers and sisters' adult children
- Brothers and sisters' adult grandchildren
- Grandparents
- Adult descendants of grandparents (uncles and aunts)

#### **In the case of a deceased individual with no spouse (i.e. never married, widowed, or divorced and not remarried) with or without descendants:**

- Adult children
- Adult grandchildren
- Parents
- Adult descendants of parents (brothers and sisters)
- Brothers and sisters' adult children
- Brothers and sisters' adult grandchildren
- Grandparents
- Adult descendants of grandparents (uncles and aunts)

**Definitions**

**Personal Representative:** Any adult that has decision-making capacity and who is willing to act on behalf of a patient. A personal representative would include an individual who has authority, by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents or individuals designated by state law.

**Minor:** An individual under the age of 18 and has not been legally emancipated by a court and is:

- not legally or previously married;
- not serving in the armed forces;
- not presently an offender in a correctional facility; or
- not at least 16 years old and living away from home and managing their own financial affairs.