

## **Patient Informed Consent & The Health Insurance Portability and Accountability Act**

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### **I. Terms & Definitions**

#### **A. Use and disclosures of information for Treatment, Payment, and Health Care Operations:**

Arête may use or disclose your protected health information (PHI), for treatment, payment, and health care operations purposes with your consent. To help clarify the terms used in this brief, here are some definitions of these terms as used in HIPPA legislation:

1. "PHI" refers to information in your health record that could identify unique individuals.
2. "Treatment, Payment, and Health Care Operations"

Treatment is when we provide, coordinate or manage your health care and other services related to your health care. An example of treatment where information would be shared would be if your clinician consulted with another health care provider, such as your family physician or another psychologist. Payment is when we obtain or assist you in obtaining reimbursement for your healthcare. An example of a payment situation would be when we disclosed your PHI to your health insurer to assist you in obtaining out-of-network reimbursement, or to determine eligibility for coverage. Health Care Operations are activities that relate to the performance and operation of our practice. Examples of health care operations would include functions such as quality assessment and improvement activities, business-related matters such as audits and administrative services, and case management and care coordination.

3. "Use" applies only to activities within our clinic, such as utilizing, examining, and analyzing information that identifies you.
4. "Disclosure" applies to activities outside of our clinic, such as releasing, transferring, or providing access to information about you to other parties.

#### **5. Uses and Disclosures Requiring Authorization:**

We may use or disclosure PHI for purposes outside of treatment, payment, or health care operations when appropriate authorization is obtained. An "authorization" is written permission above and beyond the general consent that permits specific identified disclosures. In those instances when we ask to use information for purposes outside of treatment, payment or healthcare operations, we will obtain an authorization before releasing this information. We will also need to obtain an authorization before releasing your Psychotherapy Notes. "Psychotherapy Notes" are notes clinicians have made about their conversation during a private, group, joint, or family counseling session, and which they have kept separate

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from the rest of your medical record. These notes are given a greater degree of protection than PHI. You may revoke all such authorizations (of either PHI or Psychotherapy Notes) at any time, provided each revocation is in writing. You may not revoke an authorization to the extent that (1) we have relied on that authorization; or (2) if the authorization was obtained as a condition of obtaining insurance coverage, law provides the insurer the right to contest the claim under the policy.

## **II. General Rights**

You have the right to:

- Get respectful treatment intended to be helpful to you.
- Have a safe treatment setting, free from sexual, physical, and emotional abuse.
- Report unethical or illegal behavior by a therapist.
- Ask for and get information about the therapist's qualifications, including his or her license, education, training, experience, membership in professional groups, special areas of practice, and limits of practice. At Arete, you may be assigned a therapist, or wish to see a therapist, who is a qualified intern in his/her advanced training years. This person will be supervised by a fully licensed clinician, such as a Doctor of Psychology (Ph.D/Psy.D) or Licensed Clinical Social Worker (LCSW). You have the right to know the name and phone number of the supervisor.
- Have written information, before entering therapy, about fees, method of payment, insurance coverage, number of sessions the therapist thinks will be needed, substitute therapists (in cases of vacation and emergencies), and cancellation policies.
- Refuse audio or video recording of sessions (but you may ask for it if you wish).
- Know if your therapist will discuss your case with others (for instance, supervisors, consultants, or interns).
- Ask that the therapist inform you of your progress.
- Decline to answer any particular question in filling out intake forms, or at any other time. However, in order to best assist the child or family as a whole, it is important for your therapist to have as much information as possible.
- You have the right to keep what you tell your therapist private. Generally, no one will learn of our work without you and/or your parent's written permission. There are some situations in which we are required by law to reveal some of the things you tell us (your therapist), even without your permission, and if your therapist does reveal these things he/she is not required by the law to tell you that he/she has done so. However it is our customary practice to inform clients and families of such actions. The situations in which this usually occurs during family, child, and adolescent therapy are outlined in section III.

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- You have the right to end therapy at any time. The only thing you will have to do is to pay for any sessions you have already had.
- You have the right to ask any questions, at any time, about what we do during therapy, and to receive reasonable answers.
- The issue of confidentiality for minors is complex. Adolescents often request that certain information disclosed in therapy not be revealed to their parents. In general, this frequently includes information about substance use, rules and legal misconduct, and issues of relationships and sexual activity. Again, it is Arête's policy in all cases to foster open communication unless otherwise indicated by the clinical needs of the client or family. Please see Addendum "A" for further discussion.
- You may have other state and federal rights not listed here. There are many sources of information on patient's rights in Connecticut. The following web site is an excellent and official Connecticut source of information on rights and related topics.
- State of Connecticut, The Department of Mental Health and Addiction Services

<http://www.dmhas.state.ct.us/>

**III. PHI and Specific Rights with regard to disclosures without authorization:**

We may use or disclose PHI without your consent or authorization in the following circumstances:

Child Abuse – If your clinician, in the ordinary course of his/her work and practice, has reasonable cause to suspect or believe that any child under the age of eighteen years (1) has been abused or neglected, (2) has had a non-accidental physical injury, or injury which is at variance with the history given of such injury inflicted upon such child, or (3) is placed at imminent risk of serious harm, then he/she must report this suspicion or belief to the appropriate authority.

Adult and Domestic Abuse - If your clinician knows or suspects in good faith that an elderly individual has been abused, he/she may disclose the appropriate information as permitted by law to the appropriate authority.

Health Oversight Activities – If the Connecticut Board or Examiners of Psychologists is investigating our practice, the board may subpoena records relevant to such investigation.

Judicial and Administrative Proceedings – If you are involved in a court proceeding and a request is made for information about your diagnosis and treatment and the records thereof, such information is privileged under state law, and we will not release information without your written authorization, that of your legally appointed representative, or in the instance of a court order. The privilege does not apply when you are being evaluated for a third party or where the evaluation is court ordered. You will be informed in advance if this is the case.

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Serious Threat to Health or Safety – If your clinician believes in good faith that there is risk of imminent personal injury to you or to other individuals, or risk of imminent and serious damage to the property of other individuals, he/she may disclose the appropriate information as permitted by law.

Worker Compensation – Your clinician may disclose protected health information regarding you as authorized by and to the extent necessary to comply with laws relating to worker’s compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

### **III. Specific Patient’s Rights and Psychologist’s Duties**

#### **A. Patient’s Rights:**

Right to Request Restrictions – You have the right to request restrictions on certain uses and disclosures of protected health information. However, we are not required to agree to a restriction you request.

Right to Receive Confidential Communications by Alternative Means and at Alternative Locations – You have the right to request and receive confidential communications of PHI by alternative locations. For example, you may not want a family member to know that you and your child are in treatment. At your request, we will send bills and other correspondence to another address.

Right to Inspect and Copy - You have the right to inspect or obtain a copy (or both) of PHI in my mental health and billing records used to make decisions about you for as long as the PHI is maintained in the record. I may deny your access to PHI under certain circumstances, but in some cases you may have this decision reviewed. At your request, I will discuss with you the details of the request and denial process.

Right to Amend – You have the right to request an amendment of PHI for as long as the PHI is maintained in the record. It is possible that your clinician may deny your request, however, they will discuss with you the details of the accounting process and the reason for denial.

Right to an Accounting – You generally have the right to receive an accounting of disclosures of PHI. At your request, we will discuss with you the details of the accounting process.

#### **B. Psychologist’s Duties:**

We are required by law to maintain the privacy of PHI and to provide you with a notice of our legal duties and privacy practices with respect to PHI.

We reserve the right to change the privacy policies and practices described in this notice as allowed by law. Unless we notify you of such changes, however, we are required to abide by the terms currently in effect.

If we revise our policies and procedures, we will provide you with these revisions in person or by mail.

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**HIPAA Signature Page:**



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I/we have read this brief concerning our health insurance, PHI, and mental health treatment rights. I/we have been given opportunity to ask questions about our rights and obligations described above, and I/we understand this information and give our informed consent to Arete Psychological Associates, LLC, to initiate treatment with us/our child within the framework of these rights and obligations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name/s: \_\_\_\_\_

Admitting Clinician Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

### **Addendum A: The Confidentiality of Minors in Treatment**

It is most helpful to consider this question from three perspectives: that of law, of clinical practice and of ethics.

**The law.** The law is a blunt instrument, as the issue of minors and confidentiality well illustrates. Minors generally cannot consent to treatment; a parent or guardian consents on the minor's behalf. There are exceptions. Certain states allow minors whom the law deems especially mature, such as those who are married or in the armed services, to consent to treatment, and sometimes minors may consent to treatment for substance abuse or sexually transmitted diseases. The exceptions are few, however, and prove the rule that the law deems individuals under a certain age (often 18) not sufficiently mature to make treatment decisions.

A parent who consents on the minor's behalf generally has the right to know the content of the child's treatment. This state of affairs changes when the minor reaches the age of majority. Until that time, the law will normally give the parent access to the child's treatment.

**Clinical practice.** From a clinical perspective, the situation is more complex. An important aspect of treatment is to foster an individual's autonomy, and a great pleasure of treating adolescents is to watch as they come to enjoy their growing independence. One aspect of independence is privacy. As a child grows into adolescence and adulthood, the surrounding zone of privacy should increase, thus making room for a more defined sense of self and a greater sense of autonomy. A paradox thus arises: Good clinical treatment may require what the law generally refuses, that is, a zone of privacy.

**Ethics.** Can our Ethics Code ease the apparent tension between law and clinical practice?

Standard 4.01, "Structuring the Relationship," states that "Psychologists discuss with clients or patients as early as is feasible in the therapeutic relationship...the nature...of therapy, fees, and confidentiality." Standard 4.02, "Informed Consent to Therapy," states that when an individual cannot provide informed consent (such as a minor), psychologists "consider such person's preferences and best interests." Standard 4.03, "Couple and Family Relationships," states that psychologists "attempt to clarify at the outset (1) which of the individuals is patients or clients and (2) the relationship the psychologist will have to each person."

Three points emerge. First, early in the relationship the psychologist should make clear what relationship she will have to each of the parties. Second, central to that early discussion should be an explanation of how information-sharing will work--what information will be shared, with whom and when, in a manner appropriate to the child's age and understanding. Third, as the child develops, the structure of the therapy may change for clinical reasons. Thus, the changing *clinical* picture will have *ethical* implications. The child's greater sense of self and enhanced capacity for autonomy may require greater respect for the child's need for privacy. The psychologist will thus need to revisit earlier discussions and explain that, for

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clinical reasons, the structure of the therapy should change. Such boundary renegotiation, while complex with certain adolescents and families, is clinically and ethically indicated.

Consider also three standards under "Privacy and Confidentiality." Standard 5.01 states that psychologists discuss with their patients "the relevant limitations on confidentiality," 5.02 that psychologists recognize "confidentiality may be established by law," and 5.05 that psychologists disclose confidential information without consent "(1) to provide needed professional services...(3) to protect the patient or others from harm." These ethical standards again recommend several points. First, while it is clinically and ethically indicated to make clear how the relationship is structured and how information will be shared, a psychologist *cannot promise* a minor that information will be kept from a parent who has legal custody. A parent with the legal right to treatment information may choose--however counterproductive in the psychologist's eyes--to exercise that right.

Second, clinical judgment will indicate to what extent maintaining an adolescent's privacy is central to the treatment. It may be, for example, that an adolescent has conflicting wishes about keeping information private. A psychologist may conclude that an adolescent's wish not to have information shared reflects an appropriate separation and so should be honored. Or, a psychologist may conclude that sharing certain information would be helpful; if so, the ethical standards from the section on "Privacy and Confidentiality" give the psychologist permission to do so.

Third, few things carry such potential to disrupt a treatment as an adolescent's feeling that information was shared without his or her knowledge. Regardless of whether an adolescent assents to have information disclosed to a parent, it makes both clinical and ethical sense to tell the adolescent--beforehand, if possible--what information will be shared, and when. Ideally, the adolescent would be part of such conversations.

Fourth, at times a psychologist will be mandated to disclose information. Serious threats of harm must be disclosed in many states. Neglect or abuse falls under mandatory reporting laws. The extent to which the psychologist explains the limitations on confidentiality will depend on the child's age and maturity. Certainly, however, adolescents should be told that serious threats of harm to self or others will not be kept confidential.

Fifth, many of the activities adolescents engage in do not rise to the level of reportable behavior. Nevertheless, some are on the edge and require judgment calls. For this reason, psychologists who treat adolescents will want to have a good working knowledge of mandatory reporting requirements and to be liberal in their use of consultation.

Finally, a psychologist may feel strongly that revealing information to a parent could harm the patient or be destructive to the treatment. A refusal to disclose in such a case, even in the face of a parent's request, may be legally supportable. A psychologist in this position should seek both legal counsel and consultation from colleagues.