

## **ABIM HIPAA BUSINESS ASSOCIATE AGREEMENT**

### **ADDENDUM TO THE AMERICAN BOARD OF INTERNAL MEDICINE'S APPLICATION FOR CONTINUOUS PROFESSIONAL DEVELOPMENT AND APPLICATIONS FOR ADMISSION TO CERTIFICATION EXAMINATIONS**

THIS ADDENDUM is a part of the American Board of Internal Medicine's ("ABIM") Application for Continuous Professional Development and Applications for Admission to a certification examination (hereinafter the "Application") and constitutes a contract between the ABIM and any Physician enrolled in the ABIM's CPD program or any Physician who has submitted an Application for an examination to the ABIM.

#### **Recitals**

- A. ABIM and the Physician are parties to the Application to which ABIM provides certification and related services to the Physician, and in connection with the provision of those services, the Physician may disclose to ABIM certain Protected Health Information ("PHI") (as defined in 45 C.F.R. § 164.501) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
- B. ABIM and the Physician intend to protect the privacy and provide for the security of PHI disclosed to, or received or created by, ABIM pursuant to the Agreement in compliance with HIPAA and the regulations promulgated thereunder by the U.S. Department of Health and Human Services, 45 C.F.R. Part 160 and 164, Subparts A and E (the "Privacy Rule") and other applicable federal and state laws relating to the privacy of individually identifiable health information;
- C. the Physician is a "Covered Entity" as that term is defined in the Privacy Rule;
- D. ABIM, as a recipient of PHI from the Physician is a "Business Associate" as that term is defined under the Privacy Rule;
- E. pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and
- F. the purpose of this Addendum is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§ 164.502(e) and 164.504(e).

#### **Terms**

In consideration of the mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions. Unless otherwise provided in this Addendum, capitalized terms have the same meanings as set forth in the Privacy Rule.

Section 2. Obligations and Activities of ABIM.

2.1 Permitted Uses and Disclosures

(a) ABIM shall be permitted to use and disclose PHI that is disclosed to it by the Physician as necessary to perform its obligations under the Application provided that such use or disclosure would not violate the Privacy Rule if done by the Physician.

(b) ABIM shall not use or disclose PHI other than as permitted or required by this Addendum or as Required by Law.

(c) Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or Required by Law, ABIM may:

(i) use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of ABIM;

(ii) disclose the PHI in its possession to a third party for the purpose of ABIM's proper management and administration or to fulfill any legal responsibilities of ABIM; provided, however, that the disclosures are required by law or ABIM has received from the third party written assurances that (i) the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (ii) the third party will notify the ABIM of any instances of which it becomes aware in which the confidentiality of the information has been breached;

(iii) aggregate the PHI with that of other Physicians for the purpose of providing the Physician with data analyses relating to the Health Care Operations of the Physician. ABIM may not disclose the PHI of one Physician to another Physician without the written authorization of the Physicians involved; and

(iv) de-identify any and all PHI created or received ABIM under this Addendum; provided, that the de-identification conforms to the requirements of the Privacy Rule.

2.2 Appropriate Safeguards. ABIM shall use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum.

2.3 Duty to Mitigate. ABIM shall, to the extent practicable, mitigate any harmful effect that is known to ABIM of a use or disclosure of PHI by ABIM in violation of this Addendum.

2.4 Reporting of Improper Use or Disclosure. ABIM shall report to the Physician any use or disclosure of PHI not provided for by this Addendum of which ABIM becomes aware.

2.5 ABIM's Agents. ABIM shall require any contractors or agents to whom it provides PHI to agree to the same restrictions and conditions that apply to ABIM pursuant to this Addendum.

2.6 Access to PHI. Promptly after receiving a written request from the Physician, ABIM shall make available to Physician PHI necessary for the Physician to respond to individuals' requests for access to PHI about them in the event that the PHI in ABIM's possession constitutes a Designated Record Set.

2.7 Governmental Access to Records. ABIM shall make available to the Secretary of Health and Human Services ABIM's internal practices, books and records relating to the use and disclosure of PHI for purposes of determining the Physician's compliance with the Privacy Rule, subject to any applicable legal privileges.

2.8 Accounting for Disclosures.

(a) ABIM agrees to document disclosures of PHI and information related to such disclosures as would be required by the Privacy Rule for the Physician to respond to a request by an individual for an accounting of disclosures.

(b) Promptly after receiving a request from the Physician, ABIM shall make available to Physician the information necessary for the Physician to make an accounting of disclosures of PHI about an individual.

2.9 Amendment of PHI. Promptly after receiving a written request from the Physician, ABIM will incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in ABIM's possession constitutes a Designated Record Set.

Section 3. Obligations of the Physician. The Physician agrees that he or she:

(a) Has included, and will include, in the Physician's Notice of Privacy Practices required by the Privacy Rule that the Physician may disclose PHI for Health Care Operations purposes. The Physician shall also notify ABIM of any limitation in its Notice of Privacy Practices to the extent that such limitation may affect ABIM's ability to perform its obligations under the Application.

(b) Has obtained, and will obtain, from Individuals consents, authorizations and other permissions necessary or required by laws applicable to the Physician for ABIM and the Physician to fulfill their obligations under the Application and this Addendum.

(c) Will promptly notify ABIM in writing of any restrictions on the use and disclosure of PHI about Individuals that the Physician has agreed to that may affect ABIM's ability to perform its obligations under the Application or this Addendum.

(d) Will promptly notify ABIM in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such change or revocation may affect ABIM's ability to perform its obligations under the Application or this Addendum.

Section 4. Termination.

4.1 Termination for Breach. The Physician may terminate this Addendum if the Physician determines that ABIM has breached a material term of this Addendum. Alternatively, the Physician may choose to provide ABIM with notice of the existence of an alleged material breach and afford ABIM an opportunity to cure the alleged material breach. In the event ABIM fails to cure the breach to the satisfaction of the Physician, the Physician may immediately thereafter terminate this Addendum.

4.2 Automatic Termination. This Addendum will automatically terminate upon the termination or expiration of the Application.

4.3 Effect of Termination.

Termination of this Addendum will result in termination of the Application. Upon termination of this Addendum or the Application, ABIM, its agents and subcontractors will return or destroy all PHI received from the Physician or created or received by ABIM on behalf of the Physician that ABIM, its agents or subcontractors still maintain and retain no copies of such PHI; provided that if such return or destruction is not feasible, ABIM will extend the protections of this Addendum to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

Section 5. Miscellaneous Provisions

5.1 Amendment. ABIM and the Physician agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Physician to comply with the requirements of the Privacy Rule.


5.2 Survival. The obligations of ABIM under section 4.3 of this Addendum shall survive any termination of this addendum.

5.3 Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

Section 6. Effective Date. This Addendum shall be effective as of the date that the Application is signed by Physician.

Section 7. Execution. This Addendum has been executed on behalf of the ABIM as set forth below. It is effective without execution by any Physician enrolled in the CPD Program or who has submitted an Application. However, for record purposes, any Physician who wishes to do so is authorized to print this Addendum and sign and retain it for his or her records.

AMERICAN BOARD OF INTERNAL MEDICINE

By:   
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F. Daniel Duffy, M.D.  
Executive Vice President

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Physician:  
Date: