HIPAA PRIVACY RULE: PERSONAL REPRESENTATIVES OF PATIENTS

I. Policy

B. Definition of Personal Representative

A patient’s “Personal Representative” is the person who has the authority to act on behalf of the patient in making decisions related to health care provided to the patient under California law. It should not be assumed that a family member or caregiver is a Personal Representative of the patient, unless such individual meets the definition set forth in this policy.

C. Authority of Personal Representative

The University of Southern California treats a patient’s Personal Representative as the patient with respect to the ability to authorize USC’s use and disclosure of the patient’s Protected Health Information that is relevant to the personal representation. In general, the scope of the Personal Representative’s authority to act for the patient derives from his or her authority under state law to make health care decisions for the patient. Where the authority to act for the individual/patient is limited or specific to particular health care decisions, the Personal Representative is to be treated as the individual only with respect to Protected Health Information that is relevant to the representation.

D. Who May Act as a Personal Representative

1. In General

Under the laws of California, the following may act as a Personal Representative of a patient:

   a. An attorney-in-fact (also known as an agent) under a written health care power of attorney or advanced directive.

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1 For purposes of the HIPAA Privacy Rule, USC includes USC Norris Cancer Hospital, Keck Hospital of USC, USC’s employed physicians, nurses and other clinical personnel, those units of USC that provide clinical services within the School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as the Keck Doctors of USC, and those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

2 Protected Health Information is identifiable information that relates to an individual’s past, present or future physical or mental health condition or to payment for health care.

3 The power of attorney or advanced directive will specify any limitations on an agent’s ability to make health care decisions on behalf of the patient, e.g., only where the patient lacks capacity. A patient with capacity may revoke the designation of an agent in writing, or by personally informing the supervising health
b. A surrogate designated (orally or in writing) by the patient to make health care decisions on his or her behalf.

c. A conservator in accordance with the letters of conservatorship or other applicable California law.

d. For an unemancipated minor, a parent, a relative pursuant to a Caregiver’s Authorization Affidavit, or a guardian appointed by a court to make health care decisions for the minor. Please contact the USC’s Office of General Counsel if more than one of such persons claims to be the legal representative for the minor patient.

2. Personal Representative for Adults and Emancipated Minors

If the patient is an adult or emancipated minor who lacks decisional capacity as documented in the patient’s record, then USC, through the appropriate health care provider, must make a reasonable inquiry as to the availability and authority of a Personal Representative under state law.

3. Minors

USC will treat a parent or guardian as the Personal Representative of a minor with respect to such minor’s Protected Health Information, except in the following circumstances:

a. The minor is emancipated as determined by a court of law. In this case, a copy of the minor’s Department of Motor Vehicles identification card evidencing the minor’s emancipation should be placed in the patient’s record.

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4 A patient may designate a surrogate to make health care decisions on such patient’s behalf by personally informing the supervising health care provider. The designation of a surrogate should be promptly recorded in the patient’s health record. Unless the patient specifies a shorter period, a surrogate designation is effectively only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter. Unless otherwise stated by the patient, the surrogate has priority over the agent for purposes of making health care decisions on behalf of the patient. A patient with capacity may revoke the designation of a surrogate at any time and in any manner that communicates an intent to revoke.

5 As a general rule, unless the patient’s power of attorney for health care or advanced directive provides otherwise, the designated agent who is known to the health care provider to be reasonably available and willing to make health care decisions has priority over the conservator. However, a court can modify an advanced directive. Therefore, please contact the USC’s Office of General Counsel should a dispute arise relating to whether an agent or conservator has priority for making health care decisions on behalf of the patient.

6 An unemancipated minor is a minor who is legally under the control of such minor’s parents or other legal guardian.
b. The parent or legal guardian is not permitted to act on such minor’s behalf with respect to the Protected Health Information under California Health and Safety Code Sections 123100 et seq. Please refer to Section 5 of this policy.

c. An unemancipated minor with the right to consent to treatment under state law must be given a Notice of Privacy Practices.

4. **Minors that may legally consent to treatment without parental consent**

If a minor may legally consent to a particular type of treatment without the consent of a responsible adult, the minor will be treated as the individual for HIPAA compliance purposes. By way of example, minors may lawfully consent to the following types of treatment among others:

a. Pregnancy-related services (Cal. Family Code 6925)

b. Treatment of reportable contagious disease (Cal. Family Code §6926)

c. Treatment related to rape, if age 12 or older (Cal. Family Code §6297)

d. HIV tests, if age 2 or older (Cal. Health and Safety Code §121020)

Except as permitted by California law or as authorized by the minor in writing, USC is prohibited from telling the minor’s parents or legal guardian about medical care the minor is legally able to authorize.

5. **Deceased Patient**

If, under applicable state law, an executor, administrator, or other person has authority to act on behalf of a deceased patient or of the patient's estate, USC will treat such person as the Personal Representative with respect to Protected Health Information relevant to such Personal Representation. As discussed in Section II below, USC must obtain written documentation of a person’s authority under state law to act as the patient’s Personal Representative before allowing the person to act as the patient’s Personal Representative.

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7 Generally, a parent of a minor has the right of access to the minor's patient information. However, where the minor is authorized by law to consent to treatment, the right of access with respect to that patient information rests with the minor, not the parent or guardian. Additionally, a provider may deny a parent or guardian access to a minor's patient information where the provider determines that access would have a detrimental effect on the provider's professional relationship with the minor or on the minor's physical safety or psychological well being.
6. **Victim of Abuse, Neglect or Endangerment**

USC may elect not to treat a person as the Personal Representative of a patient if the following two elements are satisfied and the election is documented in the patient’s record:

a. (i) USC has a reasonable belief that the patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(ii) Treating such person as the Personal Representative could endanger the patient; AND

b. USC, in the exercise of the professional judgment of the relevant health care provider, decides that it is not in the best interest of the patient to treat the person as the patient’s Personal Representative.

II. **Procedures**

A. **Determine Status of Patient**

If a patient lacks decisional capacity as documented in the patient’s record and is unable to give his or her authorization on an Authorization Form as required by USC’s policies, USC, through the appropriate staff or health care provider must first determine if the patient is (1) an adult or emancipated minor; (2) an unemancipated minor; (3) deceased; or (4) a victim of abuse, neglect or endangerment. After making this determination, then staff must follow the policy applicable to the category of patient as set forth in Section I.C above.

B. **Verify Authority of Personal Representative**

For all categories of patients, USC must obtain written documentation of a person’s authority under state law to act as the patient’s Personal Representative before allowing the person to act as the patient’s Personal Representative in connection with the use or disclosure of the patient’s Protected Health Information.

C. **Documentation**

1. USC shall maintain in the patient’s record the written documentation of a person’s authority to act as the patient’s Personal Representative. Examples of appropriate documentation include an “advance directive” executed by the patient, which appoints a person as the patient’s “health care representative”; or documentation of the patient’s verbal authorization of a particular individual to act as the patient’s surrogate for health care decisions.
2. USC also should maintain in the patient’s record the Personal Representative’s name, address, telephone number and relationship to the patient.

D. Out-of-State Personal Representatives

As set forth in Section II.B, USC must obtain written documentation of the authority of any out-of-state Personal Representative. Thereafter, USC employees should use good clinical judgment in communications with that personal representative. For example, the Personal Representative should provide contact information (e.g., telephone numbers) on initial contact and the identity of that Personal Representative should be verified through call-backs if USC employees are not familiar with the Personal Representative's voice.

Additional References

45 C.F.R. § 164.502(g)

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