

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:

- A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
- B. Riverside Psychiatric Medical Group (“RPMG”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. RPMG is a group practice with one location in Riverside, California. RPMG providers specialize in Child & Adolescent Psychiatry, Geriatric Psychiatry, Neuropsychiatry, Psychology, and Substance Use Disorders. HHS and RPMG shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct. On March 4, 2019, OCR received a complaint alleging RPMG was not in compliance with the Privacy Rule. The complaint alleged RPMG failed to provide an individual access to her protected health information (PHI). On April 12, 2019, OCR received a second complaint concerning RPMG’s continued noncompliance with the requirements of the Privacy Rule concerning the individual’s right of access to PHI (45 C.F.R. § 164.524). On June 3, 2019, HHS notified RPMG of its investigations of RPMG’s compliance with the HIPAA Rules promulgated by HHS pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936. RPMG has not provided the complainant access to any of her PHI or a written denial consistent with the Privacy Rule.

HHS’s investigation indicated that the following conduct occurred (Covered Conduct):

- a. RPMG failed to provide the Complainant with access to her protected health information (PHI) or a written denial in accordance with 45 C.F.R. § 164.524(a)(1) from April 22, 2019 to present. This violation is ongoing. *See* 45 C.F.R. § 164.524.

3. No Admission. This Agreement is not an admission of liability by RPMG.

4. **No Concession.** This Agreement is not a concession by HHS that RPMG is not in violation of the HIPAA Rules and not liable for civil money penalties.
5. **Intention of Parties to Effect Resolution.** This Agreement is intended to resolve OCR Transaction Number 19-339868 and any violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. **Payment.** HHS has agreed to accept, and RPMG has agreed to pay HHS, the amount of **\$25,000** ("Resolution Amount"). RPMG agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.
7. **Corrective Action Plan.** RPMG has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If RPMG breaches the CAP, and fails to cure the breach as set forth in the CAP, then RPMG will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.
8. **Release by HHS.** In consideration of and conditioned upon RPMG's performance of its obligations under this Agreement, HHS releases RPMG from any actions it may have against RPMG under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release RPMG from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.
9. **Agreement by Released Party.** RPMG shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. RPMG waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a) and 45 C.F.R. Part 160, Subpart E, and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.
10. **Binding on Successors.** This Agreement is binding on RPMG and its successors, heirs, transferees, and assigns.
11. **Costs.** Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

- 12. No Additional Releases.** This Agreement is intended to be for the benefit of the Parties only and by this instrument the Parties do not release any claims against or by any other person or entity.
- 13. Effect of Agreement.** This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.
- 14. Execution of Agreement and Effective Date.** The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (“Effective Date”).
- 15. Tolling of Statute of Limitations.** Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, RPMG agrees that the time between the Effective Date of this Agreement (as set forth in Paragraph 14) and the date the Agreement may be terminated by reason of RPMG’s breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. RPMG waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.
- 16. Disclosure.** HHS places no restriction on the publication of the Agreement. This Agreement and information related to this Agreement may be made public by either Party.
- 17. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.
- 18. Authorizations.** The individual(s) signing this Agreement on behalf of RPMG represent and warrant that they are authorized by RPMG to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

For RPMG

/s/

10/16/2020

Robert B. Summerour, M.D.
Owner

Date

For the United States Department of Health and Human Services

/s/

10/16/2020

Marisa M. Smith, Ph.D.
Regional Manager
Office for Civil Rights
Southwest Region

Date

Appendix A

CORRECTIVE ACTION PLAN BETWEEN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND RIVERSIDE PSYCHIATRIC MEDICAL GROUP

I. Preamble

Riverside Psychiatric Medical Group (referred to herein as “RPMG”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, RPMG is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. RPMG enters into this CAP as part of the consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons.

RPMG has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Robert B. Summerour, M.D., Owner
Riverside Psychiatric Medical Group
5887 Brockton Avenue
Riverside, CA 92506
Phone (951) 275-8500
Fax (951) 275-8560

HHS has identified the following individual as its authorized representative and contact person with whom RPMG is to report information regarding the implementation of this CAP:

Marisa M. Smith, Ph.D., Regional Manager
Office for Civil Rights, Southwest Region
U.S. Department of Health and Human Services
1301 Young Street, Suite 106 – 1130
Dallas, TX 75202
Voice Phone (214) 767-6973
Fax: (214) 767-0432
Marisa.Smith@hhs.gov

RPMG and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions.

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with paragraph II.14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by RPMG under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date, unless HHS has notified RPMG under section VIII hereof of its determination that RPMG has breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies RPMG that it has determined that the breach has been cured. After the Compliance Term ends, RPMG shall still be obligated to: (a) submit the final Annual Report as required by section VI; and (b) comply with the document retention requirement in section VII. Nothing in this CAP is intended to eliminate or modify RPMG’s obligation to comply with the document retention requirements in 45 C.F.R. §§ 164.316(b) and 164.530(j).

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

V. Corrective Action Obligations

RPMG agrees to the following:

A. Policies and Procedures

1. Within thirty (30) calendar days of the Effective Date, RPMG shall review, and to the extent necessary, revise its policies and procedures related to the right of access to protected health information (PHI), to reflect satisfactory compliance with 45 C.F.R. §§ 164.530(j) and 164.524. RPMG’s policies and procedures shall address, but not be limited to, the Covered Conduct specified in paragraph I.2 of the Agreement.
2. RPMG shall provide such access policies and procedures, consistent with paragraph 1 above, to HHS within sixty (60) calendar days of the Effective Date for review and approval. Upon receiving any recommended changes to such

policies and procedures from HHS, RPMG shall have thirty (30) calendar days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. RPMG shall implement any revised access policies and procedures within thirty (30) calendar days of receipt of HHS' approval.

B. Distribution and Updating of Policies and Procedures

1. RPMG shall distribute the access policies and procedures identified in section V.A to members of the workforce and relevant business associates within thirty (30) calendar days of HHS' approval of such revised policies, if any, and to new members of the workforce within thirty (30) calendar days of their beginning of service.
2. RPMG shall require, at the time of distribution of such revised policies and procedures, a signed written or electronic initial compliance certification from all appropriate members of the workforce and relevant business associates stating that the workforce members have read, understand, and shall abide by such policies and procedures.
3. RPMG shall assess, update, and revise, as necessary, the policies and procedures at least annually or as needed. RPMG shall provide such revised policies and procedures to HHS for review and approval. Within thirty (30) calendar days of the effective date of any approved substantive revisions, RPMG shall distribute such revised policies and procedures to members of its workforce and relevant business associates and shall require new compliance certifications.

C. Minimum Content of Policies and Procedures

The Policies and Procedures shall include, but not be limited to:

1. Review and update as necessary RPMG's policy regarding Right of Access to PHI to ensure timely and appropriate response to requests for records and a denial process consistent with the Privacy Rule.
2. Protocols for training all RPMG's workforce members or business associates that are involved in receiving or fulfilling access requests as necessary and appropriate to ensure compliance with the policies and procedures provided for in section V.A above.
3. Application of appropriate sanctions against RPMG workforce members who fail to comply with policies and procedures provided for in subparagraph (1) above.

D. Access Request Status Requirements

1. Within ninety (90) calendar days of receipt of HHS' approval of the policies and procedures required by section V.A, and every ninety (90) calendar days thereafter while under the Term of this CAP, RPMG shall submit to HHS a list of requests for access to PHI received by RPMG, including the date request received, date request completed, format requested, format provided, number of pages (if provided in paper format), and cost, excluding postage.
2. If RPMG denied any request for access, in whole or in part, RPMG shall submit to HHS all documentation consistent with 45 C.F.R. § 164.524(d).

E. Training

1. RPMG shall provide HHS with training materials per section V.C above for all members of the workforce and relevant business associates within sixty (60) calendar days of the approval of its policies and procedures per section V.A.
2. Upon receiving the notice from HHS specifying any required changes, RPMG shall make the required changes and provide revised training materials to HHS within thirty (30) calendar days.
3. Upon receiving approval from HHS of any revised training materials, RPMG shall provide training on any revised training materials for each workforce member and relevant business associate within ninety (90) calendar days of HHS' approval and annually thereafter. RPMG shall also provide such training to each new member of the workforce or relevant new business associate within thirty (30) calendar days of their beginning of service.
4. Each workforce member and relevant business associate who is required to attend training shall certify, in electronic or written form, that he or she has received the training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.
5. RPMG shall review the training at least annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, or any other relevant developments.

F. Mitigation

Within fifteen (15) calendar days following the Effective Date of the Agreement, RPMG shall provide OCR with evidence of making good faith efforts to provide the complainant access to inspect and obtain a copy of her complete designated record set or provide the complainant with a denial (whether reviewable or unreviewable) consistent with 45 C.F.R. § 164.524(a).

VI. Reportable Events, Implementation Report, and Annual Reports

A. Reportable Events

1. During the Compliance Term, RPMG shall, upon receiving information that a workforce member may have failed to comply with the policies and procedures described in Section V.A. or a business associate may have failed to comply with the provision of access requirement in its business associate agreement with RPMG, promptly investigate this matter. If RPMG determines, after review and investigation, that a member of its workforce has failed to comply with these policies and procedures or a business associate has failed to comply with the provision of access requirement in its business associate agreement, RPMG shall notify HHS in writing within thirty (30) calendar days and in the Annual Report, as set forth in Section VI.B. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:
 - a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
 - b. A description of the actions taken and any further steps RPMG plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy Rule policies and procedures.

B. Implementation Report

1. Implementation Report.
 - a. Within one hundred twenty (120) calendar days after the receipt of HHS' approval of the policies and procedures required by section V.A.1, RPMG shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:
 - i. An attestation signed by an owner or officer of RPMG attesting that the policies and procedures approved by HHS in section V.A are being implemented;
 - ii. An attestation signed by an owner or officer of RPMG attesting that all members of the workforce have completed the initial training required by section V.E;
 - iii. An attestation signed by an owner or officer of RPMG stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

C. Annual Reports.

1. The one (1) year period after the Effective Date and each subsequent one (1) year period during the course of the Compliance Term shall be known as a “Reporting Period.” Within sixty (60) calendar days after the close of each corresponding Reporting Period, RPMG shall submit a report to HHS regarding RPMG’s compliance with this CAP for each corresponding Reporting Period (“Annual Report”). The Annual Report shall include:
 - a. An attestation signed by an owner or officer of RPMG attesting that all members of the workforce have completed the training required by section V.E during the Reporting Period;
 - b. An attestation signed by an officer or director of RPMG attesting that any revision(s) to the policies and procedures required by section V.A were finalized and adopted within thirty (30) calendar days of HHS’ approval of the revision(s), which shall include a statement affirming that RPMG distributed the revised policies and procedures to all appropriate members of RPMG’s workforce within sixty (60) calendar days of HHS’ approval of the revision(s);
 - c. A summary of Reportable Events (defined in VI.A), if any, the status of any corrective and preventative action(s) relating to all such Reportable Events, or an attestation signed by an officer or director of RPMG stating that no Reportable Events occurred during the Compliance Term.
 - d. An attestation signed by an owner or officer of RPMG attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. Document Retention

RPMG shall maintain for inspection and copying, and shall provide to HHS, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Requests for Extensions and Breach Provisions

RPMG is expected to fully and timely comply with all provisions contained in this CAP.

- A. Timely Written Requests for Extensions. RPMG may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least five (5) calendar days prior to the date such an act is required or due to be performed.

- B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by RPMG constitutes a breach of the Agreement. Upon a determination by HHS that RPMG has breached this CAP, HHS may notify RPMG in writing of: (1) RPMG’s breach; and (2) HHS’ intent to impose a civil money penalty (CMP), pursuant to 45 C.F.R. Part 160, or other remedies, for the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other conduct that constitutes a violation of the HIPAA Privacy, Security, and Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).
- C. RPMG Response. RPMG shall have thirty (30) calendar days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:
1. RPMG is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;
 2. the alleged breach has been cured; or
 3. the alleged breach cannot be cured within the 30-day period, but that: (a) RPMG has begun to take action to cure the breach; (b) RPMG is pursuing such action with due diligence; and (c) RPMG has provided to HHS a reasonable timetable for curing the breach.
- D. Imposition of CMP. If at the conclusion of the 30-day period, RPMG fails to meet the requirements of section VIII.C of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of the CMP against RPMG pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph 2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify RPMG in writing of its determination to proceed with the imposition of the CMP.

For Riverside Psychiatric Medical Group

/s/	10/16/2020
Robert B. Summerour, M.D. Owner	Date

For the United States Department of Health and Human Services

/s/	10/16/2020
Marisa M. Smith, Ph.D. Regional Manager Office for Civil Rights Southwest Region	Date