

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective this _____ day of _____, 20____, by and between _____ ("Client") and Keith C Borglum dba Professional Management & Marketing. ("Business Associate"), 3468 Piner Rd, Santa Rosa, CA 95401, ph 707-546-4433 fax 707-546-4437, web MedicalPracticeAppraisal.com.

Section 1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E ("the Privacy Rule"), the Security Standards at 45 C.F.R. Part 164 ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

Section 2. Obligations and Activities of Business Associate: Privacy and Security Regulations

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Client any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Client agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, and to require such agent or subcontractor to execute a Business Associate Agreement consistent with the terms and conditions set forth herein.
- (f) Business Associate agrees to provide access, at the request of Client, and in the time and manner not to exceed 72 hours, to Protected Health Information in a Designated Record Set, to Client or, as directed by Client, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Client directs or agrees to pursuant to 45 CFR 164.526 at the request of Client or an Individual, within 72 hours of receipt of such amendment(s).
- (h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Client available to Client, or to the Secretary or person designated by the Secretary, if permissible or required by law, within 72 hours of receiving the request, for purposes of the Secretary determining Client's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Client or an Individual, within 72 hours, information collected in accordance with this Agreement and the Privacy Rule, to permit Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Client as required by the Security Rule.

(l) Business Associate shall ensure that any agent, including any sub-contractor, to whom Business Associate provides Electronic Protected Health Information agrees to implement reasonable and appropriate Safeguards to protect such Information.

(m) Business Associate shall report to Client any Security Incident of which it becomes aware.

(n) Business Associate shall authorize termination of this Agreement by Client, if Client determines that Business Associate has violated a material term of the original Business Associate Agreement or this Amendment.

Section 3. Business Associate Obligations: HITECH Act and Regulations

Business Associate shall be subject to and comply with all terms and conditions of the HITECH Act. Without limiting the generality of the foregoing, Business Associate shall perform each of the following duties:

(a) Minimum Necessary Restrictions. Business Associate shall comply with the minimum necessary disclosure rules under the Privacy Rule. Business Associate shall limit access to PHI to the Limited Data Set as defined in the HIPAA Privacy regulations. Limited Data Set constitutes information that excludes names, postal address (other than city, state and zip code), telephone and fax numbers, email address, Social Security and medical record numbers, as well as other identifying information.

(b) Accounting Disclosure. To the extent Business Associate uses or maintains an electronic health record, Business Associate must provide an accounting of disclosures to Client and to any patient for treatment, payment and health care operations, in addition to all other disclosures that must be accounted for under the Privacy or Security Rules.

(c) Mandatory Restriction Request. If an individual pays for a health care service out of pocket and the claim is not submitted to a government or commercial third party payer, and the patient requests or demands that PHI regarding that service not be disclosed to the patient's health plan or insurance, Business Associate shall not disclose PHI under such circumstances and pursuant to the patient's request.

(d) Prohibition on Sale of Medical Records. Business Associate shall not, directly or indirectly, offer for sale or receive payment in exchange for any PHI, unless Business Associate first obtains a written Authorization from the individual who is the subject of the PHI specifically stating that the PHI can be exchanged for payment.

(e) Electronic Health Record Access. If Business Associate retains PHI in an electronic health record, Business Associate shall provide a copy of the PHI maintained in the electronic health record to the individual in an electronic format. Business Associate shall not impose a fee greater than the labor cost incurred to respond to the request.

(f) Marketing Communications. Business Associate shall not utilize any PHI in any marketing activities unless Business Associate obtains express written Authorization from each individual whose PHI is subject to the marketing pursuant to a HIPAA Privacy Rule-complaint Authorization form.

(g) Security Standards. Business Associate shall comply with all HIPAA Security administrative safeguards, physical safeguards, technical safeguards, and security policies, procedures and documentation requirements. Business Associate expressly acknowledges that it is subject to the direct imposition of fines by the federal government and state Attorney General for failure to comply with HIPAA Security standards. Without limiting the generality of the foregoing, Business Associate shall use appropriate safeguards and comply with the HIPAA Security Rule regarding ePHI, and prevent use or disclosure of ePHI except as expressly provided for under this Agreement.

(h) Use and Disclosure Restrictions. Business Associate may use and disclose PHI or ePHI only if such use or disclosure is limited to services rendered to Client giving rise to the Business Associate relationship, and in compliance with this Agreement and all standards under the Privacy Rule, Security Rule and HITECH Act. If Business Associate uses or discloses PHI or ePHI in violation of the Privacy Rule, Security Rule or HITECH Act, or in breach of this Agreement, Business Associate shall be directly and exclusively liable to the federal government or any private party asserting a damages claim for any non-compliant use or disclosure by Business Associate, its agents, subcontractors or business associates.

(i) Notifications in the Event of Improper Use or Disclosure or Material Breach. Business Associate shall provide written notification and a full report to Client regarding any use or disclosure of PHI or ePHI not permitted under this Agreement and of which Business Associate becomes aware, including breaches of unsecured PHI; and shall provide written notification to any individual if Business Associate perpetrates a material breach of unsecured PHI, and shall copy Client on such notification. Such written notification to an individual whose PHI has been subject to material breach shall be provided by First Class mail, on Business Associate's home page of its website, or a major print or broadcast media (if the breach

involves more than 500 residents). Business Associate shall make such Notification within 60 calendar days after it discovers such material breach. The Notification shall contain the following: (i) a brief description of what occurred, including the date of the breach and the date of discovery; (ii) the steps the individual should take to protect himself from potential harm resulting from the breach; and (iii) a brief description of actions taken by Business Associate to investigate the breach, to mitigate losses and to protect against further breaches. Discovery of a Breach occurs when the Business Associate knows of the breach or should reasonably have known of the Breach. Business Associate shall also provide a copy of the Notice to the U.S. Department of Health and Human Services. The term "Breach" shall have the meaning prescribed to it pursuant to the HITECH Act, §13400(1)(A)-(B) and the final HITECH regulations, 45 CFR §164.402. Business Associate shall take all reasonable steps to cure any Breach immediately.

(j) Training. Business Associate shall take all reasonable measures to ensure its employees and members of its Workforce (including independent contractors) receive thorough and adequate training with respect to the Privacy Rule, Security Rule and HITECH Act.

(k) Amendments. Business Associate shall make available PHI and ePHI for amendment and incorporate any amendments to PHI or ePHI consistent with 45 CFR §164.526.

(l) Subcontractor Business Associate Agreements. Business Associate shall ensure that any agents or subcontractors that create, receive, maintain or transmit PHI or ePHI on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI or ePHI and shall execute a fully compliant Business Associate Agreement with the Subcontractor or agent in the same manner containing identical requirements as are set forth herein.

(m) Regulatory Compliance. Without limiting the generality of the foregoing obligations, Business Associate shall take all reasonable measures to comply with all other HIPAA Privacy and Security rules not specifically set forth herein.

Section 4. Permitted General Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information or Electronic Protected Health Information to perform functions, activities, or services for, or on behalf of, Client as specified in the Agreement or arrangement giving rise to the Business Associate relationship, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by Client or the minimum necessary policies and procedures of Client. Business Associate shall not use or disclose PHI or ePHI for any other purpose.

Section 5. Permitted Specific Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information or Electronic Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information or Electronic Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances and a fully-executed Business Associate Agreement consistent with all applicable HIPAA Privacy and Security regulations from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Client as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information or Electronic Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1), and to the U.S. Department of Health and Human Services in response to any investigation pertaining to Business Associate's compliance with the HIPAA Privacy and Security regulations. Business Associate shall not use or further disclose PHI or ePHI other than as permitted or required by this Agreement or by any contract terms or arrangement giving rise to the Business Associate relationship, unless otherwise required by law.

Section 6. Obligations of Client

(a) Client shall notify Business Associate of any limitation(s) in Client's Notice of Privacy Practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Client shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Client shall notify Business Associate of any restriction in the use or disclosure of Protected Health Information that Client has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Section 7. Permissible Requests by Client

Client shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Client; provided, however, this shall not preclude Business Associate from use or disclosure of Protected Health Information for data aggregation or management and administrative activities of Business Associate.

Section 8. Term and Termination

(a) Term. This Agreement shall be effective as of the Effective Date and shall terminate when all of the Protected Health Information or Electronic Protected Health Information provided by Client to Business Associate, or created or received by Business Associate on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy Protected Health Information or Electronic Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. Upon Client's knowledge of a material breach by Business Associate, Client shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Agreement giving rise to the Business Associate relationship if Business Associate does not cure the breach or end the violation within 10 days of receiving notice of any breach;

(2) Immediately terminate this Agreement and the Agreement giving rise to the Business Associate relationship if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure is feasible, Client shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information or Electronic Protected Health Information received from Client, or created or received by Business Associate on behalf of Client unless precluded by law from doing so. This provision shall apply to Protected Health Information or Electronic Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information or Electronic Protected Health Information if not precluded by law.

(2) In the event Business Associate determines that returning or destroying the Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall provide to Client notification of the conditions that make return or destruction infeasible. If return or destruction of Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information or Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information or Electronic Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information or Electronic Protected Health Information.

Section 9. Construction

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Client to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) Survival. The respective rights and obligations of Business Associate under Sections 2 and 6 of this Agreement shall survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Client to comply with the Privacy Rule, Security Rule or HITECH Act.

(e) No Agency or Control. Business Associate represents and warrants that Provider as the Covered Entity does not have the right or authority to control Business Associate's conduct in the course of performing services on behalf of Client. Business Associate shall not be deemed to be an agent of Client.

(f) General. Pennsylvania law governs this Agreement. This Agreement contains the entire agreement and understanding between the parties. This Agreement may be modified only by a written amendment signed by both parties and may be waived only by a writing signed by the party to be bound by the waiver. This Agreement may not be assigned by Business Associate without Client's consent. Client may assign this Agreement to any entity with which it engages in a fundamental corporate transaction.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the day and year first written above.

[Client Name]

By:

[Business Associate Name]

Keith C Borglum CHBC CBB

By:

