

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 Code of Federal Regulations (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. Wise Psychiatry, PC (Wise Psychiatry), which meets the definition of “covered entity” under 45 C.F.R. § 160.103 and therefore is required to comply with the HIPAA Rules.

C. HHS and Wise Psychiatry shall together be referred to herein as the “Parties.”

2. **Factual Background and Covered Conduct**

Complainant alleged that Wise Psychiatry failed to provide him with timely access to his minor son’s protected health information (“PHI”). Complainant is his minor son’s personal representative.

HHS’ investigation verified that on November 26, 2017, Complainant submitted to Wise Psychiatry, via certified mail, a written request for access, which included photocopies of his son’s birth certificate and Complainant’s driver’s license. Complainant’s access request included Complainant’s full contact information and return address. A certified mail receipt, indicating that Complainant’s request had been delivered to Wise Psychiatry, was signed on December 4, 2017. As a result of OCR’s investigation, Wise Psychiatry sent Complainant a copy of his son’s PHI via certified mail on May 30, 2019.

HHS’ investigation indicated that Wise Psychiatry failed to provide access to PHI to Complainant in a timely manner *See* 45 C.F.R. § 164.524(b).

3. **No Admission.** This Agreement is not an admission of liability by Wise Psychiatry.

4. **No Concession.** This Agreement is not a concession by HHS that Wise Psychiatry 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 HHS Transaction Number: 19-321554 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 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 Wise Psychiatry has agreed to pay HHS, the amount of **\$10,000** ("Resolution Amount"). Wise Psychiatry agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 pursuant to written instructions to be provided by HHS.
7. **Corrective Action Plan.** Wise Psychiatry 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 Wise Psychiatry breaches the CAP, and fails to cure the breach as set forth in the CAP, then Wise Psychiatry 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 Wise Psychiatry's performance of its obligations under this Agreement, HHS releases Wise Psychiatry from any actions it may have against Wise Psychiatry 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 Wise Psychiatry 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 United States Code (U.S.C.) § 1320d-6.
9. **Agreement by Released Parties.** Wise Psychiatry 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. Wise Psychiatry 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 Wise Psychiatry 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 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, Wise Psychiatry agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of Wise Psychiatry’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. Wise Psychiatry 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.
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 Wise Psychiatry represents and warrants that they are authorized to execute this Agreement and bind Wise Psychiatry, as set forth in paragraph I.1.B. 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.

For Wise Psychiatry PC

/s/

08/13/2020

Brian K. Wise, M.D.
Wise Psychiatry, PC
6053 South Quebec Street, #203
Centennial, Colorado 80111

Date

For Department of Health and Human Services

/s/

08/21/2020

Andrea Oliver
Regional Manager, Rocky Mountain Region
Office for Civil Rights

Date

Appendix A

CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
WISE PSYCHIATRY, PC

I. Preamble

Wise Psychiatry, PC (Wise Psychiatry) 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, Wise Psychiatry is entering into the Agreement with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. Wise Psychiatry enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement. Capitalized terms without definition in this CAP shall have the same meaning assigned to them under the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

The contact person for Wise Psychiatry regarding the implementation of this CAP and for receipt and submission of notifications and reports (“Wise Psychiatry Contact”) is:

Brian K. Wise, M.D.
Wise Psychiatry, PC
6053 South Quebec Street, #203
Centennial, Colorado 80111
bwise@wisepsych.com
Telephone: (720) 708-4287

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

Ms. Andrea Oliver, Regional Manager
Office for Civil Rights, Rocky Mountain Region
Department of Health and Human Services
1961 Stout Street, Room 08.148
Denver, Colorado 80294
Andrea.Oliver@hhs.gov
Telephone: (303) 844-7915

Facsimile: (303) 844-2025

Wise Psychiatry and HHS agree to promptly notify each other of any changes in the contact person 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, electronic 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 Wise Psychiatry under this CAP shall begin on the Effective Date of this CAP and end one (1) year from the Effective Date, unless HHS has notified Wise Psychiatry under Section VIII hereof of its determination that Wise Psychiatry 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 Wise Psychiatry that it has determined that the breach has been cured. After the Compliance Term ends, Wise Psychiatry shall still be obligated to comply with the document retention requirement in Section VII. Nothing in this CAP is intended to eliminate or modify Wise Psychiatry’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

Wise Psychiatry agrees to the following:

A. Distribution and Training on Policies and Procedures

1. Wise Psychiatry recently adopted written policies and procedures titled, “Patients Request for Records” which comply with 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”). Wise Psychiatry’s policies and procedures address, but are not limited to, the Covered Conduct specified in paragraph I.2 of the Agreement.

2. Wise Psychiatry shall distribute such policies and procedures to all members of its workforce and relevant business associates within thirty (30) days of the Effective Date and to new workforce members within thirty (30) days of their beginning of service.

3. Wise Psychiatry shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from workforce members and relevant business associates stating that the workforce members have read, understand, and shall abide by such policies and procedures.

4. Wise Psychiatry shall train all workforce members and relevant business associates within sixty (60) days of the Effective Date on its policies and procedures. Wise Psychiatry shall also provide such training to each new workforce member or relevant new business associate within thirty (30) days of their beginning of service.

5. 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.

6. Wise Psychiatry shall provide training at least annually, and, where appropriate, update the training to reflect changes in its policies and procedures, Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

7. 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.

8. Wise Psychiatry 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, and any other relevant developments.

B. Reportable Events

During the Compliance Term, Wise Psychiatry shall, upon receiving information that a workforce member may have failed to comply with its access policies and procedures or a business associate may have failed to comply with the provision of access requirements in its business associate agreement with Wise Psychiatry, promptly investigate this matter. If Wise Psychiatry determines, after review and investigation, that a workforce member has failed to comply with these policies and procedures or a business associate has failed to comply with the provision of access requirements in its business associate agreement, Wise Psychiatry shall notify HHS in writing within thirty (30) days. Such violations shall be known as Reportable Events. The report shall include the following information:

1. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and

2. A description of the actions taken and any further steps Wise Psychiatry 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.

VI. Implementation Report and Final Report

A. Implementation Report

Within 120 days of the Effective Date, Wise Psychiatry 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:

1. An attestation signed by an owner or officer of Wise Psychiatry attesting that the policies and procedures are being implemented, have been distributed to all appropriate members of the workforce and relevant business associates and that Wise Psychiatry has obtained the compliance certifications required by Section V.A.3;
2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s) and a schedule of when the training session(s) were held;
3. An attestation signed by an owner or officer of Wise Psychiatry attesting that all members of the workforce and relevant business associates have completed the initial training required by this CAP and have executed the training certifications required by Section V.A.7 ;
4. An attestation signed by an owner or officer of Wise Psychiatry 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.

B. Final Report

Within sixty (60) days after the close of the Compliance Term, Wise Psychiatry shall submit a report to HHS regarding Wise Psychiatry’s compliance with this CAP for the Compliance Term (“Final Report”). The Final Report shall include:

1. A copy of the schedule, topic outline, and training materials for the training programs provided during the Compliance Term that is the subject of the Final Report;
2. An attestation signed by an officer or director of Wise Psychiatry attesting that it is obtaining and maintaining written or electronic training certifications from all persons who are required to attend training under this CAP;
3. An attestation signed by an officer or director of Wise Psychiatry attesting that it distributed the policies and procedures to all appropriate Wise Psychiatry workforce members within thirty (30) days of the Effective Date;

4. A summary of Reportable Events (defined in Section V.B), 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 Wise Psychiatry stating that no Reportable Events occurred during the Compliance Term; and

5. An attestation signed by an owner or officer of Wise Psychiatry attesting that he or she has reviewed the Final Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. Document Retention

Wise Psychiatry 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. Breach Provisions

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

A. Timely Written Requests for Extensions

Wise Psychiatry 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) days prior to the date such an act is required or due to be performed. This requirement may be waived by HHS only.

B. Notice of Breach of This CAP and Intent to Impose CMP

The Parties agree that a breach of this CAP by Wise Psychiatry constitutes a breach of the Agreement. Upon a determination by HHS that Wise Psychiatry has breached this CAP, HHS may notify Wise Psychiatry Contact of: (1) Wise Psychiatry’s breach; and (2) HHS’ intent to impose a CMP pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

C. Wise Psychiatry’s Response

If Wise Psychiatry is named in a Notice of Breach and Intent to Impose CMP, Wise Psychiatry shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. Wise Psychiatry 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 thirty (30) day period, but that Wise Psychiatry: (a) has begun to take action to cure the breach; (b) is pursuing such action with due diligence; and (c) has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP

If at the conclusion of the thirty (30) day period, Wise Psychiatry fails to meet the requirements of Section VIII.C of this CAP to HHS' satisfaction, HHS may proceed with the imposition of a CMP against Wise Psychiatry pursuant to the rights and obligations set forth in 45 C.F.R. Part 160 for any violations of the HIPAA Rules applicable to the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify Wise Psychiatry Contact in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. §§ 160.312(a)(3)(i) and (ii).

For Wise Psychiatry, PC

/s/

08/13/2020

Dr. Brian K. Wise
Wise Psychiatry

Date

For Department of Health and Human Services

/s/

08/21/2020

Andrea Oliver
Regional Manager, Rocky Mountain Region
Office for Civil Rights

Date