

**County of San Bernardino  
Department of Behavioral Health**

**Privacy and Security Incident Sanctions Policy**

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**Effective Date** 11/17/2006  
**Approval Date** 9/15/2014  CaSonya Thomas, Director

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**Policy** It is the policy of the Department of Behavioral Health (DBH) to take appropriate actions for those who violate federal, state, and departmental privacy or security laws/regulation, including, but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It is also the policy of DBH that all personnel should feel free to report violations without fear of reprisal and understand they have a duty to do so per the Code of Conduct.

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**Purpose** To ensure that there are appropriate violation examples and sanctions that will be applied to all employees and members of the workforce including, but not limited to volunteers, interns and DBH contract employees who violate privacy and security requirements, including, but not limited to, HIPAA Privacy and Security Rules, DBH privacy and security policies, and Medi-Cal Privacy and Security Agreement.

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**Definition** **Breach** - An impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of Protected Health Information (PHI).  
**Privacy/Security Incident** - The attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with system operations in an information system that does not result in a breach.

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**Violations** Listed below are the types of violations that may require disciplinary action subject to the severity of the violation.

Level	Description of Violation
1	<b>Accidental or Unintentional:</b> Individual did not know (and by exercising reasonable diligence would not have known) that he/she violated privacy or security requirement or policy, such as but not limited to the following: <ul style="list-style-type: none"><li>• Accessing information not needed to do job.</li><li>• Failure to safeguard passwords or login information.</li><li>• Leaving computer unlocked and unattended while logged into a program containing PHI.</li><li>• Leaving PHI unlocked and unattended while away from desk.</li><li>• Discussing and/or disclosing confidential or client information with unauthorized persons.</li></ul>

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**Privacy and Security Incident Sanctions Policy, Continued**

**Violations**  
(continued)

Level	Description of Violation
1 (Cont'd)	<ul style="list-style-type: none"> <li>• Copying or altering PHI without written authorization or direct business need.</li> <li>• Misdirecting faxes or emails that contain PHI.</li> <li>• Discussing confidential client information in a public area or in an area where the public could overhear the conversation.</li> <li>• Failure or refusal to cooperate with the DBH Chief Compliance Officer, Privacy or Security Officer, or authorized designee regarding a privacy or security investigation.</li> </ul>
2	<p><b>Deliberate violation:</b> Individual did know (and by exercising reasonable diligence would have known) that he/she violated a privacy or security requirement or policy. The privacy or security violation was due to reasonable cause and not willful neglect, such as but not limited to the following:</p> <ul style="list-style-type: none"> <li>• Second occurrence of any Level 1 offense (does not have to be the same offense).</li> <li>• Unauthorized use or disclosure of PHI.</li> <li>• Using another person's computer access code (user name and password, authorized or not by the user).</li> <li>• Sharing computer access codes (user name and/or password).</li> <li>• Failure or refusal to comply with a remediation resolution or recommendation.</li> </ul>
3	<p><b>Willful neglect and malicious violation:</b> A conscious, intentional failure or reckless indifference to the obligation to comply with privacy or security policies or violation with intent to harm.</p> <ul style="list-style-type: none"> <li>• Third occurrence of any level 1 offense (does not have to be the same offense).</li> <li>• Second offense of any level 2 offense (does not have to be the same offense).</li> <li>• Leaving PHI in a public area.</li> <li>• Obtaining confidential information under false pretenses.</li> <li>• Using and/or disclosing confidential information for commercial advantage, personal gain or malicious harm.</li> </ul>

**Possible  
Disciplinary  
Actions**

Any violation of DBH privacy and security policies, and/or related state or federal laws governing the protection of confidential and client identifiable information may result in disciplinary action. The following are possible disciplinary actions that will apply for members of the DBH workforce or contract agency.

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**Possible  
Disciplinary  
Actions**  
(continued)

Violation Level	Recommended DBH Disciplinary Action
1	<ul style="list-style-type: none"> <li>• Verbal or written reprimand depending on severity of the violation.</li> <li>• Retraining on privacy/security awareness.</li> <li>• Retraining on DBH privacy and security policies.</li> <li>• Retraining on the proper use of internal controls and required forms.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Consider Disciplinary Actions taken for Level 1 violations, which may be combined with additional actions below if appropriate.</li> <li>• Letter of Reprimand, or suspension depending on severity of the violation.</li> <li>• Retraining on potential civil and criminal prosecution associated with privacy and security violations.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Consider Disciplinary Actions taken for Level 1 and/or Level 2 violations, which may be combined with additional actions below if appropriate.</li> <li>• Disciplinary action, up to and including termination of employment or contract.</li> <li>• Retraining on potential civil and criminal prosecution associated with privacy and security violations.</li> </ul>

**Important Note:** The possible disciplinary actions are identified in order to provide guidance in policy enforcement and are not meant to be all-inclusive. If a Letter of Reprimand or formal discipline is deemed necessary, the DBH manager/supervisor shall consult with the Human Resources Officer (HRO) prior to taking action. When appropriate, progressive disciplinary action steps shall be followed allowing the employee an opportunity to correct the behavior which caused the disciplinary action.

**Exceptions**

Depending on the severity of the violation, the department may take more severe disciplinary action against an employee who has committed any single act or omission resulting in disciplinary action up to and including termination of employment or contract with DBH.

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## Privacy and Security Incident Sanctions Policy, Continued

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**Penalties** Civil or criminal prosecution penalties up to \$1.5 million may apply as provided under HIPAA or other applicable Federal, State, or local laws. DBH may be required to report employee privacy/security violations to applicable licensing boards via a health facility/peer review report. Licensing Boards may also impose disciplinary actions such as cost recovery, suspension, or revocation/denial of license or registration.

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**Sanctions** Listed below are the types of violations that require sanctions to be applied. They are stated at levels 1, 2, and 3 depending on the seriousness of the violation. Please refer to the following website for levels:  
American Medical Association. HIPAA Violations and Enforcement. Retrieved May 1, 2014, from  
<http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/hipaahealth-insurance-portability-accountability-act/hipaa-violations-enforcement.page>

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**References** U.S. Department of Health and Human Services. Health Information Privacy. Retrieved April 24, 2009, from <http://www.hhs.gov/ocr/privacy/index.html>.  
United States Code Title 42, Chapter 7, Subchapter XI, Part C, § 1320d-5  
Retrieved May 22, 2014 from <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap7-subchapXI-partC.pdf>  
California Board of Behavioral Sciences. Statutes and Regulations Pertaining to the Practice of Professional Clinical Counseling, Marriage and Family Therapy, Educational Psychology, Clinical Social Work.  
Retrieved April 16, 2014, from  
<http://www.bbs.ca.gov/pdf/publications/lawsregs.pdf>  
California Legislative Information. Business and Professions Code 805.  
Retrieved April 25, 2014 from  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=805](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=805)

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**Related Policies** DBH [Code of Conduct](#)  
County of San Bernardino Policy Manual:  
• 16-02 [Protection of Individually Identifiable Health Information](#)  
County of San Bernardino Standard Practice:  
• 16-02SP [Protection of Individually Identifiable Health Information](#)  
DBH Standard Practice Manual:  
• COM905: [Client Privacy and Confidentiality of Protected Health Information](#)  
• COM0901: [Sending Confidential Information by Facsimile Policy](#);  
• COM0904: [Medical Records Security Policy for Outpatient Services](#);  
• COM 0944: [Privacy or Security Incident Policy](#)  
• IT5009: [User I.D. and Password Policy](#)

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