

## **BUSINESS ASSOCIATE AGREEMENT**

**Section 1. Parties.** The parties to this Business Associate Agreement (this “Agreement”) are Recalls, Etc. and \_\_\_\_\_ (the “Practice”). Recalls, Etc. and the Practice agree that there shall be no third party beneficiaries to this Agreement, including but not limited to the patients of the Practice.

**Section 2. Purpose.** The purpose of this Agreement is to permit the Practice to disclose protected health information to Recalls, Etc. so that Recalls, Etc. may compile the necessary information and assist the Practice in scheduling appointments for the Practice’s patients and, if requested by the Practice, to assist the Practice in distributing, receiving, and organizing the Practice’s Notice of Privacy Practices described in Section 6. The parties intend that this Agreement comply with the business associate contract requirements set forth in the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164. Where applicable, the parties also intend that this Agreement comply with the applicable provisions of state law.

**Section 3. Permitted Uses and Disclosures of Protected Health Information.**

- A. Recalls, Etc. is permitted to use and/or disclose protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice to members of its workforce. Recalls, Etc. will ensure that each member of its workforce to whom Recalls, Etc. provides protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice agrees to the same restrictions and conditions that apply to Information Etc. with respect to such information by requiring each member of its workforce to enter into an appropriate agreement with Recalls, Etc. before protected health information is disclosed.
- B. Recalls, Etc. is permitted to use and/or disclose protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice to agents, including subcontractors, of Recalls, Etc. if necessary to fulfill the purpose of this Agreement. Recalls, Etc. will ensure that any agents to whom Recalls, Etc. provides protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice agrees to the same restrictions and conditions that apply to Information Etc. with respect to such information by requiring the agent to enter into an appropriate agreement with Recalls, Etc. before protected health information is disclosed to the agent.
- C. In accordance with 45 C.F.R. § 164.504(e)(4), Recalls, Etc. is permitted to use and/or disclose protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice for the proper management and administration of Recalls, Etc. and so that Recalls, Etc. may carry out its legal responsibilities. If the use and/or disclosure is for the proper management and administration of Recalls, Etc., then Recalls, Etc. must obtain reasonable assurances that the protected health information will be held confidentially and

that it will be notified by the person to whom it discloses the protected health information of any breaches of confidentiality.

- D. The Practice will disclose patient information, which may include its patient records, to Recalls, Etc.
- E. Recalls, Etc. will use the Practice's patient information, which may include its patient records, to compile a patient database that includes (as requested by the Practice) all or some of the following information: patient name, address, city, state, zip code, home telephone number, e-mail address, birth date, last examination date, insurance coverage, and diagnosis code. Recalls, Etc. will verify each patient's address.
- F. If the Practice so requests, Recalls, Etc. will use and disclose this compiled patient information to contact the Practice's patients by letter, telephone, and/or e-mail in order to send the patient a copy of the Practice's Notice of Privacy Practices.
- G. As requested by the Practice, Recalls, Etc. will use and disclose this compiled information to contact the Practice's patients by letter, post card, telephone, and/or e-mail in order to facilitate the scheduling of an appointment for the patient with the Practice.
- H. If the Practice so requests, Recalls, Etc. will telephone, write, and/or e-mail the patient to remind the patient of his/her upcoming appointment.
- I. If the Practice so requests, Recalls, Etc. will telephone, write, and/or e-mail the patient to perform a customer satisfaction survey. The information gathered will be reported to the Practice.
- J. If the Practice so requests, Recalls, Etc. will create and maintain a website for the Practice or will attach its Appointment Module and Shopping Cart Module to the Practice's existing website. On this website, patients of the Practice may request an appointment with the Practice, which may include completing a Medical History Form and/or ordering products through the Shopping Cart Module. This patient information will be maintained on a secure website, accessible by Recalls, Etc. and the Practice. Recalls, Etc. will use this information to supply periodic reports to the Practice.
- K. If the Practice so requests, Recalls, Etc. will disclose information, including protected health information concerning the Practice's patients, to other Business Associates of the Practice, and will be able to use information disclosed to it by other Business Associates of the Practice.

**Section 4. Restrictions Upon the Use and Disclosure of Protected Health Information.**

- A. Recalls, Etc. will not use or further disclose protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice other than as permitted or required by this Agreement or as required by law.
- B. Recalls, Etc. will use appropriate safeguards to prevent the use or disclosure of protected health information received from, or created or received by Recalls, Etc.

on behalf of, the Practice except as provided for by this Agreement or as required by law.

- C. If Recalls, Etc. becomes aware of any use or disclosure of protected health information received from the Practice that is not provided for in this Agreement, Recalls, Etc. will report that use or disclosure to the Practice as soon as reasonably possible.

**Section 5. The Practice's Notice of Privacy Practices.**

- A. The Practice acknowledges that, under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, the Practice is required to provide each of its patients with a copy of its Notice of Privacy Practices. The Practice shall provide the Notice of Privacy Practices to the Practice's patients, either by directing Recalls, Etc. in writing to send copies of these documents to its patients or by doing so itself, prior to having Recalls, Etc. contact its patients to facilitate the scheduling of appointments for the patients with the Practice.
- B. The Practice agrees that its Notice of Privacy Practices shall address the matters set forth on Exhibit A.
- C. Upon execution of the Agreement, Recalls, Etc. grants to the Practice a limited, non-transferable copyright license to use, modify with notice and reproduce the Notice of Privacy Practices form of Exhibit A.
- D. The Practice agrees to inform Recalls, Etc. of any changes in the form of its Notice of Privacy Practices within five (5) business days of such change.
- E. The Practice agrees to inform Recalls, Etc., within three (3) business days, of any opt-out exercised by any individual from the marketing activities of the Practice.
- F. The Practice agrees to notify Information, Etc, in writing and in a timely manner, of any arrangements permitted or required of the Practice under 45 C.F.R. Parts 160 and 164 that may impact in any manner on the use and/or disclosure of protected health information by Recalls, Etc. under this Agreement, including, but not limited to, restrictions on the use and/or disclosure of protected health information as provided for in 45 C.F.R. § 164.522 and agreed to by the Practice.

**Section 6. Access and Amendment by Individuals.**

- A. Upon receiving a written request from a patient of the Practice, Recalls, Etc. will make available that individual's protected health information in accordance with 45 C.F.R. § 164.524. Recalls, Etc. may require the individual to pay certain fees, as delineated in 45 C.F.R. § 164.524(c)(4), for it to provide copies or summaries of protected health information to the individual.
- B. Upon receiving a written request from a patient of the Practice, Recalls, Etc. will make available that individual's protected health information for amendment and incorporate any amendments to his/her protected health information in accordance with 45 C.F.R. § 164.526.

- C. In accordance with 45 C.F.R. § 164.528, Recalls, Etc. will retain and make available to the Practice the information required by the Practice to provide an accounting of disclosures, if so requested by a patient of the Practice.

**Section 7. Access by Secretary of the U.S. Department of Health and Human Services.**

As required by 45 C.F.R. § 164.504(e)(2)(ii)(H), upon request from the Secretary of the U.S. Department of Health and Human Services, Recalls, Etc. will make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by Recalls, Etc. on behalf of the Practice, available to the Secretary for the purpose of determining the Practice's compliance with 45 C.F.R. § 164.504. If Recalls, Etc. receives such a request, it shall notify the Practice in writing. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Recalls, Etc. by virtue of this Agreement.

**Section 8. Term of Agreement.**

- A. This Agreement shall continue until it is terminated by either of the parties. Either party may terminate this Agreement without the necessity of showing cause by the delivery of a written notice to the other party. The termination is effective ten (10) business days from the date that the party receives such notice. Such notice of termination shall also terminate all other agreements then existing between Recalls, Etc. and the Practice (unless otherwise agreed in writing by Recalls, Etc. and the Practice); however, any amounts due from the Practice to Recalls, Etc. under any of such agreements as of the effective date of the termination continue to be so due.
- B. If the Practice determines that Recalls, Etc. has violated a material term of this Agreement then the Practice shall inform Recalls, Etc. in writing of the violation, and Recalls, Etc. shall attempt to cure such violation. If Recalls, Etc. fails to cure the violation in a reasonable period of time, the Practice may terminate this Agreement upon written notice. Such termination shall be effective on the date that Recalls, Etc. receives the termination notice from the Practice which states that the Practice wishes to terminate this Agreement under this provision and states the material term of this Agreement that the Practice believes has been violated by Recalls, Etc.; however, any amounts due from the Practice to Recalls, Etc. as of the effective date of the termination continue to be so due.
- C. Upon termination of this Agreement, Recalls, Etc. will, if feasible, return to the Practice all protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice, or, in the alternative, Recalls, Etc. will destroy all protected health information received from, or created or received by Recalls, Etc. on behalf of, the Practice. If such return or destruction is not feasible, Recalls, Etc. will continue to extend the protections of this Agreement to the protected health information and limit further uses and disclosures to those purposes that make the return or destruction of the protected health information infeasible.

D. The termination of this Agreement does not cause the termination, or affect in any way, any other agreements entered into by the Practice and Recalls, Etc.

**Section 9. Insurance.** Recalls, Etc. will maintain Product and General Liability Insurance in the amount of \$1,000,000.00 per occurrence for the duration of this Agreement.

**Section 10. Effective Date.** The effective date of this Business Associate Agreement (this “Agreement”) is April 14, 2003.

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**RECALLS, ETC.**

By:  \_\_\_\_\_  
Ed A. Goerges, President

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### NOTICE OF PRIVACY PRACTICES<sup>1</sup>

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(Name of Practice)

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

1. The Practice may contact you, either directly or through a business associate, to remind you to schedule an appointment with the Practice. This appointment reminder contact may include marketing materials from various manufacturers or suppliers for products or services that may be of interest to you. In addition, the Practice may contact you, either directly or through a business associate, to provide information about treatment alternatives or other health-related benefits and services that may be of interest to you.

*[The remainder of the Notice of Privacy Practices (paragraphs 2-18 below) should be tailored to the Practice's situation.]*

2. The Notice must contain a description, including at least one example, of the types of uses and disclosures that the health care provider is permitted to make for each of the following purposes: treatment, payment, and health care operations. This description must include sufficient detail to place the patient on notice of the uses and disclosures that are permitted or required by the HIPAA Privacy Regulations and other applicable law.

3. The Notice must contain a description of each of the other purposes for which the health care provider is permitted or required by the HIPAA Privacy Regulations to use or disclose protected health information without the patient's written consent or authorization. This description must include sufficient detail to place the patient on notice of the uses and disclosures that are permitted or required by the HIPAA Privacy Regulations and other applicable law.

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<sup>1</sup> Under the recently enacted Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 (HIPAA Privacy Regulations) a patient has a right to adequate notice of the uses and disclosures of protected health information that may be made by the patient's health care provider, and of the individual's rights and the provider's legal duties with respect to protected health information. To satisfy this requirement, health care providers must supply each of their patients with a copy of the provider's Notice of Privacy Practices. In addition, a health care provider that maintains a web site that provides information about the provider's customer services or benefits must prominently post its Notice of Privacy Practices on the web site and make the Notice available electronically through the web site.

This Exhibit lists some of the items that must be, or may be, included in the provider's Notice of Privacy Practices (the "Notice"), based on the HIPAA Privacy Regulations (45 C.F.R. § 164.520). This list does not include every item that you may wish to include in your Notice. Each health care provider must review its own privacy practices to determine what its own Notice of Privacy Practices should or should not include and is advised to seek the advice of his/her own counsel in regard to this document.

The Notice must be in plain language.

4. If a use or disclosure for any purpose described above in paragraph 2 or 3 above is prohibited or materially limited by other applicable law, the description of such use or disclosure must reflect the more stringent law.
5. The Notice must include a statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization.
6. The Notice must contain a statement that the patient has the right to request restrictions on certain uses and disclosure of protected health information but that the health care provider is not required to agree to a requested restriction.
7. The Notice must state that the patient has the right to receive confidential communications of protected health information. A health care provider must permit patients to request and must accommodate reasonable requests by patients to receive communications of protected health information from the health care provider by alternative means or at alternative locations.
8. The Notice must state that the patient has the right to inspect and copy protected health information as provided by 45 C.F.R. § 164.524.
9. The Notice must state that the patient has the right to amend protected health information as provided by 45 C.F.R. § 164.526.
10. The Notice must state that the patient has the right to receive an accounting of disclosure of protected health information as provided by 45 C.F.R. § 164.528.
11. The Notice must state that the patient, including one who has agreed to receive the Notice electronically, has the right to receive a paper copy of the Notice upon request.
12. The Notice must contain a statement that the health care provider is required by law to maintain the privacy of protected health information and to provide individuals with notice of its legal duties and privacy practices with respect to protected health information.
13. The Notice must contain a statement that the provider is required to abide by the terms of the Notice then in effect.
14. If the provider wishes to apply a change in a privacy practice that is described in the Notice to protected health information that the provider created or received prior to issuing a revised Notice, then the original Notice must contain a statement that the provider reserves the right to change the terms of its Notice and to make the new Notice provision effective for all protected health information that it maintains. The statement must also describe how the provider will provide individuals with a revised Notice.
15. The Notice must contain a statement that the patient may complain to the provider or to the Secretary of the U.S. Department of Health and Human Services if the patient believes his or her privacy rights have been violated. The Notice must include a brief description of how the patient may file a complaint with the provider and a statement that the patient will not be retaliated against for filing a complaint.

16. The Notice must contain the name, or title, and telephone number of a person or office to contact for further information.

17. The Notice must contain the date on which the Notice is first in effect, which may not be earlier than the date on which the Notice is printed or otherwise published.

18. If the health care provider elects to limit the uses or disclosure that it is permitted to make under the HIPAA Privacy Regulations, it may describe its more limited uses or disclosures in its Notice. However, the provider may not limit uses or disclosures required by law or permitted by 45 C.F.R. § 164.512(j)(1)(i).

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