



OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

CIVIL INVESTIGATIVE DEMAND

TO: Memorial Hermann Health System
909 Frostwood Drive FL 2 c/o Opel Goff
Houston, Texas 77024

via CMRRR: 7020 1290 0000 7439 7519
via First Class Mail
Return Date: November 30, 2022

Registered Agent:
c/o CT Corporation System
1999 Bryan St., Suite 900
Dallas, TX 75201

via CMRRR: 7014 1200 0000 2192

Pursuant to this office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), Memorial Hermann Health System, a Domestic Nonprofit Corporation, is hereby directed to produce the items listed in Exhibit “A” attached hereto. Such production is governed by the instructions and definitions on this page and subsequent pages.

You are to make available the documentary material described in Exhibit “A” to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division (“Division”). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on November 25, 2022. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov. **Please contact one of the persons listed below upon receipt in order to discuss the return date and the logistics of producing the requested documents to the Consumer Protection Division.**

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to misrepresentations regarding child privacy and Texas law.

TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 27th day of October, 2022.

Other Authorized Agents:

/s/David Shatto
David Shatto
Assistant Attorney General
T: (512) 463-2185 | F: (512) 370-9125
Email: david.shatto@oag.texas.gov

Sam Weeks, Investigator
T: (512) 463-2185 | F: (512) 370-9125
Email: samuel.weeks@oag.texas.gov

Instructions

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. *Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
3. **Relevant Dates.** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from January 1, 2020, to the date of the production of documents in response to this Civil Investigative Demand, herein called “the relevant time period.”
4. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person’s right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
 - a. the name of each author, sender, creator, and initiator of such document;
 - b. the name of each recipient, addressee, or party for whom such document was intended;
 - c. the date the document was created;
 - d. the date(s) the document was in use;
 - e. a detailed description of the content of the document;
 - f. the reason it is no longer in your possession, custody, or control; and
 - g. the document’s present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.

5. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc. must be produced.
6. **No Redaction.** All materials or documents produced in response to this Civil Investigative Demand shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final

editions of a document.

7. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

8. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes, and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

9. **Privilege Log.** For each Document and any other requested information that you assert is privileged or for any other reason excludable from production, please provide a privilege log, wherein you:

- a. Identify that Document and other requested information;
- b. State each specific ground for the claim of privilege or other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;
- c. State the date of the Document or other requested information; the name, job title, and address (including city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; and
- d. Describe the type and subject matter of the Document or other requested information.

Definitions

1. **“You,” “Your,” “Memorial Hermann Health System,” and/or “Memorial,” (also referred to herein as the “Company”)** means the entity named on page one of this Civil Investigative Demand and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance of or on behalf of any of the above. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is total or partial ownership (25 percent or more) or control between Memorial Hermann Health System and any other person or entity.
2. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
3. **“Child”** or **“Children”** are natural persons aged between 12 and 17 years old when the requested Document or medical record was created.
4. **“Communication”** means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.
5. **“Concerning”** or **“Relating to”** means related to, referring to, pertaining to, concerning, describing, regarding, evidencing, or constituting.
6. **“Document”** is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-mail), instant messages, text messages or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.
7. **“Identify”** means the following:
 - a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding

- (if different), home, cellular, and business telephone numbers, and personal and business email addresses;
- b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other affiliated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and
 - c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents.
8. **“Parent” or “Parental”** includes Parent, Guardian, or other person acting in loco parentis with legal authority to make health care decisions on behalf of a minor child.
9. **“Person”** means any natural person or any legal entity, including, without limitation, any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or firm.

EXHIBIT A: DOCUMENTS TO BE PRODUCED

In accordance with the requirements set forth in the “Definitions” and “Instructions” sections of this Civil Investigative Demand, You are specifically required to respond in writing to each of the following Requests within the time frame set forth below:

Produce within 30 days

1. Documents sufficient to define and describe the terms “Proxy,” and “Proxy access” as used by You.
2. All Documents describing Your policies and procedures related to the privacy of Children.
3. All Documents describing Your policies and procedures related to the health information of Children.
4. All Documents describing Your policies and procedures related to proxy access and Parental access of their Child’s health information and medical records.
5. Documents sufficient to support that the following representation complies with Texas law: “At the time the child turns 12 the proxy access will be limited to begin a transition to adult care for most adolescents and stay in compliance with confidentiality provided to adolescents by State of Texas laws.”
6. Documents sufficient to support that the following representation complies with Texas law: “At Memorial Hermann Health System, we are dedicated to protecting the information of our patients, and the proxy process was designed to comply with state laws and protect the privacy of our patients. Proxy access cannot be provided to Parents of children between the ages of 13 and 17. If a proxy relationship was established for a minor, the Parent will no longer be able to see their child’s health information in their Everyday Well account when the child is between the ages of 13 and 17.”
7. Documents sufficient to identify the reasons for the development, implementation, or approval of the representations noted in numbers 5 and 6.
8. All of Your Board of Directors’ minutes and communications concerning, or relating to, the development, implementation, or approval of the representations noted in numbers 5 and 6.
9. All Documents provided to Your Board of Directors concerning, or relating to, the development, implementation, or approval of the representations noted in numbers 5 and 6.
10. All training materials provided to any employees, officers or directors regarding the representations noted in 5 and 6 above, including powerpoint presentations, handouts, checklists or any other related documents.
11. All Documents concerning, or relating to, any communication between Parents of Children that were or are patients of Memorial, and You related to accessing the Child’s health information and/or related medical records.

12. All Documents concerning, or relating to, any complaints by Parents of Children that were or are patients of Memorial, about access to their Child's health information and/or related medical records.
13. Documents sufficient to identify any way Parents can obtain their Child's health information and/or related medical records, beyond an Everyday Well account.
14. All Documents sufficient to identify how many Parents have been billed for their Child or Children, while being denied proxy access to their Child's health information or medical records, including billing details.
15. All current governing documents (certificate of formation or articles of incorporation and bylaws) and any amendments that incorporate changes reflecting these new proxy policies.
16. All studies or consulting agreements or opinions reviewed/used/commissioned to evaluate or create the proxy policies.