

This Agreement is made this _____ day of _____, 20__ by **Gregory G. Markarian, MD, 10 West Martin Avenue, Suite 50, Naperville, Illinois, 60540, Orthopedic Associates of Naperville**
and _____

_____The parties are desirous of entering into this Agreement in order to comply with federal law.

I. DEFINITIONS

A. Business Associate. “Business Associate” shall mean [Business Associate name and address].

B. Covered Entity. “Covered Entity” shall mean Practice.

C. Individual. “Individual” means a person and includes a personal representative who under law has authority to make health decisions for another person. [45 CFR § 164.502(g)].

D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

E. Protected Health Information. “Protected Health Information” means individually identifiable health information that is transmitted or maintained in any form or medium, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

F. Required By Law. “Required By Law” means a mandate contained in law that compels use or disclosure of protected health information and that is enforceable in a court of law including but not limited to subpoenas. [45 CFR ' 164.501].

G. Secretary. “Secretary” means the Secretary of the Department of Health and Human Services or his designee.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

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, such as mandated reports to regulatory agencies.

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 Covered Entity 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 Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

F. [This section is not necessary if business associate does not have protected health information in a designated record set.] Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner [access policy such as - upon 10 business days written notice during regular business hours of 10am - 4pm], to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual. [45 CFR ' 164.524.] Business associate designated record set means [specify].

G. [This section is not necessary if business associate does not have protected health information in a designated record set.] Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to at the request of Covered Entity or an Individual, and in the time and manner [access policy such as - upon 10 business days written notice during regular business hours of 8am - 4pm]. Business associate designated record set means [specify].

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, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner [access policy such as upon 10 business days written notice during regular business hours of 10am - 4pm] or designated by the Secretary, for purposes of the Secretary determining Covered Entity'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 Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information [45 CFR ' 164.528]. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner [access policy such as - upon 10 business days written notice during regular business hours of 8am - 4pm], information collected in accordance with Section of this Agreement, to permit Covered Entity to

respond to a request by an Individual for an accounting of disclosures of Protected Health Information. [45 CFR ' 164.528].

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE – GENERAL USE AND DISCLOSURE PROVISIONS

[(A) AND (B) are alternative approaches]

A. Specify purposes: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

[Explicitly state business associate purpose for having PHI in general terms].

B. Refer to underlying services agreement: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in [refer to underlying service contract], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

IV. SPECIFIC USE AND DISCLOSURE PROVISIONS

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

B. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances 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 the 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 Covered Entity. [45 CFR ' 164.504(e)(2)(i)(B)].

D. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities [45 CFR ' 164.502(j)(1)].

V. OBLIGATIONS OF COVERED ENTITY – PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. [45 CFR ' 164.522].

VI. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity 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 Covered Entity; except when the Business Associate uses or discloses Protected Health Information for data aggregation or management and administrative activities of Business Associate.

VII. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the date specified above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed, or referred to covered entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide written notice to and 45 days for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure are feasible, Covered Entity 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 received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to 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, except as required by law.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make destruction infeasible. Upon written confirmation that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the destruction infeasible, for so long as Business Associate maintains such Protected Health Information, except as required by law.

VIII. MISCELLANEOUS

A. Regulatory References. A reference in this Agreement to a section in the Privacy 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 Covered Entity 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 Section VII (C) of this Agreement shall survive the termination of this Agreement.

D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

ORTHOPEDIC ASSOCIATES OF NAPERVILLE Practice

**GREGORY G. MARKARIAN, MD
10 WEST MARTIN AVE. SUITE 50
NAPERVILLE, IL 60540**

Signature of OAN Representative

Business Associates Name

Business Associates Address

Business Associates Signature

Date