

CAUSE NO. \_\_\_\_\_

IN THE MATTER OF:	§	IN THE DISTRICT COURT OF
	§	
THE STATE OF TEXAS,	§	
<i>Petitioner,</i>	§	
	§	
and	§	HARRIS COUNTY, TEXAS
	§	
MEMORIAL HERMANN HEALTH	§	
SYSTEM,	§	
<i>Respondent.</i>	§	_____ JUDICIAL DISTRICT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. The STATE OF TEXAS (“State”) and MEMORIAL HERMANN HEALTH SYSTEM (“MHHS”), collectively, the “Parties,” submit this Assurance of Voluntary Compliance (“Assurance”) for the Court’s approval and entry in accordance with the requirements of § 17.58 of the Deceptive Trade Practices–Consumer Protection Act Tex. Bus. & Com. Code (“DTPA”).

**BACKGROUND**

2. MHHS is required by law to provide patients or their legally authorized personal representatives access to medical records, including parental access to a child’s medical records, within the parameters of state law, which includes some exceptions. MHHS offers enhanced access to certain portions of medical records (when available) through its Everyday Well patient portal, which is part of its Cerner medical record system. Additionally, MHHS offers access to the complete medical record by request through its Release of Information Department. Due to technological limitations, however, parents or legally authorized personal representatives of minors are unable to access the medical records of their children aged 13-17 years old through the Everyday Well patient portal. In 2022, MHHS publicly announced that it selected Epic as its Partner for Electronic Health Record Modernization and that it was transitioning away from

Cerner. Epic is one of several healthcare information technology companies that develops medical record software for the healthcare industry. Epic’s installation will allow for more functionality at the bedside and will provide additional options to access the medical record through its patient portal. The transition to Epic will allow MHHS to retire the Cerner Everyday Well patient portal and implement Epic’s “My Chart” patient portal, which MHHS believes will alleviate the technological limitations associated with the Cerner Everyday Well patient portal. Using all deliberate speed, MHHS expects the Epic “My Chart” patient portal to be operational in May of 2024.

### **STIPULATIONS**

3. This Assurance is being entered into by the Parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation;
4. This Assurance does not constitute an admission by MHHS of any violation of law, rule, or regulation, including, without limitation, the DTPA, and MHHS expressly denies any such liability for, violation of, or noncompliance with any such law, rule, or regulation;
5. The State and MHHS agree to the terms of this Assurance and the Parties are fully authorized to sign and enter into this Assurance;
6. This Court has jurisdiction over the subject matter and the Parties in this matter;
7. This Assurance is non-appealable; and
8. MHHS acknowledges receipt of this Assurance and has full and actual notice of its terms.

### **DEFINITIONS**

9. “Child” or “Children” means a person under eighteen (18) years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes. Texas Family Code § 101.003(a).

## PARTIES

10. Respondent is the Memorial Hermann Health System, a registered Texas Domestic Nonprofit Corporation. Its principal place of business is located in Harris County at 909 Frostwood Drive, Houston, Texas 77024.

11. Petitioner is the State of Texas acting by and through the Consumer Protection Division of the Office of the Attorney General as authorized under the DTPA, §17.41, *et seq.*

## ALLEGATIONS OF THE STATE OF TEXAS

12. MHHS currently operates hospitals and medical clinics and provides medical services in the Greater Houston, Texas area.

13. MHHS also operates [www.memorialhermann.org](http://www.memorialhermann.org), its Cerner electronic medical record system, and the Cerner Everyday Well patient portal.

14. In 2022, the State issued a Civil Investigative Demand pursuant to Tex. Bus. & Com. Code § 17.61 related to actual or possible violations of DTPA sections 17.46(a) and 17.46(b) for issues related to alleged misrepresentations regarding parental access to their adolescent Child's medical record through MHHS' Everyday Well patient portal and Texas law.

15. MHHS timely responded to the Civil Investigative Demand.

16. The State alleges MHHS may have violated the DTPA by making false, misleading, or deceptive representations regarding the following Everyday Well patient portal Frequently Asked Question:

How do I gain proxy access to view a family member's health record through Everyday Well?

. . . 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. . . .

17. The State contends that this language is misleading because it implies that access to medical records for this population may not legally be provided through the Everyday Well patient portal to parents of children between the ages of 13 and 17, when in fact it could be provided if MHHS' medical record software had the technological ability to modify access to medical records based on the individual consenting to the treatment or as otherwise required by law. The State also contends that this language is misleading because it could be confused with an implication that parents have no way of accessing their child's health information if their child is between the ages of 13 and 17.

#### **RESPONDENT'S RESPONSE**

18. MHHS denies any wrongdoing or liability and alleges that it has not engaged in any conduct that violated Texas law, including the DTPA. MHHS contends that parents have always had access to the medical records for their children through its Release of Information department. Moreover, access to (and patient-facing information about) the Everyday Well patient portal clearly directs parents to the Release of Information Department for information they are not able to access on the Everyday Well portal. Moreover, MHHS invests in technological and other improvements to ensure patients and their parents have timely access to health information. MHHS underwent a lengthy process to review the need to transition its medical record system to Epic as a central part of its commitments to improving the tools available to clinicians and providers, providing high-quality care, enhancing communication with patients and their parents, and complying with various legal and regulatory obligations dictating how health information is used

and disclosed (including improving the patient experience through timely access to their medical record).

### **RESPONDENT'S ASSURANCES**

19. MHHS hereby agrees and voluntarily assures the State that, within 15 days of entry of this Assurance, it shall update the current language of the above Everyday Well patient portal Frequently Asked Question to the following language:

At Memorial Hermann Health System, we are dedicated to protecting the information of our patients. The proxy process was designed to comply with state and federal privacy laws.

The Everyday Well portal has certain technological limitations which impact proxy access to medical records for patients ages 13-17. Therefore, proxy access through Everyday Well is not available to parents for this age range. We are actively working to improve this process and to provide portal access. Parents may instead contact the Memorial Hermann Release of Information Department directly at 713-867-4335 or online at Request Medical Records | Memorial Hermann to request medical records for their children.

20. In addition, MHHS agrees that, within 15 days of entry of this Assurance, it will add language to the same effect as that in the preceding paragraph to the online sites for the Everyday Well Portal Log-in page and to the Release of Information department page.

21. In addition, MHHS agrees to notify the Attorney General when its new Epic "My Chart" patient portal, described in paragraph two (2), is operational. While failure to meet this timeline is not a violation of this AVC, if, or when, MHHS determines that it cannot meet the May of 2024 timeline to implement the new Epic "My Chart" patient portal, MHHS agrees to notify the Attorney General within a reasonable time of that determination.

22. MHHS further voluntarily assures the State that it will continue to ensure open and transparent parental access in accordance with Texas and federal law to their adolescent Child's

medical records through the MHHS Release of Information Department until the current Everyday Well portal is retired and replaced by the Epic “My Chart” patient portal.

### **MONETARY PROVISIONS**

- 23. **Civil Penalty:** None
- 24. **Attorneys’ Fees:** None

### **RELEASE**

23. This Assurance constitutes a complete settlement and release by the State of all claims that the State could have brought against MHHS based on the facts alleged herein.

### **GENERAL PROVISIONS**

- 24. **Court Approval:** MHHS and the State agree that the Attorney General will submit this Assurance to a district court of competent jurisdiction in Harris County and request that the court approve this Assurance, pursuant to the terms set forth herein and DTPA § 17.58.
- 25. **No Private Right of Action:** Nothing in this Assurance shall create any private rights, causes of action, or remedies against MHHS and nothing in the Assurance shall be construed as a waiver of any private rights, causes of action, or remedies of any person against MHHS with respect to the practices or conduct described herein.
- 26. **Past and Future Practices:** Nothing herein constitutes approval or acquiescence by the State of MHHS’ past practices, current efforts to reform their practices, or any future practices which MHHS may adopt or consider adopting. The State’s decision to enter into this Assurance does not constitute approval or imply authorization for any past, present, or future business practice.
- 27. **Preservation of Future Enforcement Action:** MHHS and the State agree that nothing in this Assurance shall be construed to affect any action or proceeding by any regulatory body or

State agency other than the Office of the Attorney General, whether such action or proceeding is related to any issue addressed by the Assurance or otherwise.

28. **Authority:** The corporate signatory hereto is a corporate officer for MHHS who is authorized to enter into this Assurance and has read the Assurance and agrees to entry of same.

29. **Conflict of Other Law:** To the extent that the provisions of this Assurance conflict with any Texas, local, or federal law or regulation that now exists, or is later enacted or amended, such law or regulation, and not this Assurance, shall apply.

30. **Entire Agreement:** This Assurance sets forth the entire agreement between the Parties. MHHS represents that MHHS has fully read and understands this Assurance, accepts the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between the Parties not stated in writing herein.

31. **Modification:** The Parties agree that this Assurance shall not be modified or terminated except by written agreement signed by the Parties and filed with the Court.

32. **Assessment of Court Costs:** The Parties shall bear their own costs.

33. **Effective Date:** The effective date of this Assurance is the date signed by the Court.

**APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:**

Respectfully submitted,

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Attorney General

BRENT WEBSTER  
First Assistant Attorney General

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Deputy First Assistant Attorney General

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Dated: November 15, 2023

**ATTORNEYS FOR THE STATE OF TEXAS**

**RESPONDENT,  
MEMORIAL HERMANN HEALTH SYSTEM**



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### Automated Certificate of eService

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Pauline Sisson on behalf of David Shatto  
Bar No. 24104114  
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Envelope ID: 81726613  
Filing Code Description: Petition  
Filing Description: 20231116 AVC\_MemHHS  
Status as of 11/16/2023 3:48 PM CST

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Shatto		david.shatto@oag.texas.gov	11/16/2023 3:01:04 PM	SENT
Pauline Sisson		pauline.sisson@oag.texas.gov	11/16/2023 3:01:04 PM	SENT

Associated Case Party: Memorial Hermann Health System

Name	BarNumber	Email	TimestampSubmitted	Status
James Jefferson Dewald	24001990	jay.dewald@nortonrosefulbright.com	11/16/2023 3:01:04 PM	SENT