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January 25, 2000

U.S. **Dept** of Health and Human Services
 Assistant Secretary for Planning and Evaluation
 Attention: Privacy-P, Room **G-322A**
 Hubert Humphrey Building
 200 Independence Avenue SW
 Washington, D. C. 20201

Dear Sir,

Re: Comments on the 'Treatment, payment, and health care operations' Section of the Standards of Privacy of Individually Identifiable Health Information, **RIN0991-AB08**

- 1) I urge the government to expressly state in the regulations that individuals have a right to privacy for all identifiable medical information.
- 2) I urge statutory recognition that the privacy of psychotherapy communications is vital and must be preserved in the final draft. The privilege for psychotherapy-patient communications as established in the Supreme Court's Jaffee v. Redmond decision should be expressly recognized and should not be deemed to be waived for any disclosure required for treatment or payment of an insurance claim.

Many patients come to therapy to deal with highly shameful and humiliating events, thoughts or feelings. For the public good to be served, these patients need to know that nothing they say **will** leave the therapy room. One example is a woman who called her HMO for therapy. When the person at the HMO insisted the woman tell **her why** she needs therapy, she said she couldn't reveal it, to please just approve therapy. **The HMO** refused unless the woman said specifically wtty she needed therapy. The caller hung up without a referral. Several months later; she found a therapist-outside of her HMO, whom she paid out-of-pocket: It was only then that **the** woman revealed that her husband was sexually abusing their-daughter. The child and the whole family had to suffer **the abuse** several extra months due to the demand for information the **patient** did not **want to give**. **An invasion** of privacy is also harmful to anyone **who** has been raped or sexually molested, for patients have reported that an insurer's demand for **information has made** them feel raped and abused all over again. Patients have committed suicide rather than give shame-producing information to anyone other than their therapist. I am aware of many such stories because I am a member of the

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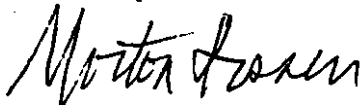
National Coalition of Mental Health Professionals and Consumers (Commack, NY). Our group is very concerned about the patient's loss of choice, privacy, and control over treatment decisions. Patients and therapists from all over the country have sent us their stories.

Patients at risk for harm to themselves or others will back away from the treatment they so badly need if they cannot count on the therapy room being absolutely safe from intrusion. The intrusion into privacy involves **a loss** of the patient's control over something that is very private to them. Such an intrusion is often traumatic. The government should not be **causing trauma**, but it will if it insists that patient information must be given without the patient's consent. The result will be patients avoiding needed treatment, suicides and harm to others.

3) Patient consent should be required for the disclosure of all mental health information. Urge the government to adopt the "New Jersey" model for protecting mental health information, which contains this requirement.

4) The regulations should not permit disclosure of medical information related to items and services paid for with private funds, without the patient's express consent,

Sincerely,

A handwritten signature in black ink that reads "Morton Kissen". The signature is written in a cursive, flowing style.

Morton **Kissen**, Ph.D.