

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-11-1317-^{DS}-MQA
FILED DATE - 6-15-2011
Department of Health
By: Jandra Soto
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY STATEMENT
OF ROGÉRIO S. FAILLACE, M.D., FAPP

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

This matter came before the Board of Medicine (hereinafter the "Board") on February 6, 2011, in Orlando, Florida, for consideration of the above referenced Petition for Declaratory Statement (attached hereto as exhibit A). The Notice of Petition for Declaratory Statement was published on December 30, 2010, in the Vol. 36, No. 52, in the Florida Administrative Weekly.

The petition filed by Rogerio S. Faillace, M.D., makes the following inquiry:

1. A physician medical records owner terminates his practice and properly lets his patients know of the termination. Subsequently, he receives a patient request for a copy of the patient's records, timely complies with the request, and obtains written confirmation that the patient has received the records. Under such circumstances is that physician excused from complying with future requests for copies of medical records from that same patient?
2. Has the person or entity who obtained the medical records from the previous records owner, assumed the role of the new "records custodian", thus terminating the previous record owner's duty to maintain that patient's medical records, and thus, transferring such duty to the new records custodian?
3. After the physician who terminated his practice has already provided a copy of a patient's medical record to the patient himself, to that patient's legal guardian, or to the patient's parent (when patient is a minor), is that physician's duties regarding disposition of that patient's records fulfilled and thereafter extinguished?

FINDINGS OF FACTS

1. Petitioner, Rogerio S. Faillace, M.D., is a physician licensed pursuant to Chapter 458, Florida Statutes.
2. Petitioner has terminated his private practice and as the medical records owner, maintains patient medical records from his private practice patients.

CONCLUSIONS OF LAW

3. The Board of Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

4. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

5. For purposes of determining standing in this matter, the Petitioner, an allopathic physicians licensed pursuant to Chapter 458, Florida Statutes, is a substantially affected persons because failure to comply with the medical records requirements of Sections 455.057 and 456.058, Florida Statutes (2010), and Rule 64B8-10.002, Florida Administrative Code, may result in disciplinary actions against his license to practice medicine

6. Section 456.057(6), Florida Statutes, reads in part as follows:

(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information.

Nothing in Sections 456.057 and 456.058, Florida Statutes, or Rule 64B8-10.002, Florida Administrative Code, excuses physicians who have terminated their practices from providing their patients or the patient's legal representatives with copies of the patient's medical records more than once.

7. The Board is of the opinion that under the facts presented above, the Petitioner's first and third inquiry are answered in the negative.

8. As to his second inquiry, the person or entity who obtains medical records from the Petitioner does become an owner of those records and must maintain them according to Florida law but that does not terminate the Petitioner's duty to maintain that patient's medical records

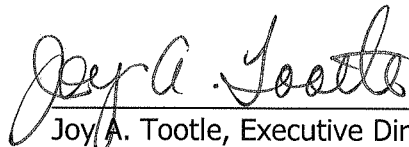
or from continuing to comply with Sections 456.057 and 456.058, Florida Statutes, and Rule 64B8-10.002, Florida Administrative Code.

9. This Final Order is issued in response to the questions propounded by the Petitioner as set forth in his Petition For Declaratory Statement. The Board's conclusions is based solely on the Board's application of the factual circumstances outlined in the Petition to the pertinent statutory and rule provisions set forth above.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 14th day of June, 2011.

BOARD OF MEDICINE



Joy A. Tootle, Executive Director
for George Thomas, M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Rogerio S. Faillace, M.D., 5042 S.W. 173 Avenue, Miramar, Florida 33029; and by interoffice mail to Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and Nicholas Romanello, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 15th day of June, 2011.

Sandra Soto

Deputy Agency Clerk

Rogério S. Faillace, MD, FAAP
5042 SW 173 Avenue; Miramar, FL 33029

MEDICINE BOARD
2010 DEC 14 AM 2:49

December 8, 2010

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Board of Medicine
Florida Department of Health
Attn: Mr. Larry McPherson, Executive Director
4052 Bald Cypress Way, Bin # C03
Tallahassee, FL 32399-3253

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE DEC 16 2010

Re: Request for clarification regarding disposition of medical records after termination of medical practice

Dear Mr. McPherson:

I write to petition this Board's assistance with interpretation of the statutory and administrative laws governing the duties of medical practitioners in Florida who have terminated practice. In particular, I need clarification regarding the disposition of patient medical records, even after having reviewed Sections 456.057 and 456.058, Fla. Stat, as well as Rule 64B8-10.002, F.A.C. Specifically, my questions are as follows:

When a physician (a "records owner"), who has terminated practice, and has duly communicated such practice termination to its patients, receives a request of copy of records of a certain patient, and complies with such request, and has written confirmation that the addressee has received such copy, is that physician excused from complying with future requests for copies? Hasn't the party (a person or entity), who has obtained the medical records from the previous records owner, assumed the role of the new "records custodian", thus terminating the previous records owner's duty to maintain that patient's medical file, and transferring such duty to the new records custodian?

Lastly, but not less importantly: after the physician, who has terminated practice, has already provided a copy of a patient's medical record to the patient himself, or to that patient's legal guardian, or the patient's parent (when patient is a minor), are that physician's duties regarding disposition of that patient's records fulfilled and thereafter extinguished?

Although Subsections (13) and (15) address these issues, your assistance with this matter is still needed and respectfully requested. As I have previously advised this Board, I have terminated my private practice in the past, and now just want to ascertain and distinguish between ongoing and fulfilled responsibilities towards my past pediatric patients and their families.

I thank you in advance for your time and attention and remain,

Respectfully yours,



Rogério S. Faillace, MD, FAPP
ME 77924

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