

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF MEDICAL EXAMINERS FOR SOUTH CAROLINA**

IN THE MATTER OF:

**Dermatology and Skin Cancer Center of
South Carolina and Joseph Masessa,
M.D. (deceased)**

ORDER

This matter came before the South Carolina Board of Medical Examiners upon a petition by the Board Administrator, Maggie Murdock, pursuant to South Carolina Reg. 81-1, "Safeguarding Patient Medical Records When a Physician Licensee is Incapacitated, or Dies."

The petition establishes the following facts:

1. The South Carolina Board of Medical Examiners ("Board") recently became aware that the Dermatology and Skin Cancer Center of South Carolina (the "Center") located in Myrtle Beach, South Carolina, recently closed abruptly and without notice to its patients. The last day of operation was Friday, February 17, 2023. The Center purportedly was to reopen on Monday, February 20, 2023, under new ownership. The transfer of ownership did not take place and the Center has not reopened as of March 30, 2023.

2. The Center was previously owned by Joseph Masessa, M.D., License No. MMD.35615. On November 1, 2019, Dr. Masessa died in a plane crash.

3. After the death of Dr. Masessa, the practice continued to be operated by a family member of Dr. Masessa, who is not a licensed physician in the State of South Carolina. This family member employed licensed practitioners who treated patients at the Center, although some practitioners were only at the practice site once a month but otherwise regularly practiced elsewhere.

4. Since it closed on Friday, February 17, 2023, the Center has not reopened. No one has contacted the patients in accordance with the Board's policy regarding "Closing of a Medical Practice." The family member operating the practice did not contact the Board following the closing of the practice, and the Board has not heard from him to date. Numerous patients contacted the local media in the area about their inability to obtain their records so that they could continue to receive treatment.

5. While the family member in question indicated in a news article to the local media that he was going to reopen the practice, this has not happened as of March 30, 2023. Patients have gone more than 40 days with no ability to obtain their records. The family member resides in New Jersey and there is no evidence to date that he has made any arrangements for record retrieval.

CONCLUSIONS OF LAW

1. The right of patients to obtain their medical records is of vital importance. It allows a patient to seek continuity of care of their ongoing medical problems, allows treatment to resume rather

than restart, saves the patient the time that would be necessary to find a new physician to start care over from the beginning, and saves the expense of having procedures repeated. This benefits patients, insurers, and physicians. The ability to obtain records is crucial, which is why the South Carolina Legislature passed the Physicians' Patient Records Act, S.C. Code § 44-115-10 *et seq.*, and why the Board promulgated South Carolina Regulation 81-1.

2. South Carolina Regulation 81-1 delegates to the Board of Medical Examiners certain rights and authority when a physician licensee is incapacitated, disappears, or dies. S.C. Code Reg. 81-1(B) states:

Where the physician licensee is incapacitated, disappears, or dies, and no responsible party is known to exist, the Administrator of the Board of Medical Examiners may petition the President of the Board for an order appointing another licensee or licensees to take custody of, inventory, and disperse the medical records to patients or other authorized parties in accordance with the Physician Patient Records Act and to take all other actions as appropriate to protect the interests of the clients. The Order of Appointment shall be a public document.

3. Dr. Masessa died in 2019. The family member who took over the practice is not a physician; it is doubtful that he legally owns the medical records. First, under the Physicians' Patient Records Act, the physician is the owner of medical records in his possession that were made in treating of a patient as well as any records transferred to the physician in the treatment of a patient. S.C. Code Ann. § 44-115-20. Moreover, a patient has a legal right to receive a copy of these medical records and to have them transferred to another physician. *Id.* A physician may not sell or transfer records to a nonphysician without permission granted by the Board of Medical Examiners. S.C. Code Ann. § 44-115-130. The Board has never approved the transfer of records to this particular family member.

4. Because Dr. Masessa is deceased, and because the Board finds there is no responsible party who currently has custody of these records, S.C. Code Reg. 81-1(B) gives the Board the authority to appoint a custodian of these records. While this family member may have been considered a "responsible party" at one point in time, he is no longer, as evidenced by the fact that the office has been closed for 40 days and that patients, many of them with cancer, have been unable to obtain their records to seek further treatment of their conditions. This may have resulted in treatment delays or the necessity for repeat biopsies or other medical treatment.

THEREFORE, the Board hereby appoints Brandon Coakley, M.D. as custodian of these records. This appointment as custodian of these records is necessary for the reasons set forth above. When contacted by the Board, Dr. Coakley indicated his willingness to take custody of these records and to comply with the law and the Board's policies in notifying patients as to where they may obtain their records. Dr. Coakley's obligations are provided by law, which states:

(C) The appointed licensee shall:

- (1) Take custody of and safeguard the physician licensee's available and accessible medical records;
- (2) Notify each patient at the patient's address shown in the file, by first class mail, of the patient's right to obtain his or her medical records to which the patient is entitled and the time and place at which the medical records may be obtained;

- (3) Post a notice in a conspicuous location at the impaired or unavailable licensee's last known business address advising the time and place at which patient medical records may be obtained;
- (4) Publish, in a newspaper of general circulation in the county or counties in which the licensee resided or engaged in any substantial practice, once a week for three consecutive weeks, and notice of the discontinuance or interruption of the physician's practice. The notice shall include the name and address of the licensee whose practice has been discontinued or interrupted; the time, date and location where patients may obtain their medical records; and the name, address and telephone number of the appointed licensee. The notice shall also be mailed, by first class mail, to any malpractice insurer or other entity having reason to be informed of the discontinuance or interruption of the medical practice;
- (5) Release to each patient the records to which the patient is entitled unless release directly to the patient is expressly prohibited by state or federal law. The appointed licensee shall obtain a receipt from the patient for the medical records before releasing the medical records. In the event the release of medical records directly to the patient is prohibited by state or federal law, the appointed licensee may release the records to an appropriate licensed healthcare provider, healthcare facility or patient's representative upon receipt of authorization to release from the patient, patient's representative or a court of law and shall obtain a receipt from the receiving party prior to the release of the records;
- (6) Perform any other acts directed in the Order of Appointment; and
- (7) The appointed licensee may seek reimbursement for reasonable expenses incurred pursuant to the discharge of duties imposed by the Order of Appointment from the assets or estate of the incapacitated, unavailable or deceased physician licensee.
- (D) The appointed licensee shall petition the Board President for authorization to dispose of unclaimed records no sooner than 1 year from the Order of Appointment's execution.
- (E) When the appointed licensee has complied with the provisions of this regulation, he or she may petition the Administrator of the Board for termination of the Order of Appointment by the Board President.
- (F) Neither the appointed licensee nor any other person or entity appointed to assist the appointed licensee shall disclose any information contained in the patient records without the consent of the patient or the patient's duly authorized representative, except as necessary to carry out the Order of Appointment.
- (G) Neither the appointed licensee nor any other person or entity appointed to assist the appointed licensee shall be responsible for reviewing the content of the medical records or ensuring compliance with any records retention policy set forth in either state or federal law.

(H) While acting pursuant to the Order of Appointment, the appointed licensee and any other person or entity appointed to assist the appointed licensee shall be considered an extension and agent of the South Carolina Board of Medical Examiners.

(I) The term of an Order of Appointment shall be for a period of no longer than 12 months. Upon application by the appointed licensee, the Board President may extend the term of the order as necessary.

S.C. Code Reg. 81-1. Again, Dr. Coakley has voiced his understanding of his obligations and has agreed to fulfill these responsibilities.

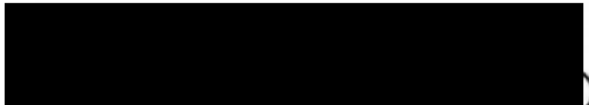
Where the Board's policy regarding "Closing of a Medical Practice" allows notices to be carried out via email, provided the email addresses are still valid and confirmation of receipt can be achieved, Dr. Coakley may provide notice electronically rather than by first-class mail. The Board's policy allows posting on social media, websites, etc., particularly if it is impracticable or impossible for Dr. Coakley to access voicemail systems of the former practice.

This Order granting Dr. Coakley custody of the records includes access to medical records that are either paper records, electronic records, or both. This Order may be served on anyone in possession of such records and shall act as authorization to release these records to Dr. Coakley or anyone acting as Dr. Coakley's agent.

This Order does not impose upon Dr. Coakley any obligations to assume patient care or assume liability arising out of the operation of the Dermatology and Skin Cancer Center of South Carolina, including but not limited to any payments owed for leases of any kind (equipment, office space), rent, storage fees, utilities of any type, invoices for items provided to Dermatology and Skin Cancer Center of South Carolina, wages, or liabilities arising out of contracts that Dermatology and Skin Cancer Center of South Carolina may have had with any provider or patient. The only legal obligations that Dr. Coakley assumes under this Order are those required by him pursuant to Regulation 81-1 as records custodian only and as set forth above.

AND IT IS SO ORDERED.

**STATE BOARD OF MEDICAL
EXAMINERS FOR SOUTH CAROLINA**



**ANNE G. COOK, M.D., FACP
President of the Board**

April 3, 2023