

## HEALTH: REGULATION OF MEDICAL CARE FACILITIES AND SERVICES.

**Written consent is not required from patients to transfer medical records maintained by selling corporation upon sale of its assets to purchasing corporation.**

The Honorable John C. Watkins

Member, Senate of Virginia

October 9, 1998

You inquire regarding the "Patient Health Records Privacy" law, § 32.1-127.1:03 of the *Code of Virginia*.

You present a hypothetical situation in which a health care corporation employs licensed physical therapists that provide physical therapy services to patients. The corporation is negotiating to sell and transfer its assets to another health care corporation. The asset-acquiring corporation will continue to employ the selling corporation's physical therapists. You ask whether written consent is required to transfer patient medical records maintained by the selling corporation upon the sale of the corporation's assets to the other corporation.

Section 32.1-127.1:03(A) recognizes a patient's right of privacy in the content of the patient's medical record, and, except when permitted by the section or by another provision of state or federal law, prohibits the disclosure of such record by any person working in the health care setting. In addition, no patient record shall be removed from the premises where such records are held without the approval of the provider maintaining them, "except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section."<sup>1</sup> The provisions of § 32.1-127.1:03, however, shall not apply "[u]pon the sale of a medical practice as provided in § 54.1-2405."<sup>2</sup>

Section 54.1-2405 provides:

No person licensed, registered, or certified by one of the health regulatory boards under the Department [of Professional and Occupational Regulation] shall transfer records pertaining to a current patient in conjunction with the sale of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area. The notice shall specify that, at the written request of the patient or an authorized representative, within a reasonable time period, the records or copies will be sent to any other like-regulated provider of the patient's choice or destroyed.

Several principles of statutory construction are applicable to this matter. "If the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>3</sup> It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.<sup>4</sup> In such situations, the statute's plain meaning and intent govern. In addition, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>5</sup>

Section 32.1-127.1:03 plainly exempts from the prohibitions of the Patient Health Records Privacy law the facts of the hypothetical situation you present. I am, therefore, of the opinion that written consent is not required from the patients in your hypothetical situation to transfer their medical records maintained by the selling corporation upon the sale of the corporation's assets to another corporation.

<sup>1</sup>Section 32.1-127.1:03(A).

<sup>2</sup>Section 32.1-127.1:03(D)(18).

<sup>3</sup>Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also 1993 Op. Va. Att'y Gen. 256, 257.

<sup>4</sup>See Ambrogi v. Koontz, 224 Va. 381, 297 S.E.2d 660 (1982); 1993 Op. VA. Att'y Gen. 99, 100.

<sup>5</sup>See 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1998); 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.