Agency Name: State Board of Nursing ‑ Labor, Licensing and Regulation

Statutory Authority: 40‑33‑10(E)

Document Number: 5151

Proposed in State Register Volume and Issue: 46/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Medical Affairs Committee

120 Day Review Expiration Date for Automatic Approval: 05/10/2023

Final in State Register Volume and Issue: 47/5

Status: Final

Subject: Handling Patient Records Upon the Death, Disappearance, or Incapacity of a Licensee

History: 5151

By Date Action Description Jt. Res. No. Expiration Date

‑ 10/28/2022 Proposed Reg Published in SR

‑ 01/10/2023 Received President of the Senate & Speaker 05/10/2023

S 01/10/2023 Referred to Committee

H 01/11/2023 Referred to Committee

H 03/27/2023 Committee Requested Withdrawal

 120 Day Period Tolled

‑ 03/27/2023 Withdrawn and Resubmitted 05/10/2023

‑ 05/10/2023 Approved by: Expiration Date

‑ 05/26/2023 Effective Date unless otherwise

 provided for in the Regulation

Document No. 5151

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**

**STATE BOARD OF NURSING**

Chapter 91

Statutory Authority: 1976 Code Section 40‑33‑10(E)

91‑33. Safeguarding Patient Records. (New)

**Synopsis:**

 The South Carolina Board of Nursing proposes to amend its regulations regarding the handling of patient records upon the death, disappearance or incapacity of a licensee.

 The Notice of Drafting was published in the *State Register* on March 25, 2022.

**Instructions:**

 Print the regulation as shown below. All other items remain unchanged.

**Text:**

ARTICLE 6

SAFEGUARDING PATIENT RECORDS

91‑33. Safeguarding Patient Medical Records When a Nurse Licensee is Incapacitated, Disappears, or Dies.

 A. Each Advanced Practice Registered Nurse (APRN) licensee actively practicing within the State of South Carolina, in a solo practice setting, shall designate a partner, personal representative, or other responsible party to assume responsibility for patient medical records in the case of incapacity, death or disappearance of the licensee, including any circumstances whereby the licensee is unable for any reason to provide continuity of care, appropriate referral or patient medical records upon a valid request of the patient. Each APRN nurse licensee must identify by name, address, and telephone number their designee required by this regulation upon each application for initial licensure, renewal, and reinstatement.

 B. Where the APRN licensee is incapacitated, disappears, or dies, and no responsible party is known to exist, the Administrator of the Board of Nursing may petition the Board Chair 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 Patient Records Act and to take all other actions as appropriate to protect the interests of the patients. The Order of Appointment shall be a public document.

 C. The Board of Nursing appointed licensee shall:

 (1) Take custody of and safeguard the APRN 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 APRN’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 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 Board of Nursing 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 Board of Nursing 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 APRN licensee.

 D. The Board of Nursing appointed licensee shall petition the Board Chair for authorization to dispose of unclaimed records no sooner than 1 year from the Order of Appointment’s execution.

 E. When the Board of Nursing 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 Chair.

 F. Neither the Board of Nursing 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 Board of Nursing 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 Board of Nursing 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 Nursing.

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

**Fiscal Impact Statement:**

 There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Rationale:**

 The updated regulations will provide guidance for the handling of patient records upon the death, disappearance or incapacity of a licensee.