

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
) Case No. 12-1143
vs.)
)
DOCTOR'S OFFICE FOR WOMEN,)
INC., d/b/a TODAY'S WOMEN)
MEDICAL CENTER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on June 8, 2012, by video teleconference at sites in Miami and Tallahassee, Florida, before Administrative Law Judge (ALJ) Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Nelson E. Rodney, Esquire
Agency for Health Care Administration
Suite 300
8333 Northwest 53rd Street
Miami, Florida 33166

For Respondent: Vlad Van Rosenthal, M.D.
Qualified Representative
Doctor's Office for Women
3250 South Dixie Highway
Miami, Florida 33133

STATEMENT OF THE ISSUE

Whether Respondent, Doctor's Office for Women, Inc., d/b/a Today's Women Medical Center (Respondent), failed to maintain medical records as alleged in the Administrative Complaint filed with DOAH on March 28, 2012.

PRELIMINARY STATEMENT

By Administrative Complaint filed February 7, 2012, the Agency for Health Care Administration (Petitioner) alleged certain facts pertaining to an abortion performed on a female patient (the Patient). Based on those factual allegations, Petitioner charged Respondent with failing to maintain medical records in violation of Florida Administrative Code Rule 59A-9.031.

Respondent thereafter timely requested a formal administrative hearing, the matter was referred to DOAH, and this proceeding followed.

Prior to the formal hearing, Petitioner narrowed its allegations against Respondent. Petitioner alleged that Respondent violated the medical records rule by failing to maintain a consent form for a procedure that was approximately eight weeks after the Patient's abortion. Petitioner also alleged that Respondent violated the medical records rule by failing to obtain records of the Patient's visit to an emergency

room between the abortion and the subsequent procedure. All other allegations were abandoned.

At the final hearing, Petitioner presented the testimony of Ariesa Render, and Faith Randolph. Ms. Render is employed by Petitioner as a Health Facility Evaluator. Ms. Randolph is employed by Petitioner as a Registered Nurse Consultant. Petitioner offered two exhibits, both of which were admitted into evidence without objection. Respondent presented the testimony of Vlad Van Rosenthal, M.D., the owner and medical director of the subject facility. Respondent offered no exhibits.

A Transcript of the hearing was filed June 27, 2012. Petitioner filed a timely Proposed Recommended Order (PRO), which has been duly considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a PRO.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Respondent has been licensed as an abortion clinic authorized to perform first and second trimester abortions. The facility at issue in this proceeding is located in Miami-Dade County, Florida.

2. Respondent is required to comply with the following provisions of Florida Administrative Code Rule 59A-9.031:

(1) A permanent individual clinical record shall be kept on each clinic patient. Clinical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval.

(a) Clinical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval.

(b) Clinical records involving second trimester abortion procedures shall be kept confidential and secure.

(c) Operative reports signed by the physician performing the second trimester abortion shall be recorded in the clinical record immediately following the procedure or that an operative progress note is entered in the clinical record to provide pertinent information.

(2) Clinical records shall be kept on file for a minimum of five years from the date of the last entry.

3. At the times relevant to this proceeding, Respondent used a consent form which, preceding the line for the patient to date and sign the form, states as follows:

I, _____, voluntarily authorize Doctor's Office for Women, [Dr. Rosenthal], who is an independent provider and will have complete control over this procedure, follow up and any and all treatments and whomsoever he may designate as his assistants, to perform upon me an elective abortion. I fully understand that the purpose of the procedure is to terminate my pregnancy, and I affirm this is to be my personal choice in the light of the alternative of continuing the pregnancy to full term. I further request and authorize him to do whatever he deems advisable if any unforeseen conditions arise in the course of the abortion that call, in his judgment, for procedures in

addition to or different from those contemplated.

I will fully and completely disclose my medical history, including allergies, blood conditions, prior medications or drugs taken, and reactions I had to anesthesia, medicines of [sic] drugs, I consume to my physician relying on my disclosure to be complete.

I consent to the administration of anesthesia as may be deemed necessary or advisable by my physician. I understand that local anesthesia do not eliminate all pain completely and IV sedation anesthesia (Versed, Valium, Demerol) will not put me to sleep and no guarantee to the contrary have been made to me.

The nature and purpose of an abortion, the procedures, the risks involved, the emotional distress, and the possibility of complications have been fully explained to me. I realize there are inherent risks of minor and major complications which may occur in this and all surgical procedures without the fault of the physician. No guarantee has been made to me. The complications include, but are not limited to: allergic reaction to the sedative or anesthesia; infection; excessive bleeding; the need for a second D&C to complete the abortion; perforation of the uterus; laceration of the cervix; hysterectomy - surgically removing the pregnancy through the abdomen; removal of the uterus as treatment of a complication (hysterectomy), also, one study indicates the possibility of breast cancer due to abortions even though these studies are not conclusive, we still recommend annual breast examinations, etc. [sic].

I release the doctors and Doctor's Office for Women and any corporation which operates this facility from any liability resulting

from the above mentioned [sic] or any other complications.

I further realize that I may need to be hospitalized at my own expense for treatment of such complications. I realize that such conditions can be caused by my own condition or conduct. I will accept hospitalization, if required by the doctors for any complications arising from this procedure. I understand that my complication requiring hospitalization, as a result of the termination will not be covered financially by the Doctor's Office for Women, or corporation which may operate this facility or the doctors.

I understand that any questions I have will be answered before leaving the facility. If I have any questions or complications after leaving, I agree to call the Doctor's Office at this number: [xxx-xxx-xxxx].

I understand that I must return to the office for a two-week post-termination evaluation (free). I also acknowledge that if I do not return for this evaluation, I have not completed my medical care and release the Doctor's Office for Women and physicians from any liability resulting from my termination.

The undersigned hereby expressly waives and releases for themselves, heirs or representatives any claims or demand which they may have of any nature, kind or description against [Dr. Rosenthal] and/or his/her assistant/s and Doctor's Office for Women, and any corporation which operates this facility and the undersigned do [sic] specifically assume any and all responsibility for the operation, acknowledging that the same is done at their [sic] request for their benefits [sic]. I certify that (if married) I have notified my husband of my intention to obtain a

termination of pregnancy and I have given him the opportunity to consult with me concerning this decision. I CERTIFY THAT I HAVE READ AND FULLY UNDERSTAND THE ABOVE CONSENT TO AN ABORTION THAT THE EXPLANTATIONS THEREIN REFERRED TO WERE MADE [sic]. I GIVE THIS PERMISSION VOLUNTARILY AND OF MY OWN FREE WILL, I FURTHER REPRESENT AND WARRANT THAT I HAVE FULL LEGAL AUTHORITY TO GIVE THIS PERMISSION.

4. On July 18, 2011, the Patient executed the foregoing consent form, and Dr. Rosenthal performed an abortion on the Patient.

5. On September 20, 2011, Ms. Render inspected the Patient's medical records as maintained by Respondent as part of a survey of the facility.

6. Respondent's records for the Patient reflect the events of July 18, 2011. The Patient's records reflected that the Patient was seen at an emergency room on a date between July 18 and September 13, 2011. The Patient's records did not reflect the date of that visit to the emergency room. The Patient's records reflect that the Patient had gone to the emergency room due to excessive bleeding for a sustained period of time following the abortion on July 18, 2011. The Patient's records reflect that all findings at the emergency room were "WNL" (within normal limits), but the records have no further information as to the emergency room visit.

7. On September 13, 2011, the Patient returned to Respondent's facility, at which time Dr. Rosenthal performed on the Patient a procedure generally referred to as a D&C (dilation and curettage). The Patient did not sign a separate consent form for the second procedure.

8. Ms. Randolph's testimony, and the consent form itself, established that the consent form authorized emergency follow-up care for the abortion, but it was insufficient to authorize the D&C some eight weeks after the abortion. Petitioner established that Respondent should have obtained written consent for the second procedure and should have maintained that consent as part of the Patient's records.^{1/}

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1).

10. The burden of proof is on Petitioner to prove the material allegations of its Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996).

11. Respondent's records noted that the emergency room visit occurred and noted that all findings were "WNL." Petitioner did not prove that Respondent was required to obtain a copy of the records of the Patient's emergency room visit or

further document the findings of that visit. Consequently, no violation should be predicated on the absence of emergency room records.

12. Although the second procedure may have been necessary because of the first procedure, they are two separate and distinct procedures separated in time by eight weeks. Petitioner proved that Respondent should have obtained a separate consent from the Patient for the second procedure, which should have been maintained in the Patient's medical records as alleged by the Administrative Complaint. The failure to maintain a valid consent form for the second procedure violated Florida Administrative Code Rule 59A-9.031, as alleged by the Administrative Complaint.

13. Pursuant to section 390.018, Petitioner has the authority to impose upon Respondent an administrative fine for the violation found up to \$1,000.00, which is the amount of the fine requested by Petitioner in its PRO. Considering the importance of obtaining consent and maintaining accurate records in a medical facility, the undersigned concludes that a penalty of \$1,000.00 is appropriate.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Agency for Health Care Administration enter a final order finding Respondent guilty of

failing to maintain a consent form for the second procedure, but dismissing all other charges against A Doctor's Office for Women, Incorporated, d/b/a Today's Women Medical Center. It is further recommended that the final order impose an administrative fine in the amount of \$1,000.00 against A Doctor's Office for Women, Incorporated, d/b/a Today's Women Medical Center.

DONE AND ENTERED this 31st day of July, 2012, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 2012.

ENDNOTE

^{1/} In making these findings, the undersigned has considered Dr. Rosenthal's testimony. Dr. Rosenthal testified, credibly, that the Patient was not billed for the second procedure. He further testified that he did not believe the Patient needed to sign a separate consent form for the second procedure because of the consent form signed by the Patient on July 18, 2011. Dr. Rosenthal considered the Patient to have consented to the D&C performed on September 13 as follow-up treatment for the abortion performed July 18, 2011.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.