

Declaratory judgments -- Medical records -- Copying fees -- When patient's legal representative requests copies of patient's medical records on behalf of patient, proper fee under administrative rule is \$1.00 per page for first 25 pages and 25 cents for each page in excess of 25 pages, the rate applicable when a patient requests copies, not \$1.00 per page fee applicable to requests from all other entities.

RUE & ZIFFRA, P.A., as legal representative of Tammy Bales, Allan Best and Karen Stella-Medina, Plaintiff, vs. HEALTH INFORMATION PROFESSIONALS, INC., Defendant. Circuit Court, 7th Judicial Circuit in and for Orange County. Case No. 2010-CA-008510-O. December 19, 2011. Julie H. O'Kane, Judge. Counsel: Luis R. Gracia, Rue & Ziffra, P.A., Port Orange, for Plaintiff. Eric V. Hires, Law Office of Eric V. Hires, LLC, Orlando, for Defendant.

**ORDER GRANTING SUMMARY
JUDGMENT FOR PLAINTIFF**

This cause, coming on to be heard upon Plaintiff's Motion for Summary Judgment, and the Court having reviewed legal authorities, considered the pleadings, arguments of counsel, and being sufficiently advised on the premises, hereby finds and holds as follows:

FACTS

1. The Plaintiff, Rue & Ziffra, P.A., (hereafter Rue & Ziffra) is a law firm that all times material hereto had an ongoing contractual relationship with Tammy Bales, Allan Best and Karen Stella-Medina to provide legal services to them and, as a result, had full authority to act on their behalf as their legal representative.
2. The Defendant, Health Information Professionals, Inc., (hereafter Health Information Professionals) is a corporation that provides services which include the release of medical records on behalf of medical providers to parties that request such information.
3. Ms. Bales, Mr. Best and Ms. Medina were all patients of medical providers for whom the Defendant provides release of medical information services.
4. As part of their respective cases, Ms. Bales, Mr. Best and Ms. Medina executed a release of medical records document directing Health Information Professionals to provide their medical records to Rue & Ziffra as their legal representative.

5. In responding to the request for the above mentioned records, the Defendant billed Rue & Ziffra at a rate of \$1.00 per page in order to produce the records.

6. Rue & Ziffra challenged the \$1.00 per page charge as excessive and contrary to the language of Rule 64B8-10.003 of the Florida Administrative Code which allows the charges to reproduce copies for patients to be no more than \$1.00 per page for the first 25 pages of records and 25 cents for all pages in excess of 25.

7. Health Information Professionals stood by the \$1.00 per page charge claiming that the Florida Administrative Code rule that allows charges as argued by the Plaintiff is only applicable to records provided for patients and governmental entities. Since Rue & Ziffra is neither, Health Information Professionals argued that the applicable provision of the code, which refers to other entities requesting medical information, allows charges for medical records at a rate of \$1 per page.

8. Rue & Ziffra filed a Declaratory Judgment Action pursuant to Florida Statute §86.021 in order to establish and determine the parties' rights under Rule 64B8-10.003 of the Florida Administrative Code.

PROCEDURAL POSTURE

9. On May 9th, 2011, the Plaintiff filed an amended Motion for Summary Judgment arguing that as the duly appointed legal representative of the above referenced patients, and pursuant to Rule 64B8-10.003(2) of the Florida Administrative Code, the charge for medical records should have been \$1.00 for the first 25 pages of records and 25 cents for each page in excess of 25 pages.

10. In support of the above argument, Plaintiff cited the plain language of Rule 64B8-10.003(2), which in relevant part states as follows:

(2) For patients and governmental entities, the reasonable costs of reproducing copies of written or typed documents or reports shall not be more than the following: (a) For the first 25 pages, the cost shall be \$1.00 per page. (b) For each page in excess of 25 pages, the cost shall be 25 cents.

11. Plaintiff further argued the well settled principle of law that an attorney serves as an agent for his or her client. As such, the acts of an attorney are the acts of the principle, the client. *Richard Bertram, Inc. v. Sterling Bank & Trust*, 820 So.2d 963, 965 (Fla. 4th DCA 2002) [27 Fla. L. Weekly D1201b]. Thus, Rue & Ziffra was simply standing "in the shoes" of the patients, i.e., their clients, when it requested their medical records from the Defendant. Therefore, the law firm was not just "another entity" for purposes of Rule 64B8-10.003 of the Florida Administrative Code.

12. Finally, the Plaintiff stated that a plain reading of Rule 64B8-10.003(2) makes it clear that the determinative factor in deciding what the applicable charge for records will be depends on the party for whom the copies are being made. As Rue & Ziffra requested the medical records at issue for its clients, who are undisputedly the patients, the parties for whom the copies have been requested are the patients.

13. On May 12, 2011, Health Information Professionals filed a Response in Opposition to the Plaintiff's Motion for Summary Judgment arguing that the correct provision to be applied in the case was not subsection (2) of Rule 64B8-10.003, but subsection (3) of the same rule.

14. To summarize, Rule 64B8-10.003(3) states that for entities other than patients and governmental entities, i.e., other entities, the reasonable costs of reproducing copies of written or typed documents or reports shall not be more than \$1.00 a page.

15. Based on the above, Health Information Professionals argued that since Rue & Ziffra is not the patient itself, an undisputed fact, the language of subsection (2) is inapplicable to this matter and, as another entity, the correct charge for records billed to Rue & Ziffra is \$1.00 per page.

16. A hearing on Plaintiff's Motion for Summary Judgment took place on September 14, 2011, wherein the parties argued their respective positions.

CONCLUSIONS OF LAW AND RULING

17. The Florida Administrative Code provision at issue in this case is Chapter 64B8-10.003, which is titled "Costs of Reproducing Medical Records." That administrative code provision refers back to Florida Statute §456.057(18). Florida Statute, §456.057 is titled "Ownership and Control of Patient Records; Report or Copies of Records to be Furnished," and it defines the record owner as the health care practitioner who generates a medical record after essentially performing an examination of a patient.

18. Subparagraph (6) of the above section reads that 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 delay for legal review, copies of all reports relating to the examination.

19. Further, subparagraph (18) of that statutory section reads that a health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount

specified in the administrative rule by the appropriate board, or the department when there is no board.

20. The Court also notes that Florida Administrative Code Provision 64B8-10.004 defines "legal representatives" for purposes of Florida Statute §456.057 as including the patient's attorney who has been designated by the patient to receive copies of the patient's medical records.

21. The Court, as well as the parties, has been unable to find any legislative history or other commentary on the administrative code provision that sets forth what the charges at issue in this case should be.

22. Accordingly, based on what the Court views to be a plain reading of the statute, and in order to harmonize the statute at issue with the relevant administrative code provision, the Court hereby grants Plaintiff's Motion for Summary Judgment and finds that, pursuant to Rule 64B8-10.003(2), the patients' legal representative, which in this case is their attorney, is required to pay \$1.00 for the first 25 pages of records and 25 cents for each page in excess of 25 pages, and is not required to pay the charge of \$1.00 per page that would be assessed for all other entities who request copies of such pursuant to Rule 64B8-10.003(3).

Based upon the forgoing it is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is **GRANTED**.

The Court hereby reserves jurisdiction for the purposes of awarding costs and, if applicable, attorney's fees, to Plaintiff.