



The Attorney General of Texas

December 20, 1978

JOHN L. HILL
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

701 Commerce, Suite 200
Dallas, TX. 75202
214/742-8944

1824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

723 Main, Suite 610
Houston, TX. 77002
28-0701

906 Broadway, Suite 312
ubbock, TX. 79401
06/747-5238

313 N. Tenth, Suite F
Allen, TX. 78501
512/682-4547

00 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Honorable A. Bryan Spires, Jr., M.D.
Secretary-Treasurer
Texas State Board of Medical Examiners
211 East 7th Street
Austin, Texas 78701

Open Records Decision No. 215

Re: Whether files maintained
on a physician by the State Board
of Medical Examiners are public.

Dear Dr. Spires:

You have requested our decision as to whether individual physician licensing files maintained by the State Board of Medical Examiners are public under the Open Records Act, article 6252-17a, V.T.C.S. In each case, the information requested consists of the completed application for licensure, except for letters of recommendation. The request does not cover investigatory files. You contend that much of the information is excepted from disclosure under section 3(a)(1) of the Open Records Act as information deemed confidential by law, specifically by judicial decisions recognizing the right of privacy.

On two prior occasions, we have held the contents of licensing files to be public information. In Attorney General Opinion H-242 (1974), we said that the Board of Vocational Nurse Examiners must disclose information regarding a licensee's name, address, date of birth, social security number, age, sex, marital status, license number, date of graduation from nursing school, date of license, present status of license, present employment status, and whether the licensee has been arrested for a felony or misdemeanor within the past year. In Open Records Decision No. 157 (1977), we held that the licensing file of a professional engineer, including college transcript, date and place of birth, registration in other states, prior and present employment, and names and addresses of persons requested to provide references was not excepted from disclosure. To the extent that the files at issue here contain similar information about physician licensees, we believe they should be disclosed. But the physician's licensing application calls for the disclosure of certain information not previously considered.

The licensee must furnish information regarding past and present affiliations with hospitals and professional organizations, including the fact of any disciplinary action, and facts regarding any disciplinary action taken by the board; citizenship status; military service and nature and circumstances

of separation; whether the individual has ever failed or been refused examination by any licensing board; whether any previous license has ever been suspended or revoked; and whether any complaint about the individual has ever been made to another licensing board. An applicant must reveal any addiction or excessive use of alcohol or drugs, any prior emotional or mental illness, any prior psychotherapy, and any treatment or confinement for mental or emotional illness, drug addiction or alcoholism. The individual is required to furnish information about any prior arrest, indictment, conviction, fine or incarceration, or forfeiture of collateral for breach of any law or ordinance. Finally, he must state whether he has ever been summoned to appear before or denied a certification by the Drug Enforcement Administration, or has ever surrendered a state or federal controlled substances registration.

The courts have delineated two kinds of privacy interest. Information is excepted from disclosure on the basis of a constitutional right of privacy only if it is within one of the "zones of privacy" described by the United States Supreme Court in Roe v. Wade, 410 U.S. 113, 152-53 (1973): marriage, procreation, contraception, family relationships, and child rearing and education. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 680 (Tex. 1976). On its face, no portion of the licensing application appears to call for information relating to any of these constitutionally protected areas. If the board believes that, in a particular instance, an applicant's response to any question tends to reveal information within a protected zone of constitutional privacy, it should request an individual determination thereof.

The other privacy interest protected by section 3(a)(1) is that derived from judicial decision. As the Supreme Court said in Industrial Foundation, this right of common law privacy excepts from disclosure "information contain[ing] highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." Id. at 685. Several of the questions on the application for licensure require answers which might fall within this category.

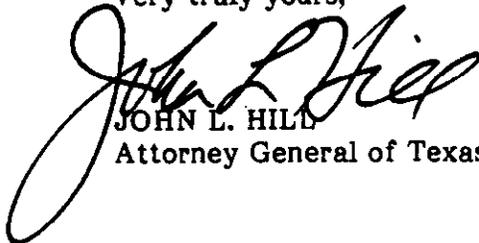
In the Industrial Foundation case, plaintiff sought disclosure of information relating to claims for workmen's compensation benefits. The court there declared that

[i]f the information meets the first test, it will be presumed that the information is not of legitimate public concern unless the requestor can show that, under the particular circumstances of the case, the public has a legitimate interest in the information notwithstanding its private nature.

Id. at 685. Whether information about a particular licensee's addiction, mental illness or criminal history should be disclosed must be determined on an individual basis.

As to three of the four applicants for licensure at issue here, none of their responses would appear to be excepted from disclosure. The fourth applicant is now deceased, and, as we said in Attorney General Opinion H-917 (1976), an individual's right of privacy lapses upon his death.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:

DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

jsn