



**THE ATTORNEY GENERAL
OF TEXAS**

March 28, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Joyce A. Hammer
Executive Director
Board of Vocational Nurse
Examiners
1300 E. Anderson Lane
Bldg. C, Suite 285
Austin, Texas 78752

Open Records Decision No. 490

Re: Whether the Board of Vocational Nurse Examiners must disclose certain information to a contracted peer assistance program under the Open Records Act, article 6252-17a, V.T.C.S. (RQ-1208)

Dear Ms. Hammer:

You ask whether the Texas Open Records Act, article 6252-17a, V.T.C.S., requires the Board of Vocational Nurse Examiners (the board) to disclose certain information about nurses to the Texas Peer Assistance Program for Impaired Nurses (TPAPIN). The TPAPIN provides assistance to nurses suffering from or "impaired" by chemical dependency or mental illness. Assistance is provided pursuant to a contract between the TPAPIN and the board. Article 5561c-3, V.T.C.S., authorizes and governs the terms of such contracts.

The TPAPIN requested copies of correspondence, documents, and other records in the possession of the board relating to a complaint against a particular licensed vocational nurse. The board referred this nurse to the TPAPIN for assistance. You ask whether the records in the board's file on this individual are excepted from disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act. Your primary concern appears to be that release of the records to the TPAPIN would "compromise" the confidentiality of the records. Additionally, section 10(a) of the Open Records Act prohibits the release of information deemed confidential under the Open Records Act. The TPAPIN asserts that the issue is not whether the board must release the documents to the public but whether the board may release the documents to a board-approved peer assistance program.

As a general rule, if a governmental body releases information to one member of the public, the act's exceptions to disclosure are waived unless the information is deemed confidential under the act. See V.T.C.S. art. 6252-17a, §14(a); Open Records Decision No. 463 (1987); 163 (1977). In other words, the act prohibits "selective disclosure." The type of information at issue involves privacy interests that may be protected under section 3(a)(1). See Open Records Decision No. 370 (1983) (section 3(a)(1) protects information related to drug and alcohol abuse and emotional/mental distress). Although protection for information protected by the act's permissive exceptions can be waived, protection for information deemed confidential by law is not ordinarily waived through "selective disclosure." See Open Records Decision No. 463. Consequently, you would not be "compromising" the confidential status of the information in question.

There is also a concern about the Act's prohibition on the release of confidential information. Information may be transferred from one person or entity to another without infringing on the protected character of the information so long as each entity or person is authorized to possess the information. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). Section 10(a) was designed to prohibit the release to the public of information deemed confidential under the Open Records Act. Article 5561c-3 by its terms envisions that approved peer assistance programs will possess confidential information about impaired nurses.

Article 5561c-3 authorizes professional associations or licensing or disciplinary authorities to establish peer assistance programs, which meet the requirements of the act, to identify and assist impaired professionals. See V.T.C.S. art. 5561c-3, §3. Persons with information that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the information directly to an approved peer assistance program. See V.T.C.S. art. 5561c-3, §5(a). Section 6(b) of article 5561c-3 provides that a licensing or disciplinary authority that receives an initial complaint against a professional may refer the professional to an approved peer assistance program or may require the professional to complete another course of treatment or rehabilitation.

Section 7 of article 5561c-3 provides:

(a) Any information, report, or record an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this Act is confidential. Except as prescribed by Section 5(c) of this Act and Subsection (b) of this section, the information, report, or record may not be disclosed without the written approval of the impaired professional or other interested person.

(b) Information made confidential by Subsection (a) of this section may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom it has referred to a peer assistance program under Section 6(b) or 6(c) of this Act;

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes if information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or licensing or disciplinary authority has referred an impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency. (Emphasis added.)

Subsection 7(a) requires the written approval of the impaired professional or other interested person except as prescribed in subsection 5(c) and subsection 7(b). Subsection 5(c) authorizes the peer assistance program to transfer information about impaired professionals to the licensing or disciplinary authority when the complaint originates with the peer assistance program. Subsection 7(b)(4) expressly authorizes the licensing or disciplinary authority to disclose confidential information to health

care personnel to whom an approved program has referred an impaired professional.

Consequently, article 5561c-3 authorizes the Board of Vocational Nurse Examiners to transfer, without written consent, complaint information about a nurse who is referred to an approved peer assistance program to the health care personnel to whom the impaired person has been referred by the peer assistance program. Because this transfer is authorized by statute, it would not violate section 10(a) of the Open Records Act. Nor would it "waive" the protected status of the information under the Act.

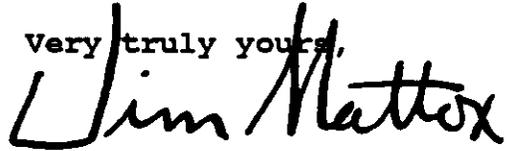
The information at issue, however, cannot be disclosed to the public by the board or by an approved program. We have reviewed the information and determined that it falls within subsection 7(a) of article 5561c-3 and therefore is deemed confidential by statutory law within the meaning of section 3(a)(1) of the Open Records Act. Consequently, section 10(a) of the Open Records Act prohibits the release of the information to the public.

S U M M A R Y

Article 5561c-3, V.T.C.S., authorizes the Board of Vocational Nurse Examiners to transfer, without written consent, complaint information about a nurse who is referred to an approved peer assistance program to the health care personnel to whom the impaired person has been referred by the peer assistance program. Because this transfer is authorized by statute, it would not violate section 10(a) of the Texas Open Records Act, article 6252-17a, V.T.C.S., which prohibits the release of information deemed confidential by law. Section 3(a)(1) of the Open Records Act in conjunction with

section 7(a) of article 5561c-3, protects the information in question from release to the public.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I M M A T T O X
Attorney General of Texas

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