



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

December 21, 1990

Honorable Jim A. Robertson  
County Judge  
Cooke County Courthouse  
Gainesville, Texas 76240

Open Records Decision No. 578

Re: Whether a patient's EMS records are excepted from disclosure as "medical records" under section 5.08 of the Medical Practices Act, article 4495b (RQ-2063)

Dear Judge Robertson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Specifically, you have received a request for "reports of activities by the Cooke County Emergency Medical Service, particularly but not limited to records concerning the transport of individuals to hospitals or other medical assistance."

You assert that the reports created with respect to the transportation of patients are medical records excepted from required public disclosure by section 3(a)(1) of the Open Records Act as "information deemed confidential by law." In this respect, you cite Rule 509 of the Texas Rules of Evidence (the physician/patient privilege) and section 5.08 of the Medical Practice Act (V.T.C.S. art. 4495b).

The records submitted for our examination pursuant to section 7 of the Open Records Act are entitled "Cooke County Emergency Medical Service Patient Form" and consist of two or more pages. The first page consists of a schedule listing information including the patient's name and other identifying information, vital signs, the type and location of the patient's injury or illness, the kind of aid provided by the Emergency Medical Service personnel, the receiving facility, and the Emergency Medical Service personnel in attendance. The second and subsequent pages are subtitled "Run Narrative" and provide spaces for an entry of the time and for a narrative recitation of the events of the call, including narrative descriptions of the injury or illness of the patient, and the treatment administered. The forms are prepared by Emergency Medical Service personnel in

attendance at the call, and are signed by a supervising physician.

The Texas Rules of Civil Evidence are promulgated by the supreme court pursuant to V.T.C.S. art. 1731a. The 1984 comment to Rule 509, supplied by the supreme court and accompanying the published text of the rule provides as follows:

This rule only governs disclosures of patient-physician communications in judicial or administrative proceedings. Whether a physician may or must disclose such communications in other circumstances is governed by TEX. REV. CIV. STAT. ANN. art. 4495b, Sec. 5.08.

- Accordingly, Rule 509 is not applicable to a request for information pursuant to the Open Records Act. See also Open Records Decision No. 575 (1990).

Section 5.08 of the Medical Practice Act provides, in part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

This office has long held that records created or maintained under the supervision of a physician are within the scope of the confidentiality provisions of the Medical Practice Act as records "that are created or maintained by a physician." Open Records Decision Nos. 546 (1990); 342 (1982); see also V.T.C.S. art. 4495b, § 3.06(d).

In Open Records Decision No. 370 (1983), this office was presented with a request involving similar emergency medical service records. In that open records decision we stated:

[T]he records at issue here are prepared prior to the time that any physician sees the patient. Indeed, the last item on the "patient form," the signature of the doctor or registered nurse accepting the patient, is accompanied by the following disclaimer: "Doctor or R.N. signature below does not

approve or disapprove above information." In such circumstances, we do not believe that the mere fact that EMS personnel are often in radio contact with a physician is sufficient to convert these EMS forms into records "created" by a physician. If particular forms indicate that they were prepared by or under the supervision of a physician, they will be excepted from public disclosure by section 5.08(b) of article 4495b, V.T.C.S.

Open Records Decision No. 370 went on to explain that certain information in such records might be excepted from public disclosure by judicial decisions recognizing common law or constitutional privacy. Earlier, Open Records Decision No. 258 (1980) had reached a conclusion similar to that reached in Open Records Decision No. 370 with respect to such records.

Subsequent to the issuance of Open Records Decision No. 370, the legislature enacted the Emergency Medical Services Act. Acts 1983, 68th Leg., ch. 516, § 1, at 2987. Originally article 4447o, section 1.01, V.T.C.S., the Emergency Medical Services Act now appears as chapter 773 of the Health and Safety Code. Section 773.007 of the Health and Safety Code provides:

(a) The provision of advanced life support must be under medical supervision and a licensed physician's control.

(b) The provision of basic life support may be under medical supervision and a licensed physician's control.

You advise that the Cooke County Emergency Medical Service operates ambulances at the mobile intensive care unit level. A mobile intensive care unit is the highest level of ambulance established under the Emergency Medical Services Act and, in addition to other requirements, must meet the requirements of an advanced life-support emergency medical services vehicle. Health & Safety Code § 773.044.

Chapter 197 of title 22 of the Texas Administrative Code provides standards adopted by the State Board of Medical Examiners for the delegation of health care tasks to emergency medical service technicians and provides standards for the supervision of such technicians by supervising

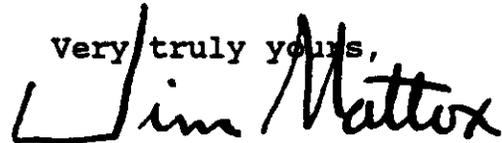
physicians.<sup>1</sup> These provisions ensure that health care tasks are performed under standing physician's orders or under direct control of a supervising physician in telephonic or radio contact with the technician. 22 T.A.C. § 197.3. In addition, it is provided that "[t]he supervising physician shall be responsible for appropriate medical records being maintained in the facility, including, but not limited to, information on transport forms, procedures performed, and medications administered by the emergency medical service technician." 22 T.A.C § 197.4.

Accordingly, we are satisfied that the procedures followed with respect to the creation of the records in question bring them within section 5.08(b) of the Medical Practice Act as records "created or maintained by a physician." Open Records Decision Nos. 370 and 258 are overruled to the extent of any conflict herewith.

S U M M A R Y

Emergency medical service reports created under delegated authority from a physician with respect to the transportation of patients are medical records excepted from required public disclosure by section 3(a)(1) of the Open Records Act and section 5.08(b) of the Medical Practice Act (V.T.C.S. art. 4495b). Open Records Decision Nos. 370 and 258 are overruled to the extent of any conflict herewith.

Very truly yours,



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1. See 8 Tex. Reg. 1341 (1983) (adopted pursuant to article 4495b, V.T.C.S. section 2.09); see also V.T.C.S. art. 4495b, § 3.06(d)(1).

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