



**THE ATTORNEY GENERAL
OF TEXAS**

October 6, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Wanda F. Stewart
Executive Director
Texas Board of Examiners in the
Fitting & Dispensing of Hearing Aids
4800 N. Lamar, Suite 150
Austin, Texas 78756

Dear Ms. Stewart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7425; this decision is OR89-330.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids (the board) received an open records request for a copy of all records of the board for two licensees. The board released all of the requested records except for statements from a medical doctor concerning the individuals. You contend that the doctor's statements come under the protection of section 3(a)(1) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The Texas Medical Practices Act, article 4495b, V.T.C.S., provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a

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physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b).

The Medical Practice Act does not authorize the disclosure of these statements to the requestor. You must, therefore, withhold these documents pursuant to article 4995b, V.T.C.S.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-330.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General



DAN/RWP/bc

Ref.: ID# 7425