



THE ATTORNEY GENERAL  
OF TEXAS

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ATTORNEY GENERAL

March 26, 1990

Mr. Jerry A. Bell, Jr.  
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Attorney for Jackson County  
Hospital District  
1300 Capitol Center  
919 Congress Avenue  
Austin, Texas 78701

OR90-120

Dear Mr. Bell:

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# 8355.

The Jackson County Hospital District, Edna, Texas, received a request from the editor/general manager of the Edna Herald for a copy of a summary report of an evaluation of the credentials of the six physicians on the staff at Edna hospital. In the process of reviewing the qualifications of the six physicians for reappointment to the Edna Hospital medical staff, the board of directors of the hospital district retained the Sunderbruch Corporation which sent a panel of physicians to perform the review. The hospital district contends the Sunderbruch summary report is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., the Health and Safety Code §§ 161.031, 161.032, which makes confidential all records and proceedings of a medical committee, and the Texas Medical Practices Act, art. 4495b, section 5.06(g), which makes confidential all records and proceedings of a medical peer review committee.

Section 1.03(a)(6) of the Medical Practice Act defines "medical peer review committee" as

a committee of a health-care entity, the governing board of a health-care entity, or the medical staff of a health-care entity, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or

the governing board of the health-care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians. Such a committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other persons or organizations that serve the committee in any capacity.

The Sunderbruch Corporation was commissioned by the hospital district's board of directors to evaluate the competence of the Edna hospital staff physicians. As such they must be considered "agents or employees of the committee," and, therefore, properly subsumable within the medicable peer review committee.

Section 1.03(a)(9) of the Medical Practices Act defines "medical peer review" as:

the evaluation of medical and health-care services, including evaluation of the qualifications of professional health-care practitioners and of patient care rendered by those practitioners. The term includes evaluation of the merits of complaints relating to health-care practitioners and determinations or recommendations regarding those complaints. The term specifically includes evaluation of:

- (A) accuracy of diagnosis;
- (B) quality of the care rendered by a health-care practitioner;
- (C) reports made to a medical peer review committee concerning activities under the committee's review authority;
- (D) reports by a medical peer review committee to other committees or to the board as permitted or required by law; and
- (E) implementation of the duties of a medical peer review committee by its members, agents, or employees.

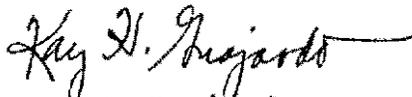
The Sunderbruch Corporation summary report of the staff physicians at Edna Hospital, which contains evaluations of

the diagnosis and treatment by each physician, as well as specific recommendations for improving the quality of care administered by each physician, is a "medical peer review."

Section 5.06(g) of the Medical Practice Act provides that "Except as otherwise provided by this Act, all proceedings and records of a medical peer review committee are confidential and all communications made to a medical peer review committee are privileged." Communications to a medical peer review committee and the records of such committee may be disclosed to certain specified individuals or groups and in certain situations. See sections 5.06(h), (i), and (s)(1). The board of directors of the Jackson County Hospital District is not required to release the Sunderbruch Corporation summary report to the Edna Herald editor, as it is a report of a medical peer review committee deemed confidential under section 5.06(g) of the Medical Practices Act and hence, section 3(a)(1) of the Open Records Act. In view of this determination, we need not address whether the report is a report of a medical committee under sections 161.031 and 161.032 of the Health and Safety Code. We note that under section 5.06(s)(2) a disciplinary order of the Texas State Board of Medical Examiners against a physician and known hospital suspensions for thirty days or longer of a physician relating to the competence of a physician are not confidential.

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 OR90-120.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/le

Ref.: ID# 8355, 8554

cc: M.L. "Tex" Rogers  
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