



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1993

Mr. C. Thomas Camp
Executive Director
Texas State Board of Dental Examiners
P.O. Box 13165
Austin, Texas 78711-3165

OR93-427

Dear Mr. Camp:

You have asked this office whether certain information is subject to required public disclosure under the Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 19582.

The Texas State Board of Dental Examiners (the "board") has received an open records request for "history on any disciplinary action that has occurred on" a particular individual dentist. You have submitted for our review two documents concerning this individual, one entitled "Complaint and Docketed Complaint" and the other entitled "Findings and Orders of the Board/Complaint and Docketed Complaint." You contend that the requested information is excepted from required public disclosure by section 3(a)(1) of the act as "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

The Dental Practice Act specifically provides that "[a]ll of the records and files of the [board] shall be public records and open to inspection at reasonable times, *except the investigation files and records which shall be confidential and shall be divulged only to persons so investigated upon completion of said investigation.*" V.T.C.S. art. 4550, § 2 (emphasis added); *see also* Open Records Decision No. 276 (1981) (construing a prior version of article 4550). In Open Records Decision No. 474 (1987), this office considered whether certain records generated by the Board of Pharmacy constituted "investigative files" made confidential by a similar provision in the Texas Pharmacy Act. That decision concluded that the term "investigative files" includes "documents relating to the gathering of facts and the assessment of the validity of the complaints against the licensees." *Id.* at 2. However, this term does not include documents that "relate to the disposition of the complaint, based on the investigation." *Id.*

Article 4549, section 5, of the Dental Practice Act sets out the procedures the board is to follow in processing complaints against its licensees. V.T.C.S. art. 4549, § 5.

If a complaint is filed by a member of the board or one of its agents or employees, then the complaint is placed on the board's docket with notice to the accused. *Id.* § 5(b). If, however, a complaint is filed by someone other than a member or employee of the board, then the "Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation . . . justify the docketing of such complaint for hearing before the Board," then the complaint is placed on the board's docket at that time in the same manner as a complaint that originates from within the board. *Id.*

The documents that you have submitted to us for review do not indicate the origin of the complaint against this particular dentist, although the "Complaint and Docketed Complaint" was apparently prepared and filed with the board by an employee of the board who investigated the case. Regardless of the origin of the complaint, it is clear that neither of the documents you have submitted to us were created during the investigatory phase of the board's disciplinary action against this particular dentist. Rather, they consist of the formal complaint that was docketed against the individual dentist at the conclusion of any necessary investigation and the board's disposition of that complaint. We therefore conclude that these documents are not made confidential by article 4550, V.T.C.S.

You suggest that the requested information is made confidential by section 467.007 of the Health and Safety Code, which applies to certain records created as part of peer assistance programs. Section 467.003 of the Health and Safety Code authorizes a "professional association or licensing or disciplinary authority"¹ to "establish a peer assistance program to identify and assist impaired professionals." Health & Safety Code § 467.003(a). An "impaired professional" is defined as "an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness." *Id.* § 467.001(3). In addition to any other authority it might have, a licensing or disciplinary authority may take various actions with regard to impaired professionals upon receiving a complaint under the provisions of chapter 467. *See id.* § 467.006(a).

Section 467.007 provides that

[a]ny information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives,

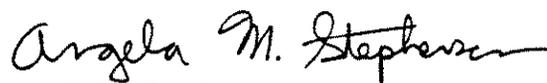
¹A "licensing or disciplinary authority" is defined as "a state agency or board that licenses or has disciplinary authority over professionals." Health & Safety Code § 467.001(4). Section 467.0041 of the same chapter specifically refers to the board; this provision sets the fees the board may charge in connection with peer assistance programs. *Id.* § 467.0041(a), (b). We assume, therefore, that the board is authorized to establish a peer assistance program in accordance with chapter 467 of the Health and Safety Code.

gathers, or maintains *under this chapter* is confidential. . . . An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public.

Id. § 467.007(a) (emphasis added). On their face, the documents that you have submitted to us for review do not appear to have been generated by the board pursuant to any provision of chapter 467 of the Health and Safety Code, even though the "Findings and Orders of the Board" does refer to a peer assistance program. Rather, both documents indicate that they were created by the board pursuant to article 4549, section 3, V.T.C.S., which authorizes the board to bring disciplinary actions against its licensees. Consequently, these documents are not confidential under section 467.007 of the Health and Safety Code. Because the requested information is not excepted from required public disclosure by any other exception under the Open Records Act, it must be released in its entirety.

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 contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/KKO

Ref: ID# 19582

Enclosures: documents submitted

cc: Ms. Deborah Bell
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(w/o enclosures)