



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1994

Mr. Jeff B. McDonald  
Director, Hearings Division  
Texas State Board of Medical Examiners  
P.O. Box 149134  
Austin, Texas 78714

OR94-330

Dear Mr. McDonald:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> Your request was assigned ID# 21894.

The Texas State Board of Medical Examiners (the "board") has received a request for information relating to disciplinary action taken against a specified physician. The requestor, a credential committee of a health-care entity that had previously suspended the physician's clinical privileges, seeks information regarding the status of the physician's license and "the name and address of the physician assigned to monitor his progress during his probationary period." You have provided to the requestor information about the status of the physician's license. You contend, however, that section 552.101 of the Government Code in conjunction with section 4.05(c) of the Medical Practices Act, art. 4495b, V.T.C.S., prohibit disclosure of the remainder of the requested information.

You state that the requested information is contained within "compliance files" that are maintained on physician licensees that are placed on supervised probation as a result of disciplinary action taken against the physician by the board. You contend that the compliance files are considered investigation records subject to the confidentiality provisions of section 4.05(c) of the Medical Practices Act. We disagree.

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 4.05(c) provides in relevant part:

All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee . . . are privileged and confidential . . . [t]he board shall provide the licensee with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

It is clear that this section applies only to investigatory records gathered in the pre-hearing stage. We do not believe that this provision applies to compliance files maintained on physicians pursuant to section 4.11, which provides for the monitoring of licensees who have been disciplined for compliance with the conditions imposed by the board. Section 4.11 does not contain a confidentiality provision similar to that found in section 4.05(c). Therefore, compliance files are not *per se* confidential by law under section 4.05(c).

We note, however, after reviewing the documents submitted for our review, that several of the records are confidential medical records prohibited from disclosure by section 5.08 of the Medical Practices Act or section 611.001 of the Health and Safety Code. Nonetheless, the requestor in this case only seeks the name and address of the individual assigned to monitor the specified physician. We do not believe that such information is confidential by law under the Medical Practices Act or the chapter 611 of the Health and Safety Code. Therefore, the board must disclose the requested information in this instance.

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 our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/SLG/mc

Ref.: ID# 21894

Enclosures: Submitted documents

cc: Ms. Anna L. Elliott  
Coordinator  
Medical Staff Services  
Memorial Hospital - The Woodlands  
9250 Pinecroft  
The Woodlands, Texas 77380  
(w/o enclosures)