Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1996

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation Insurance Fund
100 Congress Avenue, Suite 300
Austin, Texas 78701-4042

OR96-0266

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38533.

The Texas Workers' Compensation Insurance Fund (the "fund") received a request for one of its claim files. You assert that part of the file, specifically the medical records of the injured employee, is excepted from disclosure by section 552.101 of the Government Code, section 5.08, article 4495b, V.T.C.S., section 2(b), article 5.76-3 of the Insurance Code, and article 5.58(d) of the Insurance Code. You have submitted these records for our review.[1]

Sections 5.08(b) and (c) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provide:

> (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 at provided in this section.
>
> (c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the

[1]You note that the requestor has attempted to use his request letter as a form of discovery. You state that the claim file at issue is the subject of a Texas Workers' Compensation Commission contested case. We address here only the disclosure of medical records in response to an open records request, not their availability via discovery.

> patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The documents at issue are medical records generated by the injured employee's physicians. Therefore, the MPA governs the release of these records. It does not appear that either section 2(b), article 5.76-3 or article 5.58(d) of the Insurance Code control here.

You state that the fund "has asked the requestor to provide a written authorization of release for the claimant's medical records, but such release has not yet been received." Section 5.08(j)(1) of the MPA provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which the fund obtained the records. Open Records Decision No. 565 (1990) at 7. The injured employee's medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 38533

Enclosures: Submitted documents

cc: Mr. Mike Till
Hawkins-Gooch Insurance Agency
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(w/o enclosures)