



July 27, 2001

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-3261

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149949.

The Texas Department of Health (the "department") received a request for (1) a copy of any documentation of the July 26, 2000 administrative penalty assessed against Covenant Behavioral Health System, and (2) a copy of any sanctions or penalties assessed against Covenant for the two years prior to January 1, 2001. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. You indicate that you will release the remainder of the requested information to the requestor. We have considered the exception you claim and reviewed the submitted information.

We begin by addressing your argument that a portion of the submitted documents is protected from disclosure under the Medical Practice Act (the "MPA"). Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the 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.

For purposes of the MPA, a “physician” is defined as a person who is licensed to practice medicine in the State of Texas. Occ. Code § 151.002. Here, it does not appear that any of the submitted information consists of either communications between a physician and a patient or records “of the of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician.” Therefore, we find that the submitted information may not be withheld under section 159.002 of the Occupations Code.

We next address your contention that a portion of the submitted information is excepted from disclosure under sections 611.002 and 611.004(d) of the Health and Safety Code. Section 611.002 of the Health and Safety Code provides that “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” A “professional” is defined as:

- (A) a person authorized to practice medicine in any state or nation;
- (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
- (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Section 611.004(a) provides specific instances in which a professional may disclose information that is confidential under section 611.002. Section 611.004(d) states that “[a] person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.” You indicate that the department received some mental health records pursuant to section 611.004(a). You further indicate that a portion of the submitted information consists of “copies of mental health records or communications and/or information from mental health records.” However, it does not appear that any of the submitted information consists of communications between a professional and a patient or “records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” Therefore, we find that you may not withhold any of the requested information under section 611.002 or section 611.004(d) of the Health and Safety Code. Consequently, you must release the submitted information in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

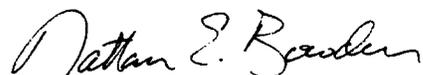
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Mr. George D. Cato - Page 4

Ref: ID# 149949

Enc: Submitted documents

c: Ms. Claudia D. Brown
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(w/o enclosures)