ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2005

Mr. Robert Simpson
Assistant General Counsel
Texas State Bd of Medical Examiners
P. O. Box 2018
Austin, Texas 78768-2018

OR2005-11397

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 238377.

The Texas State Board of Medical Examiners (the "board") received a request for any and all documents regarding a named physician. You state that the board has provided the requestor with a copy of the public verification and physician profile information, including any disciplinary action, and other information that the board does not believe is excepted from required public disclosure.[1] You have submitted other responsive information that you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted on behalf of the named physician. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

[1]We note that the Texas Medical Practice Act, subtitle B of title 3 of the Occupations Code, requires the board to make public certain information concerning physicians licensed in this state. *See* Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public).

Initially, we note that the board currently has a lawsuit pending against the Office of the Attorney General, *Texas State Board of Medical Examiners v. Abbott*, Cause No. GV505206, 201st District Court of Travis County, Texas. The submitted documents in Tab B, the "licensure investigative file," contains the same type of information that is at issue in the pending litigation, and the board's claims with respect to that information correspond to its arguments in the litigation. Accordingly, this decision does not address your claims with regard to the type of information that is at issue in the litigation. We will allow the trial court to determine whether any of that information must be released to the requestor.

Next, we address your claim that the submitted documents in Tab A, the "enforcement investigative files," are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You contend that the submitted information in Tab A is confidential under section 164.007(c) of the Occupations Code. Section 164.007(c) provides as follows:

> (c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). Section 164.007(c) is applicable to investigatory records compiled by the board during an investigation of a license holder. You state that the submitted documents in Tab A, the "enforcement investigative files," consist of investigative information received or gathered by the board that relates to a license holder. Based on your representations and our review of the submitted information, we conclude that all the information submitted in Tab A is confidential under section 164.007(c) of the Occupations Code. You do not inform us that the board is authorized to release this information to this requestor. *See id.* § 164.007(f). Accordingly, you must withhold the information submitted in Tab A under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code.

To conclude, this decision does not address the information submitted in Tab B, the "licensure investigative file." The information submitted in Tab A, the "enforcement investigative files," is confidential under section 164.007 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

You also ask this office to issue a previous determination that would permit the board to withhold all investigative information, including enforcement, licensure, and compliance files, without the necessity of seeking a ruling from this office under section 552.101 in conjunction with section 164.007(c). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue a previous determination at this time. Accordingly, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 238377

Enc. Submitted documents

c: Ms. Tina Pena-Cervantes
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(w/o enclosures)