



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2006

Mr. Robert D. Simpson  
Assistant General Counsel  
Texas Medical Board  
P.O. Box 2018, MC 251  
Austin, Texas 78768-2018

OR2006-13617

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 264832.

The Texas Medical Board (the "board") received a request for information pertaining to a specified board order. You state that the board has provided the requestor a copy of the public verification/physician profile information, including any disciplinary action, and other information the board believes is not excepted from required public disclosure.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

---

<sup>1</sup>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).

<sup>2</sup>We note that the board also provided notice of this request for information to the physician whose records are requested. As of the date of this decision, this office has received no correspondence from the physician in question. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from 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. Section 164.202(a) of the Occupations Code provides in part “[t]he board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder[.]” Occ. Code § 164.202(a). A rehabilitation order imposed under section 164.202 is a nondisciplinary private order and, if entered by agreement, is exempt from disclosure under the Act. *See id.* § 164.203(a)(2). You inform this office that the submitted records constitute a nondisciplinary rehabilitation order entered into agreement by a license holder. You do not inform us that the board is authorized to release this information to this requestor. *See id.* § 164.202(d); *see also id.* § 164.205. Accordingly, the board must withhold the submitted information under section 552.101 in conjunction with section 164.203(a)(2) of the Occupations Code.

You also ask this office to issue a previous determination permitting the board to withhold this category of information without the necessity of requesting a decision from this office. We decline to issue such 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), ©. 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 264832

Enc. Submitted documents

c: Ms. Abigail Houston  
FirstCare Health Plans  
1105 Wooded Acres Drive, Suite 404  
Waco, Texas 76710  
(w/o enclosures)

Mr. Michael McMahon, M.D.  
1001 Carmel Place  
College Station, Texas 77845-7710  
(w/o enclosures)