



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Ms. Loris Jones
Public Information Officer
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701-3942

OR2009-18055

Dear Ms. Jones:

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# 364895.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for any documents filed by a named individual regarding a specified complaint investigation. You claim the submitted investigation records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section encompasses information other statutes make confidential, such as section 801.207 of the Occupations Code. Section 801.207(b) provides "[a]n investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential." Occ. Code § 801.207(b). You indicate the submitted information relates to a complaint filed with the board and the complaint's subsequent investigation. Based on your representation and our review, we conclude the submitted investigation records are generally confidential under section 801.207 of the Occupations Code.

We note, however, the information contains the requestor's client's medical records, which are governed under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See id.* § 151.001. Section 159.002 of the MPA provides, in part:

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have marked physicians' letters and treatment records in the submitted information that constitute confidential medical records. Medical records must be released upon the patient's signed, written consent, provided 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. Occ. Code §§ 159.004, .005. In this instance, the requestor is an attorney representing the individual whose medical records are at issue. As such, the requestor may have a right of access to the marked medical records under the MPA. *See id.* § 159.005(a)(2).

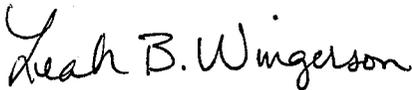
Therefore, there is a conflict between the provisions of section 801.207 of the Occupations Code and the MPA. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 801.207 generally makes board investigation records confidential, the MPA specifically permits release of medical records to certain parties and in certain circumstances. Therefore, we conclude that, notwithstanding the provisions of section 801.207 of the Occupations Code, the board must release the marked

medical records if it receives consent from the requestor that complies with the MPA. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 801.207 of the Occupations Code. If the board does not receive consent that complies with the MPA, the board must withhold the submitted investigation records in their entirety under section 552.101 of the Government Code in conjunction with section 801.207 of the Occupations Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 364895

Enc. Submitted documents

c: Requestor
(w/o enclosures)