



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Mr. Marc Allen Connelly
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-12097

Dear Mr. Connelly:

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# 389959 (DSHS File: 017547-2010).

The Texas Department of State Health Services (the "department") received a request for the notice of violation and any related documents for a specified facility. You state the department has released a portion of the requested information. You claim that some of the submitted information is 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. Section 552.101 encompasses the Medical Practices Act (the "MPA"). Occ. Code §§ 151.001-165.160. 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.

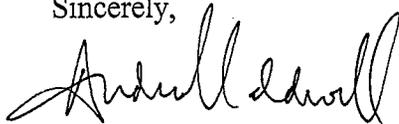
(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded that 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). Information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. See Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Medical records may only be released in accordance with the MPA. See ORD 598. You indicate that the information you have marked under section 159.002 of the Occupations Code has been taken directly from medical records or from communications between a physician and patient. Based on your representations and our review of that information, we conclude that this information may only be released in accordance with the MPA.¹

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.og.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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 389959

Enc. Submitted documents

c: Requestor
(w/o enclosures)