ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2011

Ms. Suzanne Mitchell
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2011-09715

Dear Ms. Mitchell:

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# 423228 (TMB Ref. No. 21217).

The Texas Medical Board (the "board") received two requests for information pertaining to a named business's registration as a pain management clinic and compliance with pain management clinic regulations. You state the board has released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the board notified a third party whose interests may be implicated by the request. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by

[1]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 164.007(c) of the Occupations Code, which provides:

> 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). In this case, you state the information at issue consists of the entire pain management clinic registration application investigation file involving the named business. You explain each of the named business's locations are registered to a physician who is a board licensee. You further explain the file documents the board's investigation of that physician in the context of his certification to operate pain management clinics. Thus, you contend the information at issue consists of investigative information held by the board that is related to a physician license holder. Based on your representations and our review, we agree the information at issue is made confidential by section 164.007(c). We have no indication the disclosure provisions in section 164.007 apply to either requestor at issue. *Id.* § 164.007(d), (f), (h). Thus, we conclude the information at issue is the same type of information that was at issue in Open Records Letter No. 2007-03117 (2007). That ruling serves as a previous determination under section 552.301(a) of the Government Code for the board with respect to investigative information that is in the possession of or was received or gathered by the board during the investigation of a license holder under chapter 164 of the Occupations Code. Therefore, pursuant to the previous determination in Open Records Letter No. 2007-03117, the board must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

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,

Bob Davis
Assistant Attorney General
Open Records Division

RSD/em

Ref: ID# 423228

Enc. Submitted documents

c: Requestors
(w/o enclosures)