



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

Mr. Ryan S. Henry
For Parkland Health and Hospital System
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2011-11625

Dear Mr. Henry:

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# 426602.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland"), which you represent, received a request for reports of apprehension by peace officer without warrant ("APOWW"), patient elopements, injuries, assaults, and deaths filed with the Parkland Police Department (the "department") during a specified time period; APOWW reports filed with the state or federal government during the same time period; and reports of APOWW patients who died, were assaulted or were injured outside the hospital premises following release from Parkland within 48 hours.¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note Parkland sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 181.006 of the Health & Safety Code. Section 181.006 states that: “[f]or a covered entity that is a governmental unit, an individual’s protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as “any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]”

Id. § 181.001(b)(2). You inform us Parkland operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from Parkland. You assert the information collected, used, and stored by Parkland consists of protected health information. Thus, you claim Parkland is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether Parkland is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether Parkland engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that, “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual[.]

Id. Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* The information at issue consists of records related to both Parkland’s and the department’s APOWW reports. You explain the submitted information relates to the provision of health care to individuals. Upon review, we agree Parkland’s information, which we have marked, contains individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the marked information contains protected health information for purposes of section 181.006 of the Health and Safety Code. Therefore, with respect to the marked information, Parkland is a health care entity that is in the practice of collecting, using, and storing protected health information and, consequently, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Accordingly, Parkland must withhold as protected health information the information we have marked under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code.² However, the remaining information consists of department reports. You have not demonstrated how the department, a law enforcement agency, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the department’s information is subject to section 181.006 of the Health and Safety Code. Accordingly, none of the department’s information may be withheld under section 552.101 of the Government Code on that basis. The remaining information is not protected health information and may not be withheld under section 552.101 of the Government Code on the basis of section 181.006.

You claim the remaining information is protected by subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which provide:

²As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to investigations that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the department's arrest records and police officers' applications for emergency detention. We note the remaining information consists of Parkland's administrative information. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*. Upon review, we find you have not shown how the remaining information was created by a law enforcement agency or that a law enforcement agency wishes to withhold the information at issue. Therefore, Parkland may not withhold any of the remaining information under subsection 552.108(a)(2) or subsection 552.108(b)(2) of the Government Code.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531

S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. Thus, with the exception of basic information, Parkland may withhold the department's arrest records and police officers' applications for emergency detention under section 552.108(a)(2) of the Government Code.³

We note some of the basic information is protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find some of the basic information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, Parkland must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, Parkland may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note a portion of the basic information may be subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Additionally, section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld

³As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

⁴As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the employee whose cellular telephone number we marked timely requested confidentiality for this information under section 552.024 and the cellular telephone service is not paid for by Parkland, the district must withhold this information under section 552.117(a)(1). To the extent this employee did not so elect or the cellular telephone service is paid for by Parkland, the information we marked may not be withheld under section 552.117(a)(1).

You also claim section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code, which provides in part:

(a) Except as authorized by Section 241.153 [of the Health and Safety Code], a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). We find the remaining information does not identify a patient. Therefore, Parkland may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

You argue some of the remaining information is excepted from public disclosure under section 576.005 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 576.005, which provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any of the remaining is subject to section 576.005 of the Health and Safety Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

Next, you contend the remaining information is confidential under section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which is applicable to mental health records and provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Id. § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Upon review, we find none of the remaining information consists of mental health records. Accordingly, Parkland may not withhold any of this information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. The MPA is applicable to medical records. *See* 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). Information that is 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 determined 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 also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find none of the remaining information constitutes medical records for the purposes of the MPA. Thus, Parkland may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

In summary, Parkland must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code. With the exception of basic information, Parkland may withhold the department’s arrest

records and police officers' applications for emergency detention under section 552.108(a)(2) of the Government Code. In releasing basic information, Parkland must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code to the extent the employee whose information is at issue elected to withhold such information and the cellular telephone service is not paid for by Parkland. Parkland must release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 426602

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Interested third party
(w/o enclosures)

ml

APR 21 2016

At 8:46 AM.
Velva L. Price, District Clerk

Cause No. D-1-GN-11-002542

DALLAS COUNTY HOSPITAL
DISTRICT d/b/a PARKLAND HEALTH
& HOSPITAL SYSTEM,
Plaintiff,

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

98th JUDICIAL DISTRICT

v.

THE HON. GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS,
Defendant.

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Dallas County Hospital District d/b/a Parkland Health and Hospital System (Parkland), sought to withhold certain information. All matters in controversy between Plaintiff, Parkland, and Defendant, Ken Paxton¹, Attorney General of Texas (Attorney General), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Miles Moffeit, on March 9 ^{March 16} 31, 2016, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that Parkland will withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the

¹ Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.



withholding of this information. A copy of the certified mail receipt is attached to this motion.

The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

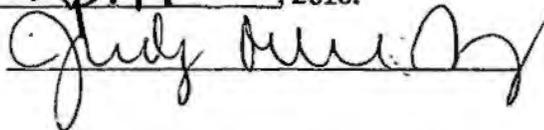
1. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant Tex. Gov't Code § 552.108(a)(2), as these reports have all been determined to be records made by a law enforcement official, none of which have which resulted in convictions or deferred adjudications. Parkland may also redact information regarding the patient's identity in the APOWW reports because the patients are neither arrestees nor complainants, and therefore information identifying them does not constitute basic information subject to section 552.108(c). Basic information must be released to the requestor in accordance with the guidelines for law enforcement reports not resulting in an arrest. All other responsive information must be release or withheld pursuant to the original Attorney General letter ruling.

2. All court cost and attorney fees are taxed against the parties incurring the same;

3. All relief not expressly granted is denied; and

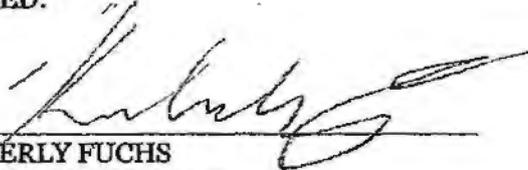
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Parkland and the Attorney General and is a final judgment.

SIGNED the 21st day of April, 2016.



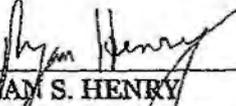
PRESIDING JUDGE

AGREED:



KIMBERLY FUCHS
Texas Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT, KEN PAXTON



RYAN S. HENRY
State Bar No. 24007347
Law Offices of Ryan Henry, PLLC
1380 Pantheon Way, Suite 110
San Antonio, Texas 78232
Telephone: (210) 257-6357
Facsimile: (210) 569-6494
Ryan.Henry@rshlawfirm.com

**ATTORNEY FOR PLAINTIFF DALLAS COUNTY HOSPITAL DISTRICT D/B/A PARKLAND
HEALTH & HOSPITAL SYSTEM**

A

Cause No. D-1-GN-11-002542

DALLAS COUNTY HOSPITAL
DISTRICT d/b/a PARKLAND HEALTH
& HOSPITAL SYSTEM,
Plaintiff,

v.

THE HON. GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

98th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Dallas County Hospital District, d/b/a Parkland Health and Hospital System (Parkland) and Ken Paxton¹, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

In May 2011, a request was made under the Public Information Act (PIA) for reports of apprehension of peace officers without a warrant, also known as APOWW reports. Parkland asked for an Attorney General decision on whether portions of this information could be withheld.

In Letter Ruling OR2011-11625, the Open Records Division of the Attorney General (ORD) allowed some of the responsive information to be withheld while requiring release of some of the information.

After this lawsuit was filed, Parkland submitted information and briefing to the Attorney General establishing that the identities of the subjects of the APPOW reports are

¹ Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

excepted from disclosure under Texas Government Code section 552.108 because none of the subjects of the report were arrested as a result of the incidents detailed in the reports. The Attorney General has reviewed Parkland's request and agrees to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant Tex. Gov't Code § 552.108(a)(2), as these reports have all been determined to be records made by a law enforcement official, none of which have which resulted in convictions or deferred adjudications. Parkland may also redact information regarding the patient's identity in the APOWW reports because the patients are neither arrestees nor complainants, and therefore information identifying them does not constitute basic information subject to section 552.108(c). Basic information must be released to the requestor in accordance with the guidelines for law enforcement reports not resulting in an arrest. All other responsive information must be release or withheld pursuant to the above listed letter ruling.

2. Parkland and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days' prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest Parkland's right to withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

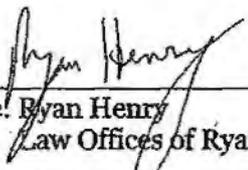
7. Parkland warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Parkland has against the Attorney General arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Parkland arising out of the matters described in this Agreement.

9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

DALLAS COUNTY HOSPITAL SYSTEM,
D/B/A PARKLAND HEALTH AND
HOSPITAL SYSTEM.

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Ryan Henry
firm: Law Offices of Ryan Henry, PLLC
Date: 3/9/16

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division
Date: 3/9/16