



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2011

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-16513

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# 435786.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for "the monthly analysis of unit outcomes and staffing . . . to comply with section 257.003 of the Health and Safety Code." You claim that the requested 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. We have also received and considered comments submitted by Thomson Reuters (Healthcare) Inc. f/k/a Solucient LLC ("Thomson Reuters"). See Gov't Code § 552.304 (providing that interested party may submit comments stating why information 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. Section 552.101 encompasses information protected by other statutes, including section 161.032 of the Health and Safety Code, which provides, in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

...

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports

provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a hospital [or] a medical organization [or] hospital district[.]” *Id.* § 161.031(a)(1), (2), (6). Section 161.0315 provides, in relevant part, that “[t]he governing body of a hospital, medical organization, [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” *Id.* § 161.0315(a).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other statutes, statutory predecessor to section 161.032). We note section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

You assert the submitted information constitutes confidential records of a medical committee. You inform us the district’s board of managers (the “board”) is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the district. You state one of the board’s responsibilities is “[t]o establish and maintain the process for credentialing, privileging, and evaluating the medical and allied health professional staff.” You inform us that, in furtherance of this duty, the board is responsible for the implementation and maintenance of the Performance Improvement Plan

("PIP"). Further, you state under the PIP, the board provides authority to medical staff to establish and support medical committees to carry out quality and performance improvement activities system-wide.

You explain one such committee is the Quality of Care and Patient Safety Committee under which the Nurse Staffing Committee was created. You state the purpose of the Nurse Staffing Committee is to evaluate patient care and staffing needs. You inform us the Nurse Staffing Committee collects, assesses, and analyzes data related to patient care and safety. You further inform us the Nurse Staffing Committee's findings and recommendations are forwarded to the board for implementation. Based on your representations, we agree the Nurse Staffing Committee is a medical committee as defined by section 161.031 of the Health and Safety Code.

You state the information at issue is prepared and collected by the Nurse Staffing Committee in carrying out its duties under the PIP. You state the information at issue was not created in the ordinary course of business. Based on your representations and our review, we find the district has established the submitted information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Therefore, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 435786

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sheila Canzoneri
Assistant General Counsel
Thomson Reuters
1 North Dearborn, 14th Floor
Chicago, Illinois 60602
(w/o enclosures)