



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Mr. William Schultz  
Assistant District Attorney  
Civil Division  
Denton County Criminal District Attorney's Office  
1450 East McKinney, Suite 3100  
Denton, Texas 76209

OR2016-18263

Dear Mr. Schultz:

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# 622566.

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the jailing of the requestor's client. You claim 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 public 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 Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant 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.

Occ. Code § 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 also found 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 some of the submitted information constitutes confidential medical records subject to the MPA. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find some of the submitted information we have marked was created by a nurse. The sheriff's office must withhold these documents under section 552.101 of the Government Code in conjunction with the MPA only if they were created under the supervision of a physician. If the documents created by a nurse were not created under the supervision of a physician, they are not subject to the MPA and the sheriff's office may not withhold them under section 552.101 on that basis.<sup>1</sup> Further, the sheriff's office has failed to demonstrate any of the remaining information consists of medical records subject to the MPA. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the sheriff's office must release the remaining information.<sup>2</sup>

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<sup>1</sup>We note this ruling does not affect an individual's right of access to her own medical records from the physician who provided treatment under the MPA. *See* Occ. Code §§ 159.004-.006; *see also cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin Nov. 21, 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

<sup>2</sup>We note the requestor has a special right of access to some of the information being released. Gov't Code § 552.023. Accordingly, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 622566

Enc. Submitted documents

c: Requestor  
(w/o enclosures)