



STATE ATTORNEY GENERAL
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October 23, 1970

Hon. E. M. Lawrence
Executive Secretary
Texas Board of Licensure for
Nursing Home Administrators
6225 U.S. Highway 290 East
Austin, Texas

Hon. J. E. Peavy
Commissioner of Health
Texas State Department of Health
1100 W. 49th Street
Austin, Texas

Opinion No. M- 713

Re: Whether the Board of
Licensure for Nursing
Home Administrators and
the State Department of
Health may share infor-
mation received by such
agencies under Articles
4442c and 4442d, Vernon's
Civil Statutes.

Gentlemen:

You have requested the opinion of this office regarding the above matter. In this connection you have provided us with the following information:

"The Texas Board of Licensure for Nursing Home Administrators was created to administer the licensing of nursing home administrators pursuant to Article 4442d, Tex. Rev. Civ. Stat. Ann. (1969), and one of the functions of the Texas State Department of Health is to administer the licensing of 'institutions,' which is defined in Article 4442c (2), Tex. Rev. Civ. Stat. Ann. (1969) to include nursing homes. In the course of carrying out its functions, each agency gathers information which would be of great use to the other; however, at the present time each agency is reluctant to share its records because of the possibility that the confidential nature of such records prohibits access thereto by any entity other than the agency which gathered the information.

"Accordingly, the Texas Board of Licensure for Nursing Home Administrators, speaking unanimously, requests the Attorney General's Opinion on the following question:

"Does the Board have the authority to divulge to the Texas State Department of Health the information and records which it gathers in the course of performing its functions and duties under Tex. Rev. Civ. Stat. Ann., Art. 4442d (1969)?

"Similarly, the Texas State Department of Public Health requests the Attorney General's opinion on the following question:

"Does the Texas State Department of Health have the authority to divulge to the Texas Board of Licensure for Nursing Home Administrators the information and records it gathers in the course of performing its functions and duties under Tex. Rev. Civ. Stat. Ann., Art. 4442c (1969)?

"Although there are two questions submitted because of the possibility of different answers, neither agency has an objection to a consolidated response to both questions in the event such an opinion can be rendered.

"The activities of the Health Department and the Board overlap to such an extent that the sharing of information would greatly reduce the workload imposed upon each agency and, therefore, would result in a savings to the taxpayer. . . ."

At the outset we would point out that Article 4442d, Vernon's Civil Statutes, which controls the operations of the Board of Licensure for Nursing Home Administrators, contains no specific statement regarding a limitation on the public nature of its files and records. Accordingly, it is our conclusion that such records would be reasonably available to the public and that no problem exists as to making such records available to the State Department of Health.

With regard to the matter of whether the State Department of Health may make its records available for use by the Board of Licensure for Nursing Home Administrators, we are faced with the provisions of Section 13, Article 4442c, Vernon's Civil Statutes, which reads as follows:

"Sec. 13. Information received by the Licensing Agency /State Department of Health/ through filed reports, inspection, or as otherwise

authorized under this law shall not be disclosed publicly, except as authorized elsewhere in this Act, in such manner as to identify individuals or institutions as defined herein except in a proceeding involving the question of licensure." (Emphasis added.)

The phrase "shall not be disclosed publicly" has not previously been the subject of any opinion by this office, nor have we been able to discover a reported case wherein this particular phrase has been examined. Since the Legislature did not specially define the phrase we must interpret the words in the sense in which they are ordinarily used. Calvert v. Fisher, 259 S.W.2d 944 (Tex.Civ. App. 1953, error ref.). When viewed from this aspect, we admit to some uncertainty as to just what types of disclosures might be forbidden by the phrase in question. The tendency is to restrict such statutes to only the relationships particularly named by strict construction. 97 C.J.S. 741, Witnesses, Sec. 254. However, it seems clear that an interagency sharing of the data, in carrying out a related administrative aim, could not be considered as a public disclosure of the information. Attorney General Opinions Nos. O-2319 (1940) and M-388 (1969). Communications between government officers are privileged and are not deemed public. 97 C.J.S. 747, Witnesses, Sec. 264a.

In connection with the foregoing, we would note that any such records from the State Health Department which come into the possession of the Board of Licensure for Nursing Home Administrators must retain their original confidential status, and the said Board would be responsible for insuring against their public disclosure.

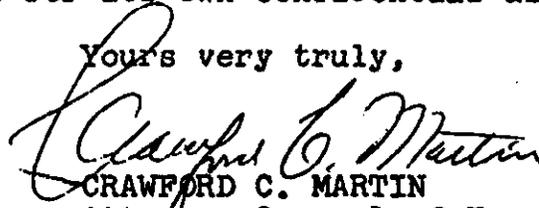
You are accordingly advised that it is the opinion of this office that the provisions of Article 4442d, Vernon's Civil Statutes, permits the Board of Licensure for Nursing Home Administrators to provide pertinent information as desired to the State Department of Health. The State Department of Health is authorized under the provisions of Article 4442c, Vernon's Civil Statutes, to provide file information to the Board of Licensure for Nursing Home Administrators for its own confidential use.

S U M M A R Y

The provisions of Article 4442d, Vernon's Civil Statutes, permits the Board of Licensure for Nursing Home Administrators to provide pertinent information as desired to the State Department of Health. The State Department of Health is authorized, under the provisions of Article 4442c,

Vernon's Civil Statutes, to provide file information to the Board of Licensure for Nursing Home Administrators for its own confidential use.

Yours very truly,


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Attorney General of Texas

Prepared by Malcolm L. Quick
Assistant Attorney General

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