



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

August 20, 1992

Ms. Patricia S. Tweedy, M.P.A. Letter Opinion No. 92-39  
Executive Director

Texas State Board of Examiners  
of Psychologists

9101 Burnet Road, Suite 212  
Austin, Texas 78758

Re: Whether privileged information relevant to the parent-child relationship that a psychologist gained during a voluntary psychological evaluation of a person involved in, or associated with, court proceedings involving the parent-child relationship are excepted from disclosure under Texas Rule of Civil Evidence 510(d)(6) (RQ-349)

Dear Ms. Tweedy:

You have requested an opinion concerning rule 510(d)(6) of the Texas Rules of Civil Evidence. To place your question in context, you state that the Texas State Board of Examiners of Psychologists has pending before it a complaint involving a professional's alleged disclosure of privileged mental health information in a court proceeding involving "the parent-child relationship." The complainant, a non-party to the judicial proceedings but the step-mother of the children in question, voluntarily submitted to a psychological evaluation for purposes related to a child custody dispute. Pursuant to a court order, the evaluating psychologist subsequently submitted to the court a written report on her evaluation of the complainant. The complainant alleges that the evaluating psychologist, who is licensed as a psychologist in the State of Texas pursuant to V.T.C.S. article 4512c, disclosed privileged information in the proceedings without her consent. See TEX. R. CIV. EVID. 509(e).

Rule 510 pertains to the confidentiality of communication between a patient<sup>1</sup> and a professional<sup>2</sup> such as a medical physician. The general rule of privilege

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<sup>1</sup>Rule 510(a)(2) defines "patient" as

any person who (A) consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or (B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.

articulated in rule 510 states that communication between a patient and a professional is confidential as between the two parties and may not be disclosed to any third persons other than those present to further the interest of the patient in the diagnosis, examination, or treatment of the patient. *Id.* 510(a)(4), (b)(1). Records pertaining to the "identity, diagnosis, evaluation, or treatment of a patient" are confidential. *Id.* 510(b)(2). Section 510(d) lists several exceptions to the general rule of privilege. You ask specifically about the exception provided in rule 510(d)(6):

Exceptions to the privilege in court proceedings exist when the disclosure is relevant in any suit affecting the parent-child relationship.

The Rules of Civil Evidence provide that the court shall determine the admissibility of evidence. *See id.* 104; *see also id.* 103. This office will not issue an opinion that is in effect an appeal of a judicial decision. Attorney General Opinions JM-287 (1984); H-905 (1976); O-1874 (1940). Accordingly, we cannot answer your question.

### S U M M A R Y

Pursuant to Texas Rule of Civil Evidence 510(d)(6), a licensed psychologist may disclose privileged information if the information is relevant in any suit affecting the parent-child relationship. The Opinion Committee will not issue an opinion that effectively overrules a judicial decision.

Yours very truly,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>2</sup>Rule 510(a)(1) defines "professional" as

any person (A) authorized to practice medicine in any state or nation; or (B) licensed or certified by the State of Texas in the diagnosis, evaluation or treatment of any mental or emotional disorder; or (C) involved in the treatment or examination of drug abusers; or (D) reasonably believed by the patient to be included in any of the preceding categories.