

RQ-379



IO #15574  
mBJ

## Texas Department of Health

David R. Smith, M.D.  
Commissioner

1100 West 49th Street  
Austin, Texas 78756-3199  
(512) 458-7111

Robert A. MacLean, M.D.  
Deputy Commissioner

April 3, 1992

### Members of the Board

Ron J. Anderson, M.D., F.A.C.P., Chairman  
Raleigh R. White IV, M.D., Vice-Chairman  
Oliver R. Smith, Jr., D.C., Secretary  
Joan Wood Biggerstaff  
Robert E. Bonham, M.D.  
Frank Bryant, Jr., M.D., F.A.A.F.P.  
Ramiro R. Casso, M.D.  
David L. Collins, P.E.  
Gill Harber, D.D.S.  
Larry D. Krupala  
Donald M. Peterson, D.O., F.A.C.G.P.  
Susan B. Place, O.D.  
William D. Poteet III, F.A.C.H.E.  
Milton L. Risinger, D.V.M.  
William A. Scott, M.S.W.  
Barbara T. Slover, R.Ph.  
Ruth F. Stewart, R.N.C.

The Honorable Dan Morales  
Attorney General of Texas  
Price Daniel, Sr. Building  
Austin, Texas

Attn.: Opinion Committee

RECEIVED

APR 7 92

Re: Request for Opinion ~~Opinion Committee~~

Dear General Morales:

The Texas Department of Health administers various programs dealing with maternal and child health. The most comprehensive of these is the Maternal and Infant Health Improvement Act (Chapter 32, Health and Safety Code). This department is also the Title 5 (Social Security Act) agency for the State of Texas, and as such, is charged with the responsibility of protecting and promoting the health of women and children in this state. From time to time, this agency has a need to obtain information from various hospitals, peer review committees or medical organizations concerning maternal and infant mortality and morbidity in order to carry out this mandate.

My questions relate to the confidentiality, privilege and discoverability of information pertaining to maternal and child health and maternal and child deaths as submitted to and retained by a medical peer review committee. Specifically, one such group is a committee on maternal and child health of a non-profit incorporated professional medical association which is established by the association under its formal by-laws as one of its standing committees. One of the primary purposes of this committee is to review cases concerning maternal and infant deaths and to disseminate information to prevent maternal and infant deaths. Therefore, it is necessary for this committee to receive information and medical records concerning maternal and infant deaths.

The ability of this particular committee to accomplish its purpose has been greatly impaired due to the fear of involuntary disclosure of information concerning maternal and infant deaths to persons outside the committee who could, and have, used this information to institute litigation.

The committee described above would appear to fit the definition of a "medical committee" of "a medical organization" as described in §161.031 of the Health and Safety Code. It would further appear that the records and proceedings of this committee are confidential under §161.032 of the Health and Safety Code.

My first question is:

Are the records and proceedings of a committee of a non-profit incorporated professional medical association confidential and exempt from discovery, even under court subpoena?

The Medical Practices Act (Article 4495b, V.T.C.S.) at §1.03(a)(5)(C) defines a health care entity as a "professional society or association, or committee thereof of physicians that follows a formal peer review process for the purpose of furthering quality medical or health care." Section 1.03(a)(6) states that a "medical peer review committee" or "professional review body" means a committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care entity, provided the committee or medical staff operates pursuant to by-laws that have been approved by the policy making body or the governing board of the health care entity and authorize to evaluate the quality of medical and health care services or the competence of physicians.

Section 5.06(j) of the Medical Practices Act provides, in part, that:

unless disclosure is required or authorized by law, records or determinations of or communications to a medical peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil, judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee...

My second question is:

Are the records and proceedings of a medical peer review committee of a non-profit incorporated professional medical association protected from court subpoena or discovery by §5.06(j) of the Medical Practices Act?

Thank you for your consideration of these questions. If any additional information is needed, please feel free to contact me or my staff.

Sincerely,



David R. Smith, M.D.  
Commissioner of Health