

OFFICE OF THE CITY ATTORNEY  
**THE CITY OF EL PASO**  
2 CIVIC CENTER PLAZA  
EL PASO, TEXAS 79901-1196  
915 541-4550  
FAX NO. 541-4710

**RO-649**

DAVID C. CAYLOR  
CITY ATTORNEY

November 4, 1993

NOV 0 4

**FACSIMILE**  
(817) 843-2092

**Certified Mail**  
RRR # P 103 586 375

Opinion Committee  
City Government Section  
Office of the Texas Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

*Gov*  
**FILE # ML-23096-93**  
**.D.# 23096**

Re: Request for EMS records of deceased patient **.D.#**

Dear Committee Members:

The City is in receipt of a request for copies of EMS patient records of Mr. Luis Alberto Rivera, deceased, submitted by Mr. Rivera's sister, Martha P. Rivera. A copy of the request and a translation of the request are submitted to you as Exhibits "A-1" and "A-2." The City has also received a request for the records of Mr. Rivera from Miguel and Beturia Gonzales who represent themselves to be the parents of Mr. Rivera. This request is submitted to you as Exhibit "B."

The EMS Act specifies that EMS records of the identity, evaluation and treatment of an EMS patient are confidential and privileged and may only be disclosed as authorized by the Act. **TEX. HEALTH & SAFETY CODE ANN., Section 773.091(b)** (Vernon 1993). The EMS Act further specifies that consent for the release of confidential information must be in writing or signed by a *personal representative* if the patient is deceased. *Id.*, Section 773.093(a), *emphasis added.*

The first issue involves the definition of "personal representative." The EMS Act does not define the term "personal representative." Courts have held that when the legislative defines a term in one statute and uses the same term in relation to the same subject matter in a later statute, it will be presumed that latter use of the term is in the same sense as previously defined. Brookshire v. Houston School Independent, 508 S.W.2d 675 (Tex. Civ. App. - Houston 1974), *no writ.* Section 3 (aa) of the Texas Probate Code defines "personal representative" to include "an executor, independent executor, administrator, independent administrator, and temporary

administrator .. together with their successors." TEX. PROB. CODE ANN., Section 3 (aa) (Vernon 1993). The City is of the belief that the definition of the term "personal representative" set forth in the Texas Probate Code should be applied to the same term as set forth in Section 773.099(a) of the EMS Act. Additionally, please note that the Texas Probate Code does *not* identify a mother, father, spouse, sibling, child, or other next of kin as constituting a "personal representative," although it is possible that any of these persons would be designated as a personal representative of a deceased person by a court.

The next issue involves identifying an appropriate individual as a personal representative of a decedent. The Texas Probate Code Ann., Section 186, states "[l]etters testamentary, of administration, ... or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate ... and of the date of qualification." The City of El Paso believes that its Department of EMS should not disclose its patient records of a deceased individual until such evidence is presented to it by the person or persons asserting their status as the personal representative of the deceased patient.

Open Records Decision No. 598 (1991) held that a widow would be entitled to the release of her deceased husband's patient records; however, in footnote 3 of that decision it is clear us that the decision is predicated on the *assumption* that the widow was the personal representative. In that footnote you state:

*"We assume, without information to the contrary, that the deceased's widow is his personal representative for purposes of the Medical Practices Act and the Health and Safety Code Provisions."*  
Open Records Decision No. 598 (1991), at 5. (emphasis added)

The City asks whether the Committee made this assumption because it, too, did not have information regarding the status of the requestor as a personal representative and whether the Committee was indicating that the Agency in possession of the records was to obtain appropriate evidence of the requestor's status as a personal representative before disclosing the records to the requesting widow.

If not, is the City to assume that any person who presents himself as a personal representative is such? The City is of the belief and opinion that in light of the above-cited legal authorities, it is improper for the City to assume that any individual has attained the status of personal representative of a deceased patient and that the City is required to first obtain appropriate evidence of personal representative status before releasing the deceased patient's records. The City asserts that the provisions of the EMS Act and the Probate Code, when construed in accordance with the Brookshire case, govern the release of a deceased patient's EMS records and that an assumption of personal representative status with no evidence of such, is in direct conflict with those legal provisions.

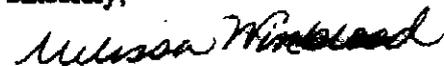
*In this instance, there are two sets of family members seeking the EMS patient records*

of the deceased patient. If the City's position that the provisions of the EMS Act and Probate Code apply in this situation is dismissed, then to whom should the City of El Paso release the records of Mr. Rivera? To his parents? To his sister? To both? To anyone? The City of El Paso contends that these are the types of questions which the legislature intended the courts to resolve through a probative process and the issuance of letters testamentary or letters of administration. The City is not in any position to know or determine the nature of Mr. Rivera's relationship with his family members or friends. But a determination of a personal representative by the courts does delve into the nuances and sensitive aspects of the relationships between persons. The City asserts that this is one reason that the legislature did not remove the confidential nature of a patient's medical records upon the patient's death. Not only do EMS patient records retain their confidential nature upon the death of the patient, but the Medical Practice Act contains the same restrictions on the release of such records. Tex. Rev. Civ. Stat. Ann., art 4495b, Section 5.08(j)(1) (Vernon 1993). Generally, all other privacy interests die with a person. However, with regard to these medical records, the legislature has chosen to maintain the confidential and privileged nature of such records intact. Thus, the City does not believe that an assumption of personal representative status is appropriate with regard to these types of records.

The City has received no evidence that any of the persons requesting Mr. Rivera's records is, in fact, the personal representative of Mr. Rivera as defined in the Probate Code. We, thus, have information, which indicates that none of the requestors is the personal representative of Mr. Rivera. The City does not believe that Open Records Decision 598 (1991) means that the requested records are releasable. The City respectfully seeks the Committee's opinion regarding the issues presented herein and a determination of which, if any, of the requestors is entitled to Mr. Rivera's EMS patient records absent evidence of personal representative status as set forth in the Probate Code.

Thank you for your time and consideration of this matter. If you have any questions or need more information, please do not hesitate to contact me at (915) 541-4550.

Sincerely,



Melissa Winblood  
Assistant City Attorney

Enclosures

cc: Martha Rivera  
Miguel & Estelita Gonzales