



# Texas Rehabilitation Commission

" A Human Energy Agency "

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OPEN RECORDS DIVISION

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FILE # ML-43204-03  
I.D. # 43204

A. Kent Waldrep, Jr.  
BOARD CHAIR

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OPINION COMMITTEE

VERNON "MAX" ARRELL  
Commissioner

July 23, 2003

**RQ-0088-GA**

VIA CMRRR 70000520002415589093

Attorney General Greg Abbott  
209 West 14th Street, 8th Floor  
Price Daniel Building  
Austin, Texas 78701

Re: Request for Opinion – Client Confidentiality After Death

Dear General Abbott:

The Texas Rehabilitation Commission (TRC) requests your opinion on whether the confidentiality afforded to TRC clients and applicants extends past death.

TRC client information is confidential under state and federal law. The Rehabilitation Act, 29 USC §709(c) and §721(a)(6)(A), and its enabling regulations provide for the confidentiality of client names and personal information. Specifically, 34 CFR 361.38(a)(1) in part provides that:

"[T]he State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that--

(i) Specific safeguards are established to protect current and stored personal information..."

TRC's enabling statute, Chapter 111 of the Texas Human Resources Code, and state rules also provide that client information is confidential. In accordance with federal regulations, 40 TAC §101.10 provides as follows:

"(a) Client records.

(1) All personal information made available to commission employees in the course of the administration of rehabilitation services programs, including lists of names, addresses, and records of agency evaluation is confidential.

(2) The use of such information and records is limited to purposes directly



connected with the administration of the rehabilitation programs.

(3) Information is not to be disclosed directly or indirectly, other than in the administration of the rehabilitation programs, unless the consent of the client has been obtained in writing, in compliance with a court order, or in accordance with a federal or state law or regulation. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibilities for administration of the program.”

The privacy rights granted by the Rehabilitation Act, Chapter 111 of the Texas Human Resources Code, and all of the associated statutes and regulations stem from privacy rights widely accepted for health information. Under this general doctrine and according to the above referenced statutes and rules, it is clear that client identity and information is protected from release to third parties absent client consent or in other limited circumstances such as governmental subpoenas. TRC asserts that this protection does not terminate upon the death of a client.

This principle is recognized in federal Health Insurance Portability and Accountability Act regulations recently adopted to provide clear and consistent confidentiality of health related information across the United States. Generally, these regulations provide that no covered entity, such as a hospital or insurance company or, in Texas, a governmental entity, may disclose the health information of an individual to a third party unless the individual specifically authorizes the release. This protection extends beyond death. In fact, the regulations specifically state, “[a] covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual. 45 CFR 164.502(f).

Texas courts recognize the privacy of individuals and their health information past death, as well. For example, in *In re Diversicare General Partner, Inc.*, the appeals court held that the identity and health records of a deceased nursing home resident were protected from release. 41 S.W.3d 788, 794 (Tex.App.—Corpus Christi, 2001). In *Diversicare*, the court found that the legal representative of the deceased resident had the right to protect the deceased resident’s records. The privacy of the health information and the resident’s identity carried past death. Furthermore, the court cited as authority for this proposition Section 242.501(a)(7) of the Texas Health and Safety Code that broadly states that the resident has the right “to have information about the resident in the possession of the institution maintained as confidential.”

TRC’s statute similarly contains a broad grant of confidentiality to its clients and their health information. As referenced above, client information may be used only for purposes connected with the vocational rehabilitation program or with the consent of the client. TRC maintains that the statutory confidentiality of client identifying information extends beyond the death of an individual.

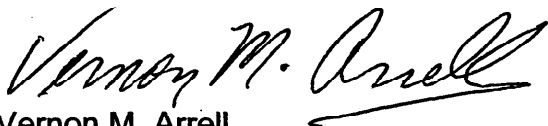
Attorney General Greg Abb

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Based on the foregoing, TRC requests an opinion on whether client information remains confidential after the death of the client/applicant. TRC has also requested an open records decision as to whether this information falls within an exception to public disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon M. Arrell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vernon M. Arrell  
Commissioner  
Texas Rehabilitation Commission

SFH: CEL