



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1997

Ms. Karen Meinardus
Wharton County Attorney
Wharton County Courthouse
100 Milam Street, Room 306
Wharton, Texas 77488

OR97-1551

Dear Ms. Meinardus:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108054.

The Wharton County Sheriff's Department (the "county") received a request for "the county jail medical records of Mauricio Hernandez." You inform us that Mr. Mauricio Hernandez is deceased. You also inform us that the requestor is the deceased's brother, but no personal representative of the deceased's estate has been named and you know of no pending estate or probate proceeding. You state that the "information requested comprises confidential medical records maintained by the jail."

Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), reads in part as follows:

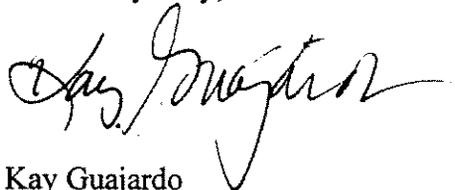
(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

We have reviewed the submitted information. We do not believe the records contain confidential physician-patient communications. As for subsection (b), it is not clear to this office that all of these records are "created or maintained by a physician." As mentioned above, you state that the jail maintains the records. Thus, we conclude that the MPA only applies to the records that appear to have been created by a physician. *See* Open Records Decision No. 343 (1982) (MPA not applicable to hospital daily log not prepared by physician). The medical chart was apparently completed by an "officer." The "Inmate Request for Medical Attention" form was apparently completed in part by Mr. Hernandez, in part by "agency personnel," and in part by the "examining physician." We, therefore, conclude that the MPA covers only the portions of the form completed by the examining physician. Consequently, the county must release those physician-created portions in accordance with the MPA. V.T.C.S. art. 4495b, § 5.08(b), (c), (j); *see* Attorney General Opinion JM-229 (1984) (protection of MPA does not lapse after patient's death). The county must release the remaining submitted information. *See* Attorney General Opinion JM-229 (1994) (right of privacy lapses upon death).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 108054

Enclosures: Submitted documents

cc: Mr. Ruben Hernandez
1727 Bear Bottom
Wharton, Texas 77488
(w/o enclosures)