ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2006

Mr. Robert Simpson
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768

OR2006-00944

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 241639.

The Texas Medical Board (the "board") received a request for all information on a named physician. You state that the board is providing the requestor with some of the requested information, including a copy of the public verification and physician profile information, as well as information pertaining to any disciplinary action.[1] However, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[2]

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[1]We note that the Texas Medical Practice Act, subtitle B of title 3 of the Occupations Code, requires the board to make public certain information concerning physicians licensed in this state. *See* Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public).

[2]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You contend that the submitted information is confidential under section 164.007(c) of the Occupations Code. Section 164.007(c) provides as follows:

> (c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). You inform us that the submitted documents consist of investigative information that is in the possession of or was received or gathered by the board in connection with complaints, disciplinary matters, and an application for licensure. You assert that section 164.007(c) is applicable to all of the submitted information. You explain that section 154.056 of the Occupations Code requires the board to investigate complaints. You also explain that section 155.003(d) of the Occupations Code authorizes the board to investigate applicants for licensure to determine that the applicant is eligible to be licensed. *See id.* § 155.003(d); *see also id.* § 164.001 (setting out circumstances under which board may refuse to admit person to its examination or to issue or renew a license).

Having considered your arguments, we conclude that the information submitted in Tab A, the "complaint and disciplinary investigative files[,]" is confidential under section 164.007(c) of the Occupations Code and must be withheld under section 552.101 of the Government Code. However, this office is currently involved in litigation styled *Texas State Board of Medical Examiners v. Abbott*, Cause No. GV505206 (201st Dist. Ct., Travis County, Tex.). Your arguments and the information that you have submitted as Tab B, the "licensure investigative file," are similar to the issues and information involved in the pending litigation. Accordingly, this ruling does not address the documents submitted under Tab B and we will allow the court to determine whether the type of information at issue must be released to the public.

You also ask this office to issue a previous determination permitting the board to withhold these categories of information without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 241639

Enc. Submitted documents

c: Ms. Phyllis Newman-Kennedy
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(w/o enclosures)