



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2006

Mr. Robert D. Simpson
Assistant General Counsel
Texas Medical Board
MC 251, P. O. Box 2018
Austin, Texas 78768-2018

OR2006-11314

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#260866.

The Texas Medical Board (the "board") received a request for "all records" regarding specified claims against a named physician. You state that the board has provided the requestor with a copy of the public verification and physician profile information for the named physician, including any disciplinary actions, and other information that the board does not believe is excepted from required public disclosure.¹ However, you claim that a portion of the requested 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note that the Texas Medical Practice Act, subchapter B of title 3 of the Texas 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).

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses section 160.006 of the Medical Practice Act, (“MPA”), found in subchapter B of Title 3 of the Texas Occupations Code, which provides as follows:

(a) A record, report, or other information received and maintained by the board under this subchapter [A] or Subchapter B, including any material received or developed by the board during an investigation or hearing, and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the division of workers’ compensation of the Texas Department of Insurance as provided by Labor Code § 413.0514.

(b) Any known hospital suspension of a physician for a term of 30 days or longer relating to the physician’s competence and a disciplinary order of the board against a physician are not confidential.

(c) A record or report disclosed by the board under this subchapter and a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for

damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

Occ. Code § 160.006. We understand the submitted information to have been obtained by the board pursuant to section 160.052 of the MPA. Section 160.052 of the MPA requires each insurer to submit information to the board no later than the 30th day after an insurer receives a notice of claim letter or complaint from an insured. Occ. Code § 160.052. *See also* Occ. Code § 160.053, 22 T.A.C. § 179.6. Based on your representations and our review, we find that the submitted information consists of records, reports, or other information received and maintained by the board under subchapter B of Chapter 160 of the Occupations Code. Further, none of the conditions for release of this information under section 160.006 of the Occupations Code apply in this case. Accordingly, the board must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 160.006(a) of the Occupations Code.²

You also ask this office to issue a previous determination that would permit the board to withhold all claim information filed with the board by insurers under section 552.101 of the Government Code in conjunction with section 160.006 of the Occupations Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue 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

²While we have determined that the submitted information is confidential by law, we note that the information covered by section 160.006(a) of the Occupations Code can be distinguished from hospital suspensions of a physician under section 160.006(b) of the Occupations Code.

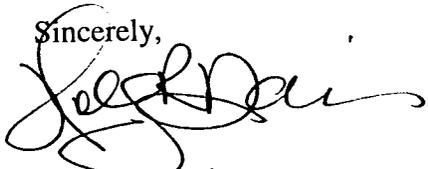
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 260866

Enc. Submitted documents

c: Mrs. India Schmidt
2411 Netherwood Court
Pearland, Texas 77584
(w/o enclosures)