ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2006

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

OR2006-11568

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# 261012.

The Texas Medical Board (the "board") received a request for information relating to a named physician. You state that the board is releasing public verification and physician profile information, together with any disciplinary action and other information that the board does not believe is excepted from public disclosure. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.[1]

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. 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

[1]This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

> 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). Section 164.007(c) is applicable to investigatory records compiled by the board during an investigation of a license holder. You state that the submitted documents consist of confidential investigative information received or gathered by the board that relates to a license holder. Based on your representations and our review of the information at issue, we conclude that the submitted information is generally confidential under section 164.007(c) of the Occupations Code.

We note, however, that the requestor identifies herself as a representative of the State of Michigan Department of Community Health's Bureau of Health Professions (the "bureau"). The requestor indicates that the bureau seeks access to the submitted information for use in connection with a matter involving the physician whose records are the subject of this request. Section 164.007(f) of the Occupations Code provides that "[i]nvestigative information in the possession of the board or an employee or agent relating to discipline of a license holder may be disclosed to . . . the appropriate licensing authority of . . . another state[.]" *Id.* § 164.007(f)(1)(A). You do not otherwise inform us that the board is authorized to release the submitted information to this requestor. *See id.* § 164.007(d), (f)-(h). Nevertheless, if the bureau is the appropriate licensing authority of another state, then the board may release the submitted information in this instance, pursuant to section 164.007(f) of the Occupations Code. If section 164.007(f) is not applicable in this instance, then the board must withhold all of the submitted information under section 552.101 of the Government Code in conjunction with section 164.007(c).

You also ask this office to issue a previous determination that would permit the board to withhold investigatory records gathered by the board during an investigation of a license holder under section 552.101 of the Government Code without the necessity of again requesting a decision from this office under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. 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,

Ramsey Abarca

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 261012

Enc. Submitted documents

c: Ms. Pamela Dixon
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(w/o enclosures)