



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 12, 2009

Mr. Marc Allen Connelly
Deputy General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2009-08107

Dear Mr. Connelly:

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# 345812 (DSHS File O14867-2009).

The Texas Department of State Health Services (the "department") received a request for the citation for, and resolution of, a complaint filed by the requestor against a named hospital. You state the department has provided or will provide some of the requested information to the requestor. You claim the submitted statement of deficiencies and plan of correction form is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information consists of only a federal form CMS-2567, Statement of Deficiencies and Plan of Correction. Federal regulations require the release of this form, provided (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 at 5-6 (1988).¹ You claim a portion of the submitted CMS-2567 form is protected under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), subtitle B

¹Section 401.133 of title 42 of the Code of Federal Regulations provides "[t]he statement of deficiencies or report and any pertinent written statements furnished by the institution or facility on the statement of deficiencies shall be disclosed within 90 days following the completion of the survey by the State agency, but not to exceed 30 days following the receipt of the report by [the federal Centers for Medicare and Medicaid Services]." 42 C.F.R. § 401.133(a)(2).

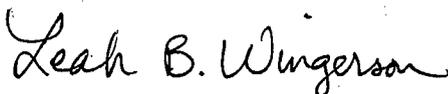
of title 3 of the Occupations Code. *See* Occ. Code § 151.001. We note, however, a state statute is preempted by federal law to the extent it conflicts with that federal law. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990). Here, withholding information from the submitted CMS-2567 form pursuant to the MPA would directly conflict with the federal regulations requiring disclosure of completed CMS-2567 forms. *See* 42 C.F.R. §§ 401.126, .133; ORD 487 at 5. Therefore, no part of the submitted form may be withheld pursuant to the MPA.

In this instance, the submitted form has been signed by a representative of the provider whose performance was evaluated, thus, indicating the provider has had a reasonable opportunity to review the report and offer comments. Accordingly, with the exception of the information identifying individual patients, physicians, other medical practitioners, or other individuals, which must be withheld, the department must release the submitted CMS-2567 form to the requestor pursuant to federal law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 345812

Enc. Submitted documents

c: Requestor
(w/o enclosures)