



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2010

Mr. Glenn Parker  
Executive Director  
Texas Board of Chiropractic Examiners  
333 Guadalupe, Suite 3-825  
Austin, Texas 78701-3942

OR2010-04562

Dear Mr. Parker:

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# 374205.

The Texas Board of Chiropractic Examiners (the "board") received a request for information pertaining to the requestor's complaint against a named chiropractor. You state that the board is providing the requestor with a portion of the requested information. 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.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes including section 201.206 of the Occupations Code. Section 201.206 provides in part:

(a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

...

(d) Notwithstanding Subsection (a), the board may:

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

Occ. Code § 201.206(a), (d). You inform us section 201.206 applies to "all investigations pending or opened on or after September 1, 2003." We understand that the submitted information is contained in an investigation file of a complaint about a chiropractor licensed by the board that is maintained by the board pursuant to section 201.204 of the Occupations Code. *See id.* § 201.204 (setting forth the board's record keeping requirements with respect to complaints filed with the board). You assert that the submitted information is confidential under section 201.206. You do not inform us the requestor is entitled to any of the submitted information pursuant to section 201.206(d)(2). Thus, based on your representations and our review of the information at issue, we agree the submitted information is generally confidential under section 201.206(a) of the Occupations Code.

We note the submitted information, while generally confidential under section 201.206(a), contains the requestor's medical records. The Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, governs release of medical records, and is encompassed by section 552.101 of the Government Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c). We have marked the medical records of the requestor which are subject to the MPA.

The submitted information also includes the requestor's chiropractic records, the public availability of which is governed by chapter 201 of the Occupations Code. Chapter 201 is also encompassed by section 552.101 of the Government Code. Section 201.402 of the Occupations Code provides in part:

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

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 201.402(b)-(c). Chapter 201 also includes exceptions to confidentiality and consent provisions. *See id.* §§ 201.404, .405. Consent for release of chiropractic records must specify: (1) the information records covered by the release; (2) the reason or purpose for the release; and (3) the person to whom the information is to be released. *See id.* § 201.405(c). We have marked the requestor's chiropractic records which are subject to chapter 201 of the Occupations Code.

Thus, although the information at issue is generally confidential under section 201.206(a) of the Occupations Code, sections 159.004, 159.005, 201.404, and 201.405 of the Occupations Code may provide the requestor with a right of access to his own medical and chiropractic records. Therefore, there is a conflict between the provisions of section 201.206(a) of the Occupations Code and sections 159.004, 159.005, 201.404, and 201.405 of the Occupations Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code § 311.026(b); City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 201.206(a) of the Occupations Code generally makes confidential investigation records relating to chiropractors, sections 159.004, 159.005, 201.404, and 201.405 of the Occupations Code specifically permit release of medical and chiropractic records to certain parties and in certain circumstances. Therefore, sections 159.004, 159.005, 201.404, and 201.405 of the Occupations Code prevail over section 201.206(a) of the Occupations Code.

Accordingly, we conclude the medical records we have marked are subject to chapter 159 of the Occupations Code and may only be released in accordance with sections 159.004 and 159.005. Thus, if the requestor provides the proper consent, the marked medical records must be released to him. *See Occ. Code §§ 159.004, .005.* Otherwise, the marked medical

records must be withheld under section 552.101 of the Government Code in conjunction with chapter 159 of the Occupations Code.

Additionally, we conclude the chiropractic records we have marked are subject to chapter 201 of the Occupations Code and may only be released in accordance with sections 201.404 and 201.405. Thus, if the requestor provides the proper consent, the marked chiropractic records must be released to him. *See id.* §§ 201.404, .405. Otherwise, the marked chiropractic records must be withheld under section 552.101 of the Government Code in conjunction with section 201.402 of the Occupations Code.

In summary, the medical records we have marked may only be released in accordance with the MPA. The chiropractic records we have marked may only be released in accordance with chapter 201 of the Occupations Code. The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code.

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](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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/cc

Ref: ID# 374205

Enc. Submitted documents

c: Requestor  
(w/o enclosures)