



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2015

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

OR2015-11443

Dear Mr. Blech:

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# 566592 (TMB Reference Number 25444).

The Texas Medical Board (the "board") received a request for a list of all applicant numbers of candidates who appeared before the board's licensure committee after January 1, 2013, and received an ineligibility determination. The requestor further asks the board to notate which candidates were reported to the National Practitioner Data Bank (the "NPDB"), which codes were used to report these candidates, and which candidates appealed to the State Office of Administrative Hearings.<sup>1</sup> You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the Department of Health and Human Services (the "department") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the

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<sup>1</sup>We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

department. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by part 60 of subchapter A of subtitle A of title 45 of the Code of Federal regulations (“part 60”). Section 60.1 of part 60 provides that “[t]he Health Care Quality Improvement Act of 1986 . . . authorizes the Secretary [of Health and Human Services (the “secretary”)] to establish . . . [the NPDB] to collect and release certain information relating to the professional competence and conduct of physicians . . . and other health care practitioners.” 45 C.F.R. § 60.1. “Section 1921 of the Social Security Act . . . expanded the requirements under the NPDB and requires each state to adopt a system of reporting to the [s]ecretary adverse licensure or certification actions taken against health care practitioners, health care entities, providers, and suppliers . . .” *Id.* “Information from section 1921 . . . is to be reported and distributed through the NPDB” and “[t]he regulations in [part 60] set forth the reporting and disclosure requirements for the NPDB[.]” *Id.* Section 60.20(a) of part 60 states, in pertinent part:

(a) Limitations on disclosure. Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.17, 60.18, and 60.21 of [part 60]. Persons and entities receiving information from the NPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. The Data Bank report may not be disclosed[.]

*Id.* § 60.20(a). The board states the information it has marked was taken from confidential reports made to the NPDB pursuant to section 60.9(a)(4) of part 60. *See id.* § 60.9(a)(4) (requiring the board to report to the NPDB any negative action or finding by the board regarding a health care practitioner, health care entity, provider, or supplier). Upon review, we agree some of the information at issue was taken from confidential reports made to the NPDB. Accordingly, the board must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 60.20 of part 60. However, we find the remaining information at issue does not consist of information reported to the NPDB, and the board may not withhold it on that basis. As you raise no further exceptions to disclosure, the board must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 566592

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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