



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 18, 2015

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

OR2015-12112

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# 567857.

The Texas Medical Board (the "board") received a request for the names of specified medical licensure applicants. You state the board has released most of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you provide documentation showing you have notified the Texas Physician Health Program (the "program") of its right to submit comments to this office explaining 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 program. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses section 167.010 of the Occupations Code, which

is part of the Medical Practice Act, subtitle B of title 3 of the Occupations Code. Section 167.010 of the Occupations Code provides as follows:

(a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the board or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Occ. Code § 167.010. We note section 167.005(c) of the Occupations Code provides that “[t]he program is administratively attached to the board.” *Id.* § 167.005(c). The board and the program state release of the responsive information would reveal a referral to the program. We understand none of the exceptions apply to this information. Based on the representations of the board and the program and our review, we find the responsive information consists of a referral received by the program relating to a physician. Thus, we conclude the responsive information is confidential under section 167.010 of the Occupations Code. Accordingly, the board must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 167.010 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.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,

A handwritten signature in black ink, appearing to read "N.A. Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

Ref: ID# 567857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Joan Howard Allen  
General Counsel  
Texas Physician Health Program  
333 Guadalupe, Tower 2, Suite 520  
Austin, Texas 78701  
(w/o enclosures)