



ATTORNEY GENERAL OF TEXAS  
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April 23, 2012

Katherine A. Thomas, MN, RN  
Executive Director  
Texas Board of Nursing  
333 Guadalupe Street, Suite 3-460  
Austin, Texas 78701

Opinion No. GA-0919

Re: Whether the receipt of a nondisclosure order requires the Board of Nursing to redact information relating to a licensee's criminal history record (RQ-0997-GA)

Dear Ms. Thomas:

On behalf of the Texas Board of Nursing ("Board"), you request an opinion about what information the Board may include in a disciplinary order against a Board-licensed nurse.<sup>1</sup> Specifically, you want to know whether a court order issued under section 411.081 of the Government Code prohibiting the disclosure of a Board licensee's criminal history would prevent the Board from citing the criminal history in a disciplinary order against the licensee. *Id.* You also ask whether a nondisclosure order issued under section 411.081 would "require the Board to 'seal' or attempt to redact the applicable text from public records often agreed to by the licensee upon receipt of a non-disclosure order." *Id.* at 2.

Section 411.081 allows a person placed on deferred adjudication to seek a nondisclosure order. TEX. GOV'T CODE ANN. § 411.081(d) (West Supp. 2011). A nondisclosure order prohibits "criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication." *Id.* If a person obtains a nondisclosure order under section 411.081, an agency that receives the person's criminal history record information "shall seal any criminal history record information maintained by the individual or entity that is the subject of the order." *Id.* § 411.081(g-1b) (applying to "an individual or entity described by Subsection (g-1)(1)"). *See also id.* § 411.081(g-1)(1) (referring to "agencies or other entities of this state"). *See also* TEX. OCC. CODE ANN. § 301.004(5) (West 2012) (indicating that the Board is a state agency).

If section 411.081's restrictions applied to criminal history record information contained in the Board's disciplinary orders, the Board would be obligated to adjust its orders to ensure that information subject to a nondisclosure order is not disclosed to the public. However, the statute

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<sup>1</sup>Letter from Katherine A. Thomas, MN, RN, Exec. Dir., Tex. Bd. of Nursing, to Honorable Greg Abbott, Tex. Att'y Gen. at 1-2 (Sept. 16, 2011), <http://www.texasattorneygeneral.gov/opin> ("Request Letter").

specifically provides that section 411.081 “does not apply to criminal history record information that is contained in . . . public judicial, administrative, or legislative proceedings [or] published judicial or administrative opinions.” TEX. GOV’T CODE ANN. § 411.081(a)(3), (5) (West Supp. 2011) (internal notations omitted). You ask “[p]articularly” about criminal history record information contained in a “disciplinary order” against a licensee of the Board. Request Letter at 1. Because the Board publishes its disciplinary orders after conducting public administrative proceedings, a court would likely conclude that the Board’s disciplinary orders constitute “published . . . administrative opinions” that arise from “public . . . administrative . . . proceedings.”<sup>2</sup> See <http://www.bon.texas.gov/disciplinaryaction> (Texas Board of Nursing Disciplinary Action pages); see also 22 TEX. ADMIN. CODE § 213.23(h) (2011) (requiring the Board to mail a copy of the final disciplinary order to all known parties and the nurse’s last known employer). As a result, criminal history record information contained in the Board’s disciplinary orders likely is not subject to a section 411.081 nondisclosure order. Accordingly, a court would likely find that section 411.081 of the Government Code does not require the Board to adjust its disciplinary orders to avoid disclosure of criminal history record information that is the subject of a nondisclosure order issued under that section.

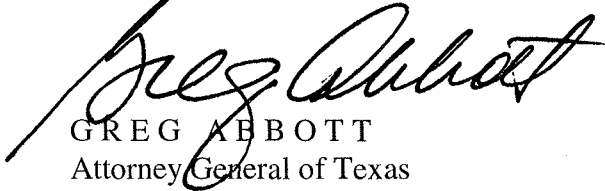
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<sup>2</sup>TEX. GOV’T CODE ANN. § 411.081(a)(3), (5) (West Supp. 2011).

S U M M A R Y

A court would likely find that section 411.081 of the Government Code does not require the Texas Board of Nursing to adjust its disciplinary orders to avoid disclosure of criminal history record information that is the subject of a nondisclosure order issued under that section.

Very truly yours,



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