



Texas House of Representatives  
COMMITTEE ON GENERAL INVESTIGATING

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January 11, 1999

RQ-0005-jc

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The Honorable John Cornyn  
Attorney General  
P.O. Box 12548  
Austin, TX 78711

FILE # ML-40617-99 Opinion Committee  
I.D. # 40617

Dear General Cornyn:

As chair of the house General Investigating Committee, I request your opinion on behalf of the committee on the following questions regarding hospital districts.

(1) Is the governing body of a hospital district acting as a medical peer review committee under Section 1.03(6), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), when the governing body decides whether a physician should be privileged to admit and treat patients at the hospital, evaluates the competence of a physician, or evaluates the quality of medical and health care services at the district's hospital?

(2) If the governing body is acting as a medical peer review committee in the circumstances described in the preceding question, does the provision in Section 5.06(g), Medical Practice Act, that "all proceedings . . . of a medical peer review committee are confidential" authorize or require the governing body to act as a peer review committee in a closed meeting for purposes of the open meetings law, Chapter 551, Government Code?

(3) If Sections 1.03 and 5.06, Medical Practice Act, do allow the governing body to hold a closed meeting while acting as a peer review committee, then in construing the Medical Practice Act together with the open meetings law, may a governmental body as defined by the open meetings law be considered to be acting as a peer review committee only when it is evaluating the competence, qualifications, or actions of a physician but not when it is generally evaluating the quality of medical and health care services for which it is responsible in a way that does not involve evaluating an identifiable physician?

Letter to Attorney General John Cornyn re hospital districts  
January 11, 1999  
Page Two

(4) Assuming it is permissible to meet in a closed session to discuss the physician/peer review issues, how detailed does the meeting notice need to be in order to meet the requirements of the statute? For example, does the meeting notice need to name the individual physician under discussion or to give any particulars whatsoever of the facts under review?

(5) How much discussion, if any, must occur in open session following the closed session prior to action by the Board? For example, is it permissible for the Board to act on a motion to impose a specific sanction on an individual physician? For example, must the physician be named in the vote in the open session and must the motion reveal any detail with respect to the facts which form a basis for the motion?

(4) Finally, if Sections 1.03 and 5.06, Medical Practice Act, do not allow the governing body to hold a closed meeting to act as a peer review committee, what potential criminal or civil liability would the hospital district or the members of the governing body face if the governing body evaluates the competence of physicians in a meeting open to the public or simply fails to meet to evaluate the competence of physicians practicing or applying to practice at the district's hospital to avoid doing so in an open meeting, and what steps could the governing body take to discharge its responsibilities in these matters in compliance with the applicable laws while avoiding or minimizing the potential for criminal or civil liability?

I request that you expedite your response to this letter because hospital districts in certain localities currently need to know how best to proceed in compliance with the requirements of both the Medical Practice Act and the open meetings law. Thank you for your consideration of this matter. If you need additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete P. Gallego". The signature is fluid and cursive, with a prominent initial "P" and "G".

Pete P. Gallego

PPG/tlc