



Texas State Board of Medical Examiners

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April 19, 2000

Honorable John Cornyn
Attorney General of Texas
Attn.: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-41380-00

I.D. # 41380

RECEIVED
APR 24 2000
OPINION COMMITTEE

RQ-0225-JC

Re: Request for Written Opinion

Dear General Cornyn:

Pursuant to Section 402.042 of the Texas Government Code, I respectfully request that you issue a written opinion on the following question affecting the public interest and concerning my official duties as Executive Director of the Texas State Board of Medical Examiners (hereinafter the "Board").

Section 164.007 of the Medical Practice Act provides, in relevant part:

(c) Each complaint, adverse report, investigative file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, **an application for license**, or a criminal investigation or proceeding is **privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board** or its employees or agents involved in discipline of a license holder. (Emphasis added)

The Board has long interpreted the foregoing as a prohibition on release of the listed information to any entity except those specifically identified in TEX. OCC. CODE ANN. §§ 164.007(d) – (h) (Vernon 2000).

The Board has received a two formal requests for documents from the U. S. Equal Employment Opportunity Commission (hereinafter "EEOC"). The initial request pertained to the application of a physician who filed a complaint with the EEOC. Although the EEOC was not considered to be among those entities identified in sections 164.007(d) – (h) of the Medical Practice Act, a Board Staff Attorney released the complaining physician's application file based upon the EEOC's promise of confidentiality. Subsequently, the EEOC has requested similar information for all applicants to whom licensure has been denied by the Board from January 1, 1983 through the September 9, 1999 date of the EEOC request.

The EEOC has taken the position that the confidentiality provisions of the Texas Medical Practice Act do not apply to the EEOC and has identified case law in support of that position. A copy of the relevant correspondence is enclosed for your review.

In view of the foregoing, I respectfully request a written opinion on the question of whether I have the authority to release the requested information to the EEOC. If you need additional information or clarification regarding this request, please contact the Board's General Counsel at 305-7072.

Sincerely,



Bruce A. Levy, M.D., J.D.
Executive Director

BAL/rew

enclosures

cc. Mr. John Teer, TSBME General Counsel (w/enclosures)
Mr. Sidney B. Chesnin, EEOC Senior Trial Attorney (w/enclosures)