TEXAS ETHICS COMMISSION

ETHICS ADVISORY OPINION NO. 21

June 4, l992

Whether a physician who is a board member of a state agency must include on his financial disclosure statement information made confidential by the Medical Practice Act, article 4495b, V.T.C.S. (AOR-35)

The Texas Ethics Commission has been asked to consider whether a physician who is a board member of a state agency must include on his financial disclosure statement information made confidential by the Medical Practice Act, article 4495b, V.T.C.S. Section 3(a) of article 6252-9b, V.T.C.S., requires "every state officer"[1] to file an annual financial disclosure statement with the Ethics Commission. The statements are public records. V.T.C.S. art. 6252-9b, § 9(a). One of the categories of information required to be listed on the public disclosure statement is set out in section 4(f) of article 6252-9b:

> A state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305, Government Code,[2] or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305, Government Code, shall report on the financial statement *the name of each person or entity for which the services were rendered* and the category of the amount of each fee. (Emphasis added.)

This requirement was added by Senate Bill 1, which went into effect January 1, 1992. S.B. 1, Acts 1992, 72d Leg., ch. 304, § 3.05, at 1318. The information on the financial statements covers the preceding year. *See generally* Ethics Advisory Opinion No. 1 (1992).

Under this disclosure requirement, a state officer who is a physician would provide the names of patients who are required to be registered under the lobby statutes. The doctor would also have to disclose names of patients he "actually knows" are compensating or reimbursing lobbyists. The names of these persons, the category of fee they paid the physician, and the fact of their consultation with the particular physician would thus be a matter of public record.

Physicians, however, are prohibited from releasing certain information about patients by the Medical Practice Act. Section 5.08(b) of the Medical Practice Act states:

> Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

There is thus a clear statutory prohibition against the release of patient identity, which would include names of patients and patient information.[3] Since physicians are prohibited by the Medical Practice Act from making certain disclosures, the question is whether this prohibition is in conflict with the disclosure requirement of article 6252-9b and, if so, which statutory requirement prevails.

In construing two conflicting statutes, courts apply the following standards:

> All statutes are presumed to be enacted by the Legislature with full knowledge of the existing condition of the law and with reference to it. Statutes are to be construed in connection with, and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence, that is, they are to be construed with reference to the whole system of law of which they form a part, including reference to other statutes, rules of procedure, and the decisions of the courts.

City of Ingleside v. Johnson, 537 S.W.2d 145, 153 (Tex. Civ. App.--Corpus Christi 1976, no writ). Thus statutes that conflict should be harmonized to the extent possible. In this situation, we believe that the prohibitions of the Medical Practice Act prevail because compliance with those standards does not significantly undermine the legislative intent of requiring state officers to file annual financial disclosure statements showing potential conflicts of interest.

The policy and intent behind requiring state officers to file annual financial disclosure statements is outlined in part in article 6252-9b, section 1:

> It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and confidence of the people of Texas in their state government, there are provided standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties.

We think it does little disservice to this policy for a physician to maintain the privacy of his patients and abide by the confidentiality requirements of the Medical Practice Act.

SUMMARY

State officers who are physicians do not have to include on their financial disclosure reports information that is made confidential by the Medical Practice Act.

---

[1] Section 2(1) of article 6252-9b defines who is a state officer:

> "State officer" means an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency as defined in this section.

[2] Government Code chapter 305 concerns the registration and regulation of lobbyists.

[3] We note that patients can have a common-law right of privacy regarding their identity and the fact of their consultation with their physician. *See generally Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Attorney General Opinion H-390 (1974). Such privacy rights are recognized in the Open Records Act, V.T.C.S. art. 6252-17a, § 3(a)(1), which exempts from disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision."