

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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July 2, 2019

Arnold E. Feldman, M.D.
17740 West Lakeway Drive
Baton Rouge, LA 70810

Re: Public Records Request to the Louisiana State Board of Medical Examiners

Dear Dr. Feldman:

I have the pleasure of serving as the Executive Director to the Louisiana State Board of Medical Examiners (the "Board").¹ We are in receipt of your email of June 25, 2019 requesting copies of certain records of the Board pursuant to La. R.S. 44:1 *et seq.* (the "Public Records Law"). This correspondence will serve as the Board's formal response and provide you with the Board's position relative to the records and information you have requested, along with the production of any documents permitted by law to be produced by the Board.

Specifically, you requested: "Has George Papale who has been paid by this board ever been an elected judge? Please provide me with a copy of his complete file."

I outline for you the objections of the Board to the scope of your request and specifically assert these objections to the production of any of the materials listed therein, if any exists, for the following, non-exhaustive reasons:

- La. R.S. 49:956(8)(a) provides that "the records and documents in the possession of any agency or any officer or employee thereof including any written conclusions therefrom, which are deemed confidential and privileged shall not be subject to subpoena by any person or other state or federal agency."
- La. R.S. 49:956(8)(b) provides that "such records or documents shall only include . . . records and documents which are specifically exempt from disclosure by statute."
- La. R.S. 49:956(8)(c) provides that any violation of the above prohibition shall be a waiver of governmental immunity from suit for damage resulting from such disclosure.
- La. R.S. 44:4(7) exempts records, writings, accounts, letters, books, photographs or copies of memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice medicine or midwifery, in the custody or control of the Board from disclosure under the Public Records Act.

¹The Board is an agency of the State of Louisiana.

- La. R.S. 44:4(37) exempts protected health information defined in R.S. 29:762 from disclosure under the Public Records Act.
- La. C. of E. Art. 510(B) and the patient-physician privilege, as enunciated in all known state and federal medical privacy privileges, including but not limited to HIPAA, 45 C.F.R. §160.101, *et seq.*, and Confidentiality of Alcohol and Drug Abuse Patient Records, 45 C.F.R. Part 2, provide a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself or his representative, his health care provider, or their representative.
- La. R.S. 37:1278(B) provides the Board the authority to obtain medical records from an applicant or licensee when the Board is acting upon a written complaint and it has reasonable cause to believe that the applicant's or licensee's fitness for duty may be impaired, however, any records or information obtained by the Board shall not constitute public records and shall be maintained in confidence by the Board until and unless such records or information are admitted into the record of proceedings before the Board pursuant to R.S. 37:1285.
- La. R.S. 37:1278.1 provides that any medical information, testimony, records, data, reports or other documents, tangible items or information relative to any patient treated by a physician under investigation by the Board and subpoenaed by the Board shall be maintained in confidence by the Board and there shall be deemed a privilege of confidentiality existing in favor of any such patient.
- La. R.S. 44:4(15) exempts malpractice reports from the Louisiana Patient's Compensation Fund, La. R.S. 40:1299.48, from disclosure under the Public Records Act.
- La. R.S. 13:3715.3(G)(2) provides that the Board shall receive and maintain peer review information as confidential and privileged, and take all measures to protect such confidentiality by means of all available evidentiary privileges and the protection of patient identification.
- La. R.S. 37:1285(E) provides that the Board's final decision in an adjudication proceeding under this section, other than by consent order, agreement or other informal disposition, shall constitute a public record and the board may disclose and provide such formal disposition to any person, firm or corporation, or to the public generally. The Board's disposition of an adjudication proceeding by consent order, agreement or other informal disposition shall not constitute a public record, but the Board shall have the authority and discretion to disclose such disposition to any person, firm or corporation with legitimate interest therein or to the public generally.

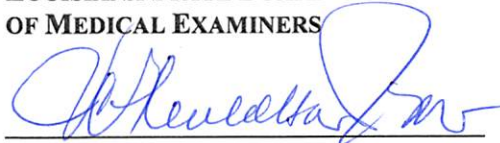
Subject to the above, and without waiving same, the Board does not have a file that is responsive to your request.

Dr. Arnold Feldman
July 2, 2019
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I trust this is responsive to your public records request.

Sincerely,

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**



Vincent A. Culotta, Jr., M.D.
Executive Director

Cc: Don S. McKinney (via email only don.mckinney@arlaw.com)