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24-ORD-223

October 14, 2024

In re: Thomas Law Offices/Kentucky Board of Medical Licensure

**Summary:** The Kentucky Board of Medical Licensure (“the Board”) did not violate the Open Record Act (“the Act”) when it redacted information related to an individual’s possible or actual impairments that had been furnished to the Kentucky Physicians Health Foundation (“the Foundation”) and made exempt under KRS 311.619(1).

***Open Records Decision***

Andrew McFarland, on behalf of Thomas Law Offices (“Appellant”), submitted a request to the Board for license information related to a particular licensee, specifying that responsive records include “complaints, investigations, disciplinary records, original applications, and renewal applications.” In response, the Board provided all responsive records but redacted “impairment information” under KRS 311.619, which is incorporated into the Act by KRS 61.878(1)(l).<sup>1</sup> This appeal followed.

On appeal, the Board maintains that the redacted information is exempt under KRS 311.619. Under KRS 311.619(1), “[a]ll information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the Program under KRS 311.616 . . . which in any way pertain or refer to an individual licensed by the [B]oard who may be, or who is actually, impaired shall be privileged and confidential.” KRS 311.616(1) authorizes the Board to “establish by contract . . . the Kentucky Physicians Health Foundation to promote the early identification, treatment, and rehabilitation of individuals licensed by the [B]oard who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition.”

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<sup>1</sup> The Board also redacted personal information pursuant to KRS 61.878(1)(a). The Appellant has not challenged those redactions.

The Board explains that “for many years, [it] has elicited information indicative of potential or existing impairments on its initial and renewal applications.” The questions on the applications require a licensee “to disclose personal health information, including physical, mental, [or] psychiatric diagnoses and/or treatments, that likely they would not otherwise disclose but-for the assurance that their answers would be exempt from public disclosure.”<sup>2</sup> Answers to the application questions are then “considered by [the Board], in concert with the [Foundation],” to identify licensees who may be or actually are impaired. In response, the Appellant claims the redacted impairment information is not exempted by KRS 311.619(1) because it was not furnished to the Foundation by the specified licensee and because the information was not produced by the Foundation. Further, the Appellant argues that the Board’s interpretation of the statute would “cover[] all documents about a licensee that the Board possesses.”

To start, KRS 311.619(1) makes confidential only “information, interviews, reports, statements, memoranda, or other documents” which have been “furnished to” the Foundation. This section contains no limitations regarding who must “furnish” the information or how that information shall be furnished to the Foundation. Here, the information was first submitted to the Board who “furnished” it to the Foundation to identify licenses who might be or are impaired. As such, the Board acts as a middleman to assist the Board in its mission to identify, intervene, treat, and rehabilitate impaired licensees. Moreover, because the Board represented to applicants that their answers were confidential under KRS 311.619(1), their answers were submitted with the expectation that they would be furnished to the Foundation by the Board. Thus, the requirement of KRS 311.619(1) that the information be “furnished to” the Foundation has been met.

KRS 311.619(1) also requires that the information furnished to the Foundation “pertain or refer to an individual licensed by the [B]oard *who may be, or who is actually, impaired*” (emphasis added). This language requires not only that any information or records furnished to the Foundation relate to an individual who is licensed by the Board, but also that the information or records relate to an individual’s actual or possible impairment.<sup>3</sup> Here, the challenged redactions were answers to questions about a licensee’s possible impairments related to medical conditions or drug or alcohol abuse. Such information clearly pertains or refers to the possible or actual impairment of the individual licensed by the Board.

At bottom, the answers to the redacted application questions were furnished to the Foundation by the Board after the Board represented to applicants that their

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<sup>2</sup> The Board’s applications inform applicants that their answers are exempt from disclosure under KRS 311.619(1) and KRS 61.878(1)(a).

<sup>3</sup> Thus, the Appellant’s concern that the Board’s interpretation of KRS 311.619(1) would cover “all documents about a licensee that the Board possesses” is without merit.

answers were confidential under KRS 311.619(1). Moreover, the challenged redactions only concern information that pertains or refers to the possible, or actual, impairment of an individual licensed by the Board. Accordingly, the Board did not violate the Act when it redacted information exempted from disclosure by KRS 311.619.<sup>4</sup>

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
**Attorney General**

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

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<sup>4</sup> The Board also claims the redacted answers are exempt under KRS 61.878(1)(a). Because KRS 311.619(1) is dispositive of this appeal, it is unnecessary to address this argument.