

bers of the public to have access, or where the purpose for which the information will be used is stated to be unlawful, or where reputations may be harmed, or for pastime, whim or fancy. In such cases, a balancing of the public interest with the right of access must be made. The only harm to the public interest which could occur here would be if we would deny access to the newspaper."

There is no legislative enactment requiring that the voter list compiled by the jury board be confidential. On the contrary, the law encourages the disclosure of this information. 1954 PA 116, § 516; MCLA 168.516; MSA 6.1516, provides for public access to voter registration records stating:

"The registration record shall be open for public inspection under rules and regulations prescribed by the clerk."

In conclusion, it is my opinion that the voter lists in the possession of the county clerk and the jury board are public records.

The fact that members of the public have a right to inspect these records does not mean, however, that public officials are obligated to furnish copies, although they may do so if they wish; it means only that the public has a right of access and may look at the records at a reasonable time without interfering with the conduct of public business. See *Burton Abstract & Title Co v Martin*, 38 Mich App 178; 196-NW2d 23 (1972).

FRANK J. KELLEY,  
*Attorney General.*

76/013.1

**ADMINISTRATIVE LAW AND PROCEDURES:** Adoption of administrative rules on public access to records.

**RECORDS AND RECORDATION:** Adoption of administrative rules on public access to records.

**MEDICAL PRACTICE BOARD:** Duty to promulgate administrative rules.

The Medical Practice Board has both the authority and the duty to promulgate rules concerning public access to its records.

Opinion No. 5062

October 13, 1976.

Frederick W. VanDuyne, M.D., President  
Medical Practice Board  
1033 South Washington Avenue  
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You have asked whether the Medical Practice Act, 1973 PA 185, MCLA 338.1801 *et seq*; MSA 14.542(1) *et seq*, § 3(6), prohibits the Medical Practice Board from promulgating administrative rules regarding public access to records generated pursuant to said Act.

1973 PA 185, § 3(6), *supra*, provides in pertinent part as follows:

"The department shall have charge of the offices of the board and

of its records and all moneys collected, shall supervise all necessary administrative work of the board and shall perform the duties usually appertaining to those offices."

Recognizing the need to establish standards to govern public access to your records, you are concerned with whether the aforesaid provision, by placing the Department of Licensing and Regulation in "charge" of the records, prohibits the Board from establishing those standards.

1973 PA 185, *supra*, created the Medical Practice Board within the Department of Licensing and Regulation as the agency responsible for the examination, licensing and regulation of doctors of medicine. Numerous powers were given to the Board to facilitate accomplishment of those tasks, two of which are related to your question.

1973 PA 185, *supra*, § 5(2) provides as follows:

"Information or records received in the course of an investigation conducted under this act, data received and maintained pursuant to section 11b(1), (2), and (3), or other information, records, or data the board designates shall be confidential information. An order of the board or disciplinary action shall not be confidential information. The board may disclose confidential information only for bona fide research, educational purposes, to conduct a proceeding under subsection (1)(a), (b), (c), (e), or (f) or section 11, or pursuant to a valid legal process."

Thus, all "information or records" received by the Board in the course of an investigation it conducts are confidential by statutory provision. Further, the Board is authorized by statute to designate that "other information, records or data" shall be confidential. Material which is confidential, whether by statute or Board determination, may only be disclosed "... for bona fide research, educational purposes, to conduct a proceeding under subsection (1)(a), (b), (c), (e), or (f) or section 11, or pursuant to a valid legal process." Such material may not be disclosed to the public. Accordingly, 1973 PA 185, *supra*, § 5(2) severely restricts the public's access to records of the Board.

It is apparent that the Board is vested with the statutory responsibility to determine which non-investigatory records shall be confidential. The Administrative Procedures Act, 1969 PA 306, § 33(1) and (2), MCLA 24.233(1) and (2); MSA 3.560(123)(1) and (2), provides as follows:

"(1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations and may include therein forms with instructions. Sections 41 and 42 do not apply to such rules.

"(2) An agency shall promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests."

That language not only authorizes the Board to promulgate rules governing public access to Board records, the Board is required to do so. Moreover, the Board is empowered by 1973 PA 185, *supra*, § 5(1)(h), as follows:

"The board may:

"\* \* \*

"(h) Promulgate rules necessary to carry out the purposes of, and enforce this act."

Among the purposes of 1973 PA 185, *supra*, is the ascertainment of which records are confidential. Standards must be developed to guide the Board in making uniform determinations and to advise the public regarding access to the records. Unless the Department of Licensing and Regulation is unfettered by the confidentiality proscriptions of 1973 PA 185, § 5(2), *supra*, those standards must be developed by the Board.

A similar issue was raised in *Grayson v Board of Accountancy*, 27 Mich App 26; 183 NW2d 424 (1970). Plaintiff in that case sought access to the names and addresses of candidates for the C.P.A. exam in order that he might send them promotional material concerning his review course business. The pertinent statutory provision prohibited the Board from making such disclosure as follows:

"Any application, document or other information filed by or concerning an applicant shall not be disclosed by the board to anyone without the prior permission of the applicant to do so, except that nothing herein shall prevent the board from making public announcement of the names of persons receiving certificates under this act." 27 Mich App 26, 29-30 (1970)

Relying on that language, the Board refused to disclose the information. Plaintiff argued that the statute limited the Board but did not limit the Department of Licensing and Regulation. In response to that argument the court held:

"Although there have been no cases which have discussed the effect of a type I transfer upon the applicability of prohibitions directed toward a board on the principal department, the only way that the nondisclosure provisions can be implemented is by construing the language of PA 1967, No 306, § 1 as also applying to the parent department. *If the information which the legislature has determined should not be disclosed is made available by the mere fact that it is in the hands of the parent department, the legislative purpose would be thwarted.* The Court held in *Benjamin v. Huntington Woods* (1957), 349 Mich 545, 555 that:

"We seek a reasonable construction of statutes in light of the purposes sought to be accomplished."

"The only way to accomplish the legislative purpose of protecting the candidates' privacy is to hold that the prohibition of the statute applies also to the Department of Licensing and Regulation." 27 Mich App 26, 35-36 (1970) (emphasis added)

Plaintiff's argument on this point was rejected.

The court's reasoning applies to the instant question. If the Board's responsibility to assess records for confidentiality is taken out of the Board's control by the mere fact that the records are in the charge of the parent

department, the legislative purpose would be thwarted. Accordingly, it is my opinion that the Medical Practice Board has both the authority and the duty to promulgate rules concerning public access to its records. Once the standards are promulgated, the Board may utilize the services of the Department of Licensing and Regulation in the implementation of them.

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*Attorney General.*

761015.2

**COLLEGES AND UNIVERSITIES:** Copyrights and patents.

**COPYRIGHTS:** Rights of institutions of higher education and faculty members.

**PATENTS:** Rights of institutions of higher education and faculty members.

Copyrights of lecture notes, textbooks and articles belong to a faculty member rather than the institution he or she serves, unless an agreement is entered into between the institution and the faculty member providing for a different arrangement.

Although a professor who makes an invention is entitled to its patent rights, his interests may be superseded by those of an employer by agreement. Employers are also entitled to shoprights in inventions of their employees where the invention is made during hours of employment with the employer's materials and appliances.

Opinion No. 5081

October 15, 1976.

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You have requested my opinion regarding the respective rights of a college or university and its faculty to copyrights and patents for work product developed in conjunction with faculty assignments.

### COPYRIGHTS

Prior to publication, the author of a work retains control over it.<sup>1</sup> If, however, a work is published with the author's consent, it enters the public domain and may be published by any person unless the author has complied with the provisions of the Copyright Act<sup>2</sup> and thereby retained for himself the exclusive right to republish the work for a limited period.<sup>3</sup>

An exception to the author's right to control prior to publication is the

<sup>1</sup> *Werckmeister v American Lithographic Co.*, 134 F2d 321, 324 (CA 2, 1904).

<sup>2</sup> 61 Stat 652 (1947), 17 USC 1 *et seq.*

<sup>3</sup> *Caliga v Inter Ocean Newspaper Co.*, 157 F2d 186, 188 (CA 7, 1907), *aff'g* 215 US 182 (1909).