

1978 WL 34714 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
February 17, 1978

*1 Ms. Del Kinlaw
Division of Research and Statistical Services,
Cooperative Health Section
Suite 201
1028 Sumter Street
Columbia, SC 29201

Dear Mrs. Kinlaw:

Recently you have requested an Opinion from the Attorney General's Office on behalf of the Cooperative Health Section, Division of Research and Statistical Services, South Carolina Budget and Control Board. Basically your request deals with the use of statistical data on all licensed health professionals.

You have advised me that your Agency acts as a central depository for all licensing data collected by various agencies on individual health professionals. This would include doctors, nurses, dentists, etc. Your role has been described as a 'trustee' of these documents, with the right to control the use of the documents remaining with the submitting agency.

Your agency is extremely careful to insure that no unauthorized use is made of these records. You attempt to insure that any use which is authorized guarantees that the data will only be used en masse, and never become individually identifiable. Your concern for confidentiality is mandated by the Policy Statement of the National Center for Health Statistics. The National Center is a major unit of the Federal Statistical System, and its Policy Statement sets forth detailed restrictions on the use of statistical intelligence.

This Policy Statement has been incorporated by reference into the federal contracts through which your agency receives federal funds. Therefore, you adhere strictly to the Policy Statement Provisions. Your concern is based on the fact that each individual State agency supplying you data is currently under no formal restrictions concerning its use of its own data.

The problem is illustrated by several recent examples in which a licensing agency asked to have individually identifiable data released to an educational institution, so that the institution could monitor the professional success and development of its graduates. Your agency believes that, as trustee of the records, it cannot prohibit the licensing agency from directing the release of its own records. However, your agency feels that general guidelines should be given to the agencies supplying data, which will help the agencies realize the potential harm in releasing individually identifiable data.

Your concern is well taken and this Office joins in your belief that all provider agencies should be cautioned about the use or misuse of its records. Without having a particular case or controversy ripe for adjudication, an extensive analysis of the law of privacy would serve little purpose here. It can be stated as a generalization that any unauthorized release of individually identifiable information, supplied by a health professional solely for the use of a licensing board, creates the potential for an invasion of privacy action.

In such a suit, the agency as an element of the sovereign, could raise the defense of sovereign immunity. Such a defense may not be available to the individual who knowingly authorizes the release, and the potential for litigation is very real.

You should be aware that I am not indicating a cause of action will lie for all releases of individually identifiable data. I am saying the potential in many cases is very real.

*2 By way of illustration of the concern felt by medical professionals over the disclosure of personal information, you have provided me with an article recounting the battle between Massachusetts doctors and the State Board of Registration. The Board sought disclosure of certain personal information which the Medical Society members felt would constitute an invasion of their privacy. Under the threat of litigation, the Board made such disclosure voluntary. If such strong feelings exist over the release of data to the Board, it is easy to see the problem inherent in releasing such material to third parties in individually identifiable form.

With the above comments as background, I believe the following course of action should be taken by your agency:

- 1) Send out a letter to all of your data source agencies, advising them of the great importance of protecting the confidentiality of their data. Indicate in this letter the serious potential danger which lies in indiscriminate distribution of individually identifiable data.
- 2) Send a copy of the Policy Statement from the National Center for Health Statistics to each data source agency. I would suggest you prepare a summary of the important points of the Statement to go along with the full text.
- 3) Advise each data source agency of your willingness to examine any request for information, and to advise the agency on the desirability of releasing said information.

I believe such action on the part of the Co-operative Health Section will go a long way in enlightening data source agencies about their duties and potential liabilities vis a vis personally identifiable health licensee data.

Sincerely,

George C. Beighley
Assistant Attorney General

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