



MARYLAND Department of Health

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

June 13, 2018

Dear Mr. Mayo,

The Office of Health Care Quality (“OHCQ”) received your request for certain records under the Public Information Act, Md. Code Ann., Gen. Prov. (“GP”) §§ 4-101-4-601, related to Hagerstown Reproductive Health Services. In particular, you seek to inspect all records in my custody and control pertaining to the following:

Per the FOIA would you kindly send the most current Surgical Abortion Facility Licensing Application pertaining to: Hagerstown Reproductive Health Services.

Pursuant to the Public Information Act, Annotated Code of Maryland, General Provisions Article, §4-301(1), these records were redacted to protect the confidentiality of medical information as required under Health-General Article, § 4-301 *et seq.* (Maryland Confidentiality of Medical Records Act) and 45 C.F.R. § 164.500 *et seq.* (Regulations issued under the federal Health Insurance Portability and Accountability Act of 1996).

Other than the Statement of Deficiencies report and the provider’s plan of correction, OHCQ’s investigatory files are not subject to public disclosure. As an agency that licenses providers of health care such as Hagerstown Reproductive Health Services, the Maryland Department of Health and Mental Hygiene is a “medical review committee” as defined by Md. Code Ann., Health Occ. Art., § 1-401(a)(3). Under Health Occupations Article, §1-401(d), the Department’s investigative “proceedings, records, and files” concerning matters that are listed in § 1-401(c) ¹ are not discoverable and are not admissible in evidence. *See Brem v. DiCarlo, et al.*,

¹ Health Occ. Art. § 1-401(c) provides:

For purposes of this section, a medical review committee:

- (1) Evaluates and seeks to improve the quality of health care provided by providers of health care;
- (2) Evaluates the need for and the level of performance of health care provided by providers of health care;
- (3) Evaluates the qualifications, competence, and performance of providers of health care; or
- (4) Evaluates and acts on matters that relate to the discipline of any provider of health care.

162 F.R.D. 94, 98 (D.Md. 1995) ("the statutory exception for actions initiated by physicians aggrieved by a committee decision appears to be the only civil action in which information gleaned from such a committee was intended to be discovered."). *See also St. Joseph Medical Center v. Cardiac Surgery Associates, P.A.*, 392 Md. 75, 98 (2006) (where Maryland Court of Appeals held that the medical review committee privilege is so broad that "the basic coverage of the privilege statute is not limited to documents generated by a medical review committee itself."). Thus, under GP § 4-301(a)(1), the investigatory file is not subject to public inspection.

Pursuant to GP §4-203(c)(1)(i)4, I must inform you of all remedies available for review. You may seek direct judicial review under GP § 4-362. You may also file a complaint with the Public Information Act Compliance Board concerning the amount of the fee charged if it exceeds \$350, *see* GP § 4-1A-01 *et seq.* and may also refer any concerns about this decision to Lisa Kershner, the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Ms. Kershner may be reached at lkershner@oag.state.md.us or at 410-576-7037.

If you have any questions or concerns regarding the processing of your request, you may contact me at 410-402-8055.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Tomsko Nay, MD".

Patricia Tomsko Nay, MD
Executive Director
Office of Health Care Quality