



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

July 16, 2019
SPR19/1230

Gerald F. Dolan, Esq.
Assistant General Counsel
Board of Registration in Medicine
200 Harvard Mill Square
Wakefield, MA 01880

Dear Attorney Dolan:

I have received a request from S. Howey seeking reconsideration of a determination involving the Board of Registration in Medicine's (Board) response to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, S. Howey requested "... all complaints, disciplines, medical malpractice lawsuits, applications and reapplications, references, resumes and everything else in your file pertaining to" an identified individual. S. Howey included several potential responsive categories of records.

Previous determination

This request was the subject of a previous determination. See SPR19/1230 Determination of the Supervisor of Records (June 24, 2019). In my June 24th determination I found that S. Howey's petition for an appeal was unclear. Consequently, I found this office was unable to opine on this matter at the time. See 950 C.M.R. 32.08(1)(f) (all petitions for appeal shall be in writing and shall specifically describe the nature of the requestor's objections to the response or failure to issue a timely response). I noted that S. Howey could petition this office for a new appeal by providing this office with the necessary clarification of the request for an appeal.

Request for reconsideration

In an email dated June 24, 2019, S. Howey indicates "I'm appealing your closing of my appeal. Where does it say 'Family Planning Fellow[]' except the Board's attorney saying that? It is not in [] her file or profile that can be seen. You have circular reason to side with the Board attorney. There is no proof. Please reopen my appeal."

The Board initially responded to the request on June 6, 2019 by providing 56 pages of records with portions redacted. The Board explained "[p]lease be advised that certain portions of

Gerald F. Dolan, Esq.
Page 2
July 16, 2019

SPR19/1230

the records have been redacted and/or some records withheld from production due to an exemption pursuant to G.L. c. 4, § 7(26), as specified below. . . .” The Board cited Exemption (c), and with respect to Exemption (a), cited G. L. c. 66A, § 2; G. L. c. 93H; G. L. c. 112, § 5; 243 C.M.R. 2.13(2)-(4) and 2.14(2); 243 C.M.R. 1.02(8)(c)(1); the Health Information Portability and Accountability Act (“HIPAA”); 45 C.F.R. 164.514(B)(2)(i) and G. L. c. 66, § 10B.

In the initial appeal petition S. Howey asserted “I’m appealing the redacted portions of the Roncari file. No where [sic] on Roncari’s profile does it say she is does Family Planning. That was evidently created out of thin air. Please send the unredacted file.”

In my June 24th determination I noted that a review of the records included with the Board’s June 6th response reveals a reference to a “Family Planning Fellow.” This reference can be found on page 7 of the PDF document provided to S. Howey with the Board’s June 6th response.

The June 24th determination also indicated that S. Howey appeared to only object to redactions made under G.L. c. 66, § 10B, despite the fact that the Board cited several exemptions, statutes, regulations other than G. L. c. 66, § 10B to justify the redactions within the records provided. Therefore, I found it was uncertain whether S. Howey sought the records without any redactions. S. Howey’s June 24th request for reconsideration does not address whether the redactions made under the exemptions, statutes, regulations other than G. L. c. 66, § 10B remain at issue.

After another careful and thorough review of this matter, I respectfully decline to reverse the finding in my June 24th determination that S. Howey’s petition for an appeal is unclear. See 950 C.M.R. 32.08(1)(f) (all petitions for appeal shall be in writing and shall specifically describe the nature of the requestor’s objections to the response or failure to issue a timely response). S. Howey may petition this office for a new appeal by providing this office with the necessary clarification of the basis for the appeal.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: S. Howey