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In re: Beth McMasters/Kentucky Board of Medical Licensure

Summary: The Kentucky Board Medical Licensure ("Board") did not violate the Open Records Act.

Open Records Decision

In September of 2018, Beth McMasters ("Appellant"), an attorney, asked the Board to provide a copy of the Board's "complete file" relating to her client, a specific doctor. The Board approved the request and provided over 200 pages of responsive records. It redacted from those records certain personal information under KRS 61.878(1)(a), including addresses and telephone numbers. The Appellant never asked this Office to review the Board's response.

In October 2019, another attorney, Freeda Louthan, asked the Board to provide "any and all documentation . . . including all conferences, hearings, and all investigation materials obtained or generated, of all licensure board [or] disciplinary matters and proceedings by [the Board], as well as the original application and all reapplications for licensure" relating to the same doctor. The Board responded to this request, and allegedly provided over 300 pages of responsive records.

In September 2020, the Appellant learned that the Board had responded to Ms. Louthan's 2019 request by providing responsive records, but the Board did not notify the doctor that it was releasing records relating to him.[1] The Appellant then demanded that the Board "retract" its October 2019 letter approving Ms. Louthan's open records request. As grounds, the Appellant

[1] The Appellant learned this from records obtained in civil discovery in a lawsuit. The Board is not a party to that lawsuit.

claimed that her client never consented to the release of his records. Moreover, the Appellant asked the Board to provide all the records that it had provided to Ms. Louthan in October of 2019. The Board provided those records, but denied the request to "retract" its October 2019 letter, and stated that there was no method to issue such a "retraction."

Appellant then initiated this appeal. On appeal, the Appellant claims that the Board violated the Act when it failed to provide her client notice that the Board would be releasing documents that pertain to him. The Appellant further claims that the Board violated the Act in 2018 because it did not provide the Appellant with all responsive records at that time. The Appellant claims this must be true, since the Board provided Ms. Louthan with over 100 more pages of responsive records than it provided to the Appellant a year earlier. The Appellant, now in possession of all the same records that the Board provided to Ms. Louthan, claims that none of the additional 100 pages were dated after her September 2018 request. She therefore infers that the Board should have provided these records in September 2018.

This Office has historically declined to adjudicate disputes involving a perceived disparity between records an appellant received and records she believes should exist. *See, e.g.*, 20-ORD-100; 19-ORD-234; 19-ORD-083; 03-ORD-61; OAG 89-81. The Office does so again here. Moreover, the Board has now provided the same records to the Appellant that it provided to Ms. Louthan in 2019. Thus, any claim that the Board has not provided the Appellant with all responsive records is moot.

Finally, under KRS 61.880(2), a person may appeal an agency's *denial* of a request to inspect records to the Attorney General. Here, the Appellant does not claim that the request was denied. She claims the opposite–that the request should have been denied. She also claims that the Board should have notified her client before it released the records.[2] Despite the Appellant's

[2] In *Beckham v. Board of Education of Jefferson County*, 873 S.W.2d 575, 577-78 (Ky. 1994), the Kentucky Supreme Court found that the subject of an open records request has standing to seek injunctive relief to prevent a public agency from providing records that invade that person's privacy. But injunctions are generally prospective, *i.e.*, designed to prevent future conduct. *See Beshear v. Haydon-Bridge Co., Inc.*, 416 S.W.3d 280, 292-93 (Ky. 2013) (recognizing that retroactive injunctions, known as "reparative injunctions," exist, but they are exceptionally rare in American jurisprudence). Injunctions are not typically issued to rectify past conduct. *Id.* Even if a person could seek a "reparative injunction" under these facts, only a circuit court, and not the Attorney General, may grant such relief.

claims, the Board did not violate any provision of the Act by granting the request without notifying the Appellant.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to 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.

Daniel Cameron
Attorney General

/s/Marc Manley
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Distributed to:

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