

DOUGLAS E. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 28, 2008

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 578 and House Bill 766

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 578 and House Bill 766, companion bills entitled "Vehicle Laws - Medical Advisory Board - Use of Confidential Records and Reports." We write to discuss the interaction of the bills with the Maryland Confidentiality of Medical Records Act.

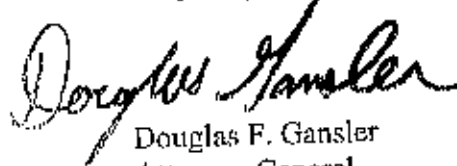
Senate Bill 578 and House Bill 766 are identical except that House Bill 766 amends Transportation Article § 16-119(d)(1) to add the phrase "Except as provided in paragraph (2) of this subsection," to the beginning of the paragraph, while Senate Bill 578 does not have this clarifying but non-substantive change. Both bills relate to information in medical records collected by the Medical Advisory Board to assess the physical and mental ability of individual applicants and licensees to drive. The bills permit the Motor Vehicle Administration to use this information for the purpose of driver safety research provided that personal information is not published or disclosed. The Administration may also contract with third parties to assist with driver safety research. The bills do not permit third parties to use the information for independent research.

The disclosure of medical records for research purposes is consistent with the Confidentiality of Medical Records Subtitle of the Health - General Article so long as the person given access to the medical records signs an acknowledgment of the duty not to redisclose any patient identifying information. HG Article § 4-305(b)(2)(i). Because these provisions are consistent, House Bill 578 and House Bill 766 should not be read as creating an exception to the Confidentiality of Medical Records Act, but instead should be applied in compliance with it. While the State law does not specify what is required to avoid disclosure of identifiable information, federal regulations provide guidelines on this matter. 45 C.F.R. § 164.514. The federal regulations, however, are not applicable

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of their own force because the Motor Vehicle Administration is not a covered entity. 45 C.F.R. § 160.102(a). Thus, the Motor Vehicle Administration should administer this provision in a manner consistent with these provisions.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Jennie M. Forehand
The Honorable James E. Malone, Jr.
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro