§ 90-121.5. Confidentiality of investigative information; cooperation with law enforcement; self-reporting requirements.

(a) The Board may, in a closed session, receive information or evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and the full presentation of relevant evidence.

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, disciplinary matter, or report of professional liability insurance awards or settlements shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in this section. However, any notice or statement of charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that the documentation may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, the documents shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of professional services to a patient who has not consented to the public disclosure of the treatment or services.

For purposes of this subsection, "investigative information" includes (i) formal or informal complaints received or information relating to the identity of, or a report made by, another licensee or other person performing an expert review or similar analysis for the Board or (ii) transcripts of any deposition taken or affidavit or statement obtained by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(c) When the Board receives a complaint regarding a licensee's care of a patient, the Board shall determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing the practice of optometry. In making such determination, the Board shall provide the licensee with a copy of the complaint and ask for a response. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care.

(d) If information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed.

(e) The Board shall cooperate with and assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the investigating agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(f) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

(1) Any felony arrest or indictment.

(2) Any arrest for driving while impaired or driving under the influence.

(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(g) The Board, its members, attorneys, and staff may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action taken by the Board. The Board shall notify the licensee in writing within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information transmitted but shall be liable for the reasonable expense of the copies. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities. (2011-336, s. 1.)