

SUPREME COURT OF OHIO

State ex rel. Mahajan v. State Med. Bd. of Ohio

127 Ohio St. 3d 497, 2010-Ohio-5995 (Ohio 2010) · No. 2009-2293 · Decided December 15, 2010

SUMMARY

The Ohio Supreme Court considered a mandamus action seeking unredacted records from the State Medical Board of Ohio under the Ohio Public Records Act. The court granted the writ in part for improperly redacted information, denied it in part for records protected by medical-board confidentiality, confidential law-enforcement investigatory-record, work-product, and attorney-client privileges, and denied statutory damages and attorney fees.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Chief Justice Brown; Justice Pfeifer; Justice Lundberg Stratton; Justice O'Connor; Justice O'Donnell; Justice Lanzinger; Justice Cupp
JURISDICTION	Ohio
DECIDED	December 15, 2010
DOCKET	2009-2293
DISPOSITION	other
PROCEDURAL POSTURE	Original action in mandamus under the Ohio Public Records Act seeking unredacted copies of records held by the State Medical Board of Ohio, statutory damages, and attorney fees.
STANDARD OF REVIEW	The records custodian bears the burden of establishing the applicability of a public-records exemption, and exemptions are strictly construed against the custodian. The Public Records Act is liberally construed in favor of broad access, with doubts resolved in favor of disclosure.
PRECEDENTIAL VALUE	Published and precedential decision of the Supreme Court of Ohio
PARTIES	Mahendra Kumar Mahajan, M.D. v. State Medical Board of Ohio

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QUESTIONS PRESENTED

1. Whether Mahajan was entitled to a writ of mandamus compelling disclosure of the challenged redacted portions under the Ohio Public Records Act.
2. Whether information received by the State Medical Board during an investigation is confidential under R.C. 4731.22(F)(5), including when the information appears in personnel records.
3. Whether the confidentiality privilege under R.C. 4731.22(F)(5) was waived when the investigated physician requested records concerning himself.
4. Whether the confidential-law-enforcement-investigatory-record exemption under R.C. 149.43(A)(2) protected investigative work product in an administrative medical-board investigation.
5. Whether Mahajan was entitled to statutory damages or attorney fees.

HOLDINGS

1. Mandamus is the appropriate remedy to compel compliance with Ohio's Public Records Act, and Mahajan was entitled to disclosure of specified improperly redacted information.
2. R.C. 4731.22(F)(5) broadly protects information received by the Medical Board pursuant to an investigation, including the names of physicians under investigation, regardless of whether the information appears in investigative or personnel records.
3. The physician who holds the confidentiality privilege under R.C. 4731.22(F)(5) may waive it, and Mahajan waived the privilege as to information concerning himself by requesting the records.
4. The confidential-law-enforcement-investigatory-record exemption applies to records pertaining to administrative medical-board enforcement matters when disclosure would create a high probability of revealing specified protected information, including investigative work product.
5. Mahajan was not entitled to statutory damages or attorney fees.

KEY QUOTATIONS

“Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” (¶ 21)

“Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception.” (¶ 24)

“The plain language of R.C. 4731.22(F)(5) protects “[i]nformation received by the board pursuant to an investigation” – it is not restricted to information relating to patients and complainants.” (¶ 35)

“Writ granted in part and denied in part.” (¶ 67)

FACTUAL BACKGROUND

Mahendra Mahajan, a physician under investigation and disciplinary proceedings by the State Medical Board of Ohio, requested records concerning the conduct of the board's enforcement attorney during Mahajan's deposition and similar incidents. The board produced thousands of pages and additional records but redacted portions under Ohio public-records exemptions, the board's investigative-confidentiality statute, the attorney-client privilege, and the Americans with Disabilities Act. The challenged redactions included names, deposition-related information, investigative material, and work product.

PROCEDURAL HISTORY

Mahajan requested records concerning a medical-board enforcement attorney and challenged portions of the board's redactions. After the board refused to provide additional unredacted records, Mahajan filed an original mandamus action in the Supreme Court of Ohio. The court granted an alternative writ, considered the parties' evidence and briefs, granted the writ in part, denied it in part, and denied statutory damages, attorney fees, and oral argument.

DISPOSITION

other

CASES CITED

- Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- State v. Fry, 125 Ohio St. 3d 163, 2010-Ohio-1017, 926 N.E.2d 1239, ¶ 67
- State ex rel. Plain Dealer Publishing Co. v. Cleveland, 106 Ohio St. 3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 64
- State ex rel. Miller v. Reed, 87 Ohio St. 3d 159, 160, 718 N.E.2d 428 (1999)
- State ex rel. Natl. Emps. Network Alliance, Inc. v. Ryan, 125 Ohio St. 3d 11, 2010-Ohio-578, 925 N.E.2d 947, ¶ 1
- State ex rel. Russo v. Deters, 80 Ohio St. 3d 152, 154, 684 N.E.2d 1237 (1997)
- State ex rel. Physicians Comm. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees, 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 6
- State ex rel. Rocker v. Guernsey Cty. Sheriff's Office, 126 Ohio St. 3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 6
- State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St. 3d 81, 2008-Ohio-1770, 886 N.E.2d 206, paragraph two of the syllabus
- State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor, 89 Ohio St. 3d 440, 444, 732 N.E.2d 969 (2000)
- State ex rel. McGee v. Ohio State Bd. of Psychology, 49 Ohio St. 3d 59, 60, 550 N.E.2d 945 (1990)
- State ex rel. Steckman v. Jackson, 70 Ohio St. 3d 420, 434, 639 N.E.2d 83 (1994)
- State ex rel. Polovischak v. Mayfield, 50 Ohio St. 3d 51, 53, 552 N.E.2d 635 (1990)
- State ex rel. Morgan v. New Lexington, 112 Ohio St. 3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶¶ 49, 51, 58
- State Med. Bd. of Ohio v. Murray, 66 Ohio St. 3d 527, 536, 613 N.E.2d 636 (1993)
- In re Kralik, 101 Ohio App. 3d 232, 236, 655 N.E.2d 273 (1995)

- State ex rel. Gannett Satellite Info. Network, Inc. v. Petro, 80 Ohio St. 3d 261, 266-267, 685 N.E.2d 1223 (1997)
- State ex rel. Besser v. Ohio State Univ., 87 Ohio St. 3d 535, 542, 721 N.E.2d 1044 (2000)
- State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth., 121 Ohio St. 3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 35
- State ex rel. Miller v. Brady, 123 Ohio St. 3d 255, 2009-Ohio-4942, 915 N.E.2d 1183, ¶ 17
- State ex rel. Lanham v. Smith, 112 Ohio St. 3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 14
- State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register, 116 Ohio St. 3d 88, 2007-Ohio-5542, 876 N.E.2d 913, ¶ 43
- State ex rel. Nix v. Cleveland, 83 Ohio St. 3d 379, 385, 700 N.E.2d 12 (1998)
- State ex rel. Cranford v. Cleveland, 103 Ohio St. 3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 26
- State ex rel. Brown v. Lemmerman, 124 Ohio St. 3d 296, 2010-Ohio-137, 921 N.E.2d 1049, ¶ 12
- State ex rel. Portage Lakes Edn. Assn., OEA/NEA v. State Emp. Relations Bd., 95 Ohio St. 3d 533, 2002-Ohio-2839, 769 N.E.2d 853, ¶ 54
- State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs., 120 Ohio St. 3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 43
- State ex rel. Cincinnati Enquirer v. Ronan, 124 Ohio St. 3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶ 10
- State ex rel. WBNS TV, Inc. v. Dues, 101 Ohio St. 3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, ¶ 36
- Yoder v. Ingersoll-Rand Co., 172 F.3d 51 (6th Cir. 1998) (table), 1998 WL 939885, at *1
- Loschen v. Trinity United Methodist Church of Lincoln, No. 4:08CV3143, 2009 WL 2902956, at *3 (D. Neb. Sept. 9, 2009)