

Confidentiality of Contract between LHR Facility and Consulting Physician

May 10, 2011

Dear LHR Facility Applicant:

Rule 25 TAC 289.302(i)(13) states: “Each application for a certificate of LHR registration shall be accompanied by a copy of a written contract with a Consulting Physician.” The contract must be between the LHR facility applicant and the consulting physician and must include certain information set forth in 289.302(i)(13)(A)-(D).

In an effort to assist a Facility applicant, DSHS has created a sample contract that meets the minimum requirements of the LHR rules to obtain a facility registration. See our related document entitled LHR Sample Contract between Laser Hair Removal Facility and Consulting Physician in accordance with 25 TAC 289.302(i)(13). We have limited the information in this contract to what is required by rule to obtain a facility registration.

Once the contract is submitted to DSHS, it is subject to the Texas Public Information Act, (PIA) Government Code, Chapter 552 which means that it is public information and presumed to be releasable to anyone asking for it unless there is a specific exemption from public disclosure. The contract you submit must include all the required items of 25 TAC 289.302(i)(13). It does not need to include other terms and conditions including financial arrangements.

As a result, here are some options to consider:

Do I want to claim that my Contract Information is Confidential?

1. You may have no reason to want to withhold any information in your Contract, including financial arrangements between you and the Consulting Physician. In that case, you may submit to DSHS a contract that contains all terms and conditions of your agreement.
2. If you do not wish to divulge information not required to be submitted under 289.302(i)(13), you may enter into two contracts: one based on the sample contract that you would submit and another that contains information not required by DSHS which you would not submit.
3. Alternatively, you may enter into one contract with the Consulting Physician and redact (black out) any information not required by DSHS under 302(i)(13). See the LHR Sample Contract for what is required to be submitted.
4. There may be other ways to handle your contract better suited to your needs and you may want to consult your attorney for suggestions.

How do I claim that my Contract Information is Confidential?

In reference to any contract you submit, you may wish to claim that some or all of the contract language is confidential. Making the claim does not ensure that the information will be kept confidential. But if you make a claim of confidentiality as outlined below, DSHS will submit your claim to the Attorney General's Office for an evaluation of whether it must be released based on information you will be asked to provide at the time of the request.

1. If you want to make a claim that information in a contract falls within an exception to the PIA you must mark your documents as noted below at the time of submission. (You may resubmit your contract marked as noted below at a later date if you change your mind about wanting to claim confidentiality).
2. On the first page of the contract (or a cover sheet), write: "INFORMATION CONTAINED WITHIN FALLS UNDER AN EXCEPTION(S) TO THE TEXAS PUBLIC INFORMATION ACT AT GOVERNMENT CODE SECTION(S) 552._____, and 552._____ (indicate subsections). WITHHOLD FROM PUBLIC DISCLOSURE.
3. On the first page of the contract (or a cover sheet), write the name of the company making the claim, a contact person, title, and contact information at the company.
4. Put the words "NOT AN OPEN RECORD" conspicuously at the top and bottom of each page containing information you claim falls within an exception and indicate which portions of the page are confidential.

If you claim that the information is confidential under Government Code 552.110, which protects commercial or financial information if release would cause "substantial competitive harm" to the person/entity from whom obtained, you will be given the opportunity to make the argument of such harm to the Attorney General if your information is requested. DSHS does not make the argument on your behalf. Your business enterprise must make a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure. Failure on your part to provide timely or sufficient information will likely result in release.