



DEPARTMENT OF NATURAL RESOURCES

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April 9, 2013

Jan Kief, MD
 President
 Colorado Medical Society
 7351 E. Lowry Blvd.
 Denver, CO 80230

Re: COGCC Rule 205A and Form 35, Confidentiality Agreement

Dear Dr. Kief:

Thank you for bringing the concerns of the Colorado Medical Society regarding the Colorado Oil and Gas Conservation Commission's hydraulic fracture chemical disclosure rule (Rule 205A) and the Form 35 confidentiality agreement to our attention. We understand some Colorado physicians are concerned the Form 35 confidentiality agreement will impact their ability to care for their patient and to comply with other reporting obligations to public health agencies. We do not believe this to be the case and wish to assure you that physicians are able to share information claimed to be a trade secret disclosed under Form 35 with patients, other health care professionals or health systems, and with public health agencies.

Commission Rule 205A requires oil and gas operators, vendors, and service providers to disclose the specific identity and amount of hydraulic fracturing chemicals claimed to be a trade secret to any health professional¹ who requests the information, has a reasonable basis to believe that knowledge of the information will assist in diagnosis or treatment of a patient, and executes a Form 35 confidentiality agreement. 2 CCR 404-1, Rule 205A. The confidentiality agreement obligates the physician "not to make use of [the information claimed to be a trade secret] for purposes other than medical diagnosis, treatment, or other health needs . . ." This language does not preclude a health professional from sharing the information claimed to be a trade secret with their patient or other treating and consulting health professionals or health systems in the course of providing diagnosis or treatment, or other asserted health needs. The right to receive the information includes the right to share the information with the patient and with other health providers. It is fully expected that chemical information disclosed under Form 35 that is relevant to a patient's diagnosis or treatment will become part of the electronic or paper medical record of the patient, giving an exposed patient ongoing access to the information as well.

It is the position of the Colorado Oil and Gas Conservation Commission that any information claimed to be a trade secret that is disclosed under Form 35 shall fall under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules privacy protections, and shall be viewed as protected information by all involved health professionals.

Only the health professional who makes the initial request for information claimed to be a trade secret under Rule 205A is obligated to submit an executed Form 35 to the COGCC and the custodian of such information. That health professional has no obligation to obtain executed Form 35s from others to

¹ Under the rules, a health professional is defined as a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the state of Colorado.

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whom he or she discloses the information claimed to be a trade secret during the course of diagnosis, treatment, or other health needs. However, the operator, vendor, or service provider who claims the information at issue is a trade secret may ask other recipients of such information to sign a Form 35. Physicians and other health professionals involved in the care and treatment of a patient may share information claimed to be a trade secret with public health officials and public health agencies, including the Colorado Department of Public Health and Environment.

We appreciate your collaboration on this issue and hope this letter addresses your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Thomas L. Compton". The signature is written in black ink and is positioned above the printed name and title.

Thomas L. Compton
Chairman, Colorado Oil and Gas Conservation Commission