

OPINION NO. 98-029**Syllabus:**

Pursuant to R.C. 5901.03, a county veterans service commission, in a reasonable exercise of its discretion, may determine that the medical condition of an applicant for financial assistance under R.C. 5901.02-.15, as described in R.C. 5901.08, is relevant to its determination whether to award or continue such assistance and may require an applicant to furnish a physician's statement of the applicant's medical condition in order to receive such assistance. (1988 Op. Att'y Gen. No. 88-103, syllabus paragraphs one and three, overruled due to statutory amendment.)

To: Paul J. Gains, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Betty D. Montgomery, Attorney General, August 24, 1998

You have requested an opinion concerning the granting of financial assistance to veterans under R.C. Chapter 5901. You specifically ask:

1. Can the [veterans service commission] require the applicant to furnish a medical statement in order to receive benefits when the applicant states that she is unable to work due to a medical condition?
2. [R.C. 5901.09] indicates that information provided by applicants shall not include medical records. Does this include a statement from a medical doctor, without the submission of any medical records, that the applicant is unable to work due to a medical condition?
3. Can the [veterans service commission] ask an applicant to sign a waiver allowing the veterans service commission to obtain a medical statement?
4. If the [veterans service commission] is not permitted to ask for a medical statement, must the [veterans service commission] provide services to an applicant without any documented proof that her inability to obtain gainful employment is due to a medical problem?
5. If the [veterans service commission] does have medical records in their possession, what should be done with these records?

According to information provided by your office, we understand that your fundamental concern is whether a veterans service commission may require an applicant for financial assistance who claims to be unable to work due to a medical condition to submit a physician's statement of the applicant's medical condition. This concern appears to arise from language in R.C. 5901.09(A), which states that the statement required thereunder shall not include "medical records."

In order to answer your questions, let us first briefly examine the functions and operation of a veterans service commission. Pursuant to R.C. 5901.02, each county has a veterans service commission consisting of five members. In accordance with R.C. 5901.03:

The commission's duties shall include but are not limited to the following:

(A) Employing such staff as are necessary to carry out the commission's duties, and fixing their compensation;

(B) Establishing policies and procedures for the administration of the commission and the veterans service office;

(C) *Establishing policies and procedures for the administration of assistance as provided under this chapter;*

...

(H) Establishing regularly scheduled transportation for veterans to and from veterans administration medical centers whose districts the county is within, through contractual agreements or through other arrangements determined by the commission to be most cost-effective.

(I) Participating in appropriate memorial and commemorative activities to help promote patriotism and veterans services;

(J) Taking any other actions required by this chapter. (Emphasis added.)

R.C. Chapter 5901 also imposes various duties upon veterans service commissions with respect to the burial of veterans. *See, e.g.,* R.C. 5901.16 (provision of veterans plot); R.C. 5901.17 (payment for care of veterans plot).

The primary source of a veterans service commission's authority to award financial assistance is found in R.C. 5901.03(C), which requires veterans service commissions to establish "policies and procedures for the administration of assistance as provided under this chapter."¹ Although the General Assembly has limited the authority of a veterans service commission to award financial assistance by the delineation in R.C. 5901.08 of those who are eligible to apply for assistance,² there appear to be no statutorily defined criteria

¹ Additional duties are prescribed by R.C. 5901.15, which requires veterans service commissions to adopt rules in order to "grant immediate assistance, financial or otherwise, to any person entitled to it under [R.C. 5901.02-.14]" and to various other persons.

² R.C. 5901.08 states:

Each applicant for financial assistance under [R.C. 5901.02-.15] shall be a veteran, an active-duty member of the armed forces of the United

for the award of such assistance.³ Rather, broad discretion has been granted to the various veterans service commissions to determine, in a reasonable manner, the bases upon which they will grant assistance. See *State ex rel. Lentz v. Depue*, 71 Ohio App. 83, 85-86, 47 N.E.2d 796, 798 (Ottawa County 1941) (“[t]he securing of the relief provided for in these statutes is not just a matter of asking for it. It is a matter at all times within the discretion and control of the commission and the person awarded such relief has no vested right in a continuation of awards nor in any specific amount of award”).⁴

You question, however, whether the discretion vested in a veterans service commission in granting financial assistance has been limited by the portion of R.C. 5901.09(A) which prohibits the inclusion of “medical records” in the financial statement required of

States, or the spouse, surviving spouse, dependent parent, minor child, or ward of a veteran or active-duty member of the armed forces of the United States, who has been a bona fide resident of the county in which application is being made for at least three months.

³ R.C. 5901.11 provides for the veterans service commission to award financial assistance, as follows:

On or before the last Monday in May in each year, the veterans service commission shall meet and determine in an itemized manner the probable amount necessary for the aid and financial assistance of persons entitled to such aid and assistance and for the operation of the veterans service office for the ensuing year. After determining the probable amount necessary for such purposes, the commission shall prepare and submit a budget in the manner specified in [R.C. 5705.28(C)] to the board of county commissioners which may review the proposed budget and shall appropriate funds to the commission pursuant to [R.C. Title III, R.C. 5705.05, and R.C. 5705.38-.41]. The board, at its June sessions, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves. (Emphasis added.)

The provisions of R.C. 5901.11 thus require the veterans service commission to determine each year in an itemized manner the probable amount the commission will need to provide aid and financial assistance to eligible persons. Pursuant to R.C. 5901.14, the county auditor is required to issue a warrant upon the county treasurer for the allowance awarded to each person certified by the commission. See generally *State ex rel. Semetko v. Bd. of Commissioners*, 30 Ohio App. 2d 130, 134, 283 N.E.2d 648, 651 (Lucas County 1971) (“[i]t is evident from the logical progression of R.C. 5901.05-5901.10 that the purpose of the legislation was to insure a reasonable and just amount of welfare benefits for indigent veterans”).

⁴ See generally *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”), *aff’d sub nom. State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916).

each applicant. In order to address this concern, let us examine R.C. 5901.09(A), which states:

Each applicant for financial assistance under [R.C. 5901.01-.15] shall provide the veterans service commission with a statement concerning the applicant's household income and the amount of real and personal taxable property, stocks, bonds, moneys on hand loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes, or other articles of value from which the applicant derives an income or revenue. The statement shall be made upon blanks furnished by the commission and shall be subscribed by the applicant.

Statements provided under this division shall not include medical records and, pursuant to division (B) of this section, are not public records under [R.C. 149.43]. Veterans service commissions may compile statistical data from the statements in a manner to be prescribed by the governor's office of veterans affairs. These data shall be considered a matter of public record. (Emphasis added.)

Thus, R.C. 5901.09(A) expressly prohibits the inclusion of "medical records" in "[s]tatements provided under this division." Your concern, therefore, is whether this prohibition precludes a veterans service commission from requiring an applicant for financial assistance to submit a physician's statement of the applicant's medical condition as it relates to the applicant's ability to obtain employment where the applicant claims to be unable to obtain gainful employment due to that medical condition.

Reserving the question of whether the term "medical records," as used in R.C. 5901.09(A), includes the type of statement you describe, we must first determine the nature of the prohibition contained in R.C. 5901.09(A). The plain language of R.C. 5901.09(A) limits the prohibition contained therein to the inclusion of medical records in "statements provided under this division." When this language is read in the context of R.C. 5901.09 as a whole, it becomes apparent that the General Assembly did not intend this prohibition to preclude a veterans service commission from considering an applicant's medical condition in deciding whether to award financial assistance or from requiring an applicant who claims to be unable to obtain employment due to a medical condition to furnish a physician's statement of that medical condition. See generally *First Fed. Sav. and Loan Ass'n v. Evatt*, 143 Ohio St. 243, 249, 54 N.E.2d 795, 797 (1944) ("it is axiomatic that all parts of a statute shall be construed together").⁵

⁵ R.C. 5901.09 states in pertinent part:

(B) The following are *not public records under [R.C. 149.43]*:

(1) A *statement* described in division (A) of this section;

(2) Any *application* for financial assistance under [R.C. 5901.01-.15];

(3) Any *documents* that accompany and pertain to a statement described in division (A) of this section or an application described in division (B)(2) of this section;

(4) Any *other documents* that are used by or are in the possession of a veterans service commission that may affect the determination of the eligibility of an applicant for financial assistance under [R.C. 5901.01-.15] or that may

Listed in R.C. 5901.09(B) as information that might be in the possession of a veterans service commission are, not only the statement required of an applicant by R.C. 5901.09(A), but also the application for financial assistance and any other documents, either pertaining to the statement or application or "used by or ... in the possession of a veterans service commission that may affect the determination of the eligibility of an applicant for financial assistance under [R.C. 5901.01-.15] or that may affect the determination of an increase, decrease, or discontinuance of an allowance under [R.C. 5901.14]," R.C. 5901.09(B)(4). R.C. 5901.09 further requires that a veterans service commission ensure that, with certain limited exceptions, the various types of information described in R.C. 5901.09(B) are "not used for any purpose other than to determine the eligibility of the applicant for financial assistance under [R.C. 5901.01-.15] or to determine whether to increase, decrease, or discontinue an allowance under [R.C. 5901.14]," R.C. 5901.09(D). R.C. 5901.09(B) and (D), therefore, implicitly acknowledge the authority of a veterans service commission to use information, in addition to the statement required by R.C. 5901.09(A), in making financial assistance determinations. Because R.C. 5901.09(A) prohibits the inclusion of "medical records" only in the statement required thereunder, and because a veterans service commission may consider information outside of that contained in such statement in making decisions concerning the granting of financial assistance, we cannot agree that R.C. 5901.09(A) prohibits a veterans service commission from requiring an applicant who claims to be unable to obtain employment due to a medical condition to

affect the determination of an increase, decrease, or discontinuance of an allowance under [R.C. 5901.14], if those documents are required to be kept confidential under any statute of this state or the United States;

(5) Any applications to obtain benefits under any law of the United States or of this state, and any documents accompanying those applications, in the possession of a veterans service commission and filed by persons in the armed forces of the United States, veterans, or the spouses, surviving spouses, children, parents, or dependents of veterans.

(C) *Interviews of applicants* for financial assistance under [R.C. 5901.01-.15], discussions of the applications, statements, and other documents described in division (B) of this section, *and reviews of matters relating to applicants' requests* for financial assistance under [R.C. 5901.01-.15] *shall be kept confidential*. In accordance with [R.C. 121.22(J)], a veterans service commission shall conduct a meeting of the commission or a portion of a meeting of the commission to interview an applicant for financial assistance under [R.C. 5901.01-.15], to discuss an application, statement, or other document described in division (B) of this section, or to review matters relating to an applicant's request for financial assistance under [R.C. 5901.01-.15] in an executive session.

(D) Except as otherwise provided in division (E) of this section or [R.C. 5902.04(B)], a veterans service commission shall ensure that the applications, statements, and other documents described in division (B) of this section are not used for any purpose other than to determine the eligibility of the applicant for financial assistance under [R.C. 5901.01-.15] or to determine whether to increase, decrease, or discontinue an allowance under [R.C. 5901.14]. (Emphasis added.)

submit a physician's statement of the applicant's medical condition as it relates to the applicant's ability to obtain employment.

Rather, we find that, pursuant to its duty under R.C. 5901.03(C) to establish policies and procedures for the administration of assistance under R.C. Chapter 5901, a county veterans service commission may, in a reasonable exercise of its discretion, determine that the medical condition of an applicant for financial assistance, as described in R.C. 5901.08, is relevant to its determination whether to award, change, or continue such assistance. Should the commission determine that a physician's statement of an applicant's medical condition is relevant to its determination, R.C. 5901.03(C) authorizes the veterans service commission, as part of its policies and procedures, to require a physician's statement of the applicant's medical condition as it relates to the applicant's ability to obtain employment, whether the applicant personally submits the statement or authorizes the applicant's physician to submit the statement directly to the commission. *See* 1946 Op. Att'y Gen. No. 1447, p. 840 (syllabus) ("[u]nder the provisions of the statutes relating to the soldiers' relief [now veterans service] commission, [G.C. 2939, *et seq.* (now R.C. Chapter 5901)], such commission has authority to require an applicant for relief to submit to a physical examination by an investigator who may be a physician or psychiatrist, employed by the commission under authority of [G.C. 2933-1 (now at R.C. 5901.06)], when such examination is deemed advisable by the [c]ommission for the purpose of determining the ability of the applicant to perform labor and his need for relief").⁶

Further support for this conclusion may be found by examining the circumstances in which the prohibition contained in R.C. 5901.09(A) was enacted. *See generally* R.C. 1.49(B) (if a statute is ambiguous, one may consider, in determining the legislative intent, the "circumstances under which the statute was enacted").

Prior to the enactment of the prohibition contained in R.C. 5901.09(A), the Attorney General was asked to render an opinion as to the confidentiality of the amount, nature, and source of financial assistance provided by a county veterans service commission under R.C. Chapter 5901. After explaining the applicability of R.C. 149.43 (public records)⁷ to the activities of a county veterans service commission, 1988 Op. Att'y Gen. No. 88-103 concluded in the syllabus:

⁶ 1946 Op. Att'y Gen. No. 1447, p. 840, 844, further noted that the provisions of former G.C. 2933-1 (now at R.C. 5901.06) authorized the employment of investigators, and that "there is no limitation as to the nature or extent of their duties or as to the scope of the investigation which they may be called upon to make." *See also* 1951 Op. Att'y Gen. No. 693, p. 421 (concluding, in part, that, because a person was required to meet certain residency requirements and was required to comply with certain service requirements in order to be eligible for assistance, *see* R.C. 5901.08, it was within the power of the commission to require proof of those facts as to the applicant's eligibility).

⁷ Pursuant to R.C. 149.43(B), "[a]ll public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." For purposes of R.C. 149.43, public records are any records that are kept by any public office, including a county office. R.C. 149.43(A)(1). Excepted from the definition of "[p]ublic record," however, are medical records, R.C. 149.43(A)(1)(a), which are defined as "any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment," R.C. 149.43(A)(3).

1. An application to the county veterans service commission for assistance under R.C. Chapter 5901 is a public record.
2. Any member of the public may inspect and copy each item of information in a public record unless one of the specific exceptions of R.C. 149.43 applies.
3. Absent a prohibition against release in federal or state law, *information supplied by the applicant* to a county veterans service commission on an *application* for assistance or on the *statement* required by R.C. 5901.09, consisting of the amount, nature and source of public assistance received, *is available for public inspection.* (Emphasis added.)

Following the issuance of 1988 Op. Att'y Gen. No. 88-103, the General Assembly established an express prohibition against the inclusion of medical records in the statement of income required by R.C. 5901.09(A). 1993-1994 Ohio Laws, Part IV, 6089, 6094 (Am. Sub. H.B. 448, eff. July 22, 1994), added to R.C. 5901.09(A) the following:

The statements shall not include medical records, and are considered public records for purposes of [R.C. 149.43]. Veterans service commissions may compile statistical data from the statements, in a manner to be prescribed by the governor's office of veterans affairs. These data shall be considered a matter of public record.

Thus, at the same time the General Assembly clarified that the financial statements submitted by applicants under R.C. 5901.09(A) were public records for purposes of R.C. 149.43, it also prohibited the inclusion of medical records in such statements. The prohibition against the inclusion of medical records in financial statements submitted under R.C. 5901.09(A) simply paralleled the confidentiality afforded medical records by R.C. 149.43, which excepted from the definition of "public records" those records constituting "medical records," as defined in R.C. 149.43(A)(3). See generally note seven, *supra*. Accordingly, it would appear that the General Assembly intended that the term "medical records," as added to R.C. 5901.09(A) by Am. Sub. H.B. 448, refer to "medical records," as defined in R.C. 149.43(A)(3).

One year later, the General Assembly again made significant changes in the operations of veterans service commissions by requiring such commissions to maintain a broader confidentiality of the various types of information in their possession. Am. Sub. H.B. 98, 121st Gen. A. (1995) (eff. Nov. 9, 1995). Among the changes made by Am. Sub. H.B. 98 was the amendment of R.C. 121.22 to require veterans service commissions to conduct an executive session for the purpose of considering any application for assistance, unless the applicant requests a public hearing. In addition, Am. Sub. H.B. 98 amended R.C. 5901.09 to exclude from the definition of "public record," for purposes of R.C. 149.43, financial statements submitted under R.C. 5901.09(A) and various other information in the possession of a veterans service commission, R.C. 5901.09(B). Am. Sub. H.B. 98, therefore, reversed the action the General Assembly had taken in Am. Sub. H.B. 448, and expressly excluded financial statements submitted under R.C. 5901.09(A) from the category of public records for purposes of R.C. 149.43. Am. Sub. H.B. 98 did not, however, repeal the prohibition

against the inclusion of medical records in the financial statements required by R.C. 5901.09(A).⁸

Examination of Am. Sub. H.B. 98 in its entirety suggests that the General Assembly's intent was to provide greater confidentiality of the applicant information in the possession of county veterans service commissions. A reading of R.C. 5901.09(A) as prohibiting a veterans service commission from requiring an applicant to submit a physician's statement of the applicant's medical condition as verification of the applicant's need for assistance would go beyond the protection of the applicant's confidentiality and impose a limitation upon the broad discretion vested in such commissions to award financial assistance. There is no indication, however, that the General Assembly intended the enactment of Am. Sub. H.B. 98 to limit the matters that a veterans service commission may consider in deciding whether to award financial assistance.

Because the prohibition in R.C. 5901.09(A) appears to have been intended to harmonize the treatment of medical records under that statute with the treatment of "medical records" under R.C. 149.43, it may be useful to examine the meaning of the term "medical records," as used in R.C. 149.43. Excepted from the definition of "public records" subject to disclosure under R.C. 149.43 are "medical records," meaning "any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment." R.C. 149.43(A)(3). In explaining this definition, the court in *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 158, 684 N.E.2d 1239, 1242 (1997) (quoting *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 10, 552 N.E.2d 243, 251 (C.P. Lucas County 1990)), concluded that, in order to constitute a "medical record," as that term is used in R.C. 149.43, "a record must pertain to a medical diagnosis and be generated and maintained in the process of medical treatment."⁹ Relying upon this test, the *Strothers* court found that records prepared in investigating allegations of child abuse and neglect are not medical records.

Applying the *Strothers* test to the physician's statement about which you ask, such a statement does not appear to constitute a "medical record" for purposes of R.C. 5901.09(A) because it does not meet the second prong of the test, *i.e.*, it is not generated and maintained in the process of medical treatment. See *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St. 3d 141, 647 N.E.2d 1374 (1995) (finding that a psychological report prepared as part of the police hiring process did not constitute a "medical record" for purposes of R.C. 149.43 because it was not obtained in the process of the applicant's medical treatment). Thus, even if R.C. 5901.09(A) were read as prohibiting a veterans service commission from requiring an applicant to submit "medical records" to assist the commission in determining whether to award the applicant financial assistance, it would not prohibit a veterans service commission from requiring an applicant to submit a physician's statement of the applicant's medical condition when the applicant claims to be unable to obtain employment due to a medical condition.

⁸ Based upon the amendment of R.C. 5901.09 in Am. Sub. H.B. 98, 121st Gen. A. (1995) (eff. Nov. 9, 1995), we must overrule syllabus paragraphs one and three of 1988 Op. Att'y Gen. No. 88-103.

⁹ In *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (C.P. Lucas County 1990), the court found that documents containing the opinions of psychologists used by a sheriff in deciding whether to continue the employment of a deputy were not medical records for purposes of R.C. 149.43.

We conclude, therefore, that, pursuant to R.C. 5901.03(C), a county veterans service commission may, in a reasonable exercise of its discretion, determine that the medical condition of a financial assistance applicant who claims to be unable to work due to a medical condition is relevant to its determination concerning the provision of assistance to the applicant. If a veterans service commission determines that such applicant's medical condition is relevant to such a determination, R.C. 5901.09(A) does not prevent the commission from adopting, as part of its policies and procedures under R.C. 5901.03(C), a requirement that such an applicant provide the commission with a physician's statement of the applicant's medical condition as it relates to the ability of the applicant to obtain employment. Pursuant to R.C. 5901.09(B)(3) and (4), however, no such statement is a public record for purposes of R.C. 149.43.

Because we have concluded that a veterans service commission does have authority to require an applicant for financial assistance to furnish a physician's statement of the applicant's medical condition as it relates to the applicant's ability to obtain employment, it is not necessary separately to address your second, third, and fourth questions. Your final question asks what a veterans service commission must do with medical records in its possession. According to information provided by a member of your staff, we understand that your reference to medical records in this question refers simply to physicians' statements of the medical condition of various applicants. We also understand that this question is predicated upon the assumption that a veterans service commission may not require an applicant to furnish such a statement and that, therefore, the commission may not retain any such statements in its possession. Again, however, in light of our determination that a veterans service commission may require an applicant to furnish a physician's statement of the applicant's medical condition, we find it unnecessary to address this question.¹⁰ See generally R.C. 149.38 (county records commission to provide rules for retention and disposal of records).

Based upon the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 5901.03, a county veterans service commission, in a reasonable exercise of its discretion, may determine that the medical condition of an applicant for financial assistance under R.C. 5901.02-.15, as described in R.C. 5901.08, is relevant to its determination whether to award or continue such assistance and may require an applicant to furnish a physician's statement of the applicant's medical condition in order to receive such assistance. (1988 Op. Att'y Gen. No. 88-103, syllabus paragraphs one and three, overruled due to statutory amendment.)

¹⁰ Pursuant to R.C. 5901.09(B)(4), documents used by, or in the possession of a veterans service commission for purposes of determining an applicant's award of, or continuing eligibility for, financial assistance are not public records for purposes of R.C. 149.43. See note seven, *supra*.