

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

**GABRIEL G. ATAMIAN, MD,** )

Plaintiff, )

v. )

C.A. No. 01C-03-031 HDR

**AREZOO A. BAHAR, DDS, )**  
**AND COLLINS DENTAL )**  
**ASSOCIATION, )**

Defendants. )

Submitted: February 15, 2002

Decided: February 22, 2002

Gabriel G. Atamian, MD, Dover, Delaware, *pro se*.

Michael B. Miller, Esq., Deputy Attorney General, Department of Justice, for the  
Division of Professional Regulation.

**Upon Division of Professional Regulation's**  
**Motion to Quash Subpoena and**  
**Notice of Deposition Duces Tecum**  
***GRANTED***

RIDGELY, President Judge

**ORDER**

This 22nd day of February, 2002, it appears that:

(1) The Division of Professional Regulation seeks to quash a subpoena served upon one of its employees by the Plaintiff in this matter, Gabriel G. Atamian, MD. On June 6, 2001, Plaintiff served a Subpoena and Notice of Deposition Duces Tecum on Gayle L. Franzolino, Administrative Assistant, Division of Professional Regulation (“The Division”), seeking “any and all investigative records regarding Gabriel G. Atamian by the Division of Professional Regulation.” Plaintiff has explained that he wants to obtain records of an investigation of Dr. Bahar, one of the defendants here, based upon his own complaint to the Division. The State moves to quash the Subpoena and Notice on the grounds that the investigative file is privileged.

(2) The Freedom of Information Act exempts from disclosure investigative files compiled for civil or criminal law-enforcement purposes.<sup>1</sup> Because investigations by the Division can result in prosecution by the Department of Justice,<sup>2</sup> the exemption would apply in this case to any request by Plaintiff under the Freedom of Information Act. Plaintiff seeks the same information by subpoena.

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<sup>1</sup> 29 *Del. C.* § 10002(d)(3). This section excludes such files from so much as a designation as a “public record.”

<sup>2</sup> 29 *Del. C.* § 8807(h).

*Atamian v. Bahar*  
**01C-03-031 HDR**  
February 22, 2002

(3) It is well established that a qualified governmental privilege exists in the common law for material obtained for use in prosecutions by the attorney general.<sup>3</sup> A court, presented with the possible application of this privilege, is to weigh the competing interests of the State and the party seeking the information.<sup>4</sup> ( 4 )

Plaintiff's interest in obtaining this information derives from his civil complaint against Dr. Bahar. The State's interest in protecting any investigative records it has is to further the effective enforcement of the professional licensing statutes. If permitted, discovery of such records may discourage some complainants from bringing pertinent information to the Division's attention. Protection of the material encourages full and frank disclosure of information to the Division. Plaintiff knows or should know what information he provided to the Division. He has not shown any undue hardship in being required to discover relevant evidence like other civil litigants. Plaintiff has not demonstrated in this case that his need for this information outweighs the interests of the State in protecting its investigative records. I am satisfied that the qualified governmental privilege applies in this case.

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<sup>3</sup> *Williams v. Alexander*, Del. Super., C.A. No. 98C-05-036, 1999 WL 743082 at \*1, Quillen, J. (June 29, 1999).

<sup>4</sup> *Id.*

*Atamian v. Bahar*  
**01C-03-031 HDR**  
February 22, 2002

**NOW, THEREFORE, IT IS ORDERED** that the Division of Professional Regulation's Motion to Quash Subpoena and Notice of Deposition is **GRANTED.**

/s/ Henry duPont Ridgely  
President Judge

cmh  
oc: Prothonotary  
xc: Order distribution