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April 14, 2004

Max Rae
Attorney at Law
P.O. Box 7790
Salem, OR 97303

Re: *Petition for Public Records Disclosure Order*:
Department of Human Services, Oregon Vocational Rehabilitation Services Records

Dear Mr. Rae:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on April 7, 2004, asks the Attorney General to direct Oregon Vocational Rehabilitation Services (OVRS) to disclose to you "[m]edical records in the Vocational Rehabilitation file of Judy L. Grossi from Dr. Hung Tran and Dr. William Seeto."[1] For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine it if may be withheld from disclosure. ORS 192.450(1).

According to your petition, you requested the identified records from OVRS on March 30, 2004. You attached to your petition the authorization by Ms. Grossi, your client, that expressly authorizes OVRS to disclose to you copies of her entire medical record, including drug and alcohol diagnosis, treatment, counseling and program participation information. On April 2, OVRS provided you with access to the records in Ms. Grossi's file, excepting those upon which you have petitioned.

[1] The documents identified in your petition as being from Dr. Seeto are actually from Dr. Benton Davidson, who is in Dr. Seeto's office.

The federal regulations governing the protection, use and release of personal information maintained by state vocational rehabilitation services programs permit disclosure of "personal information [that] has been obtained from another agency or organization * * * only by, or under the conditions established by, the other agency or organization." 34 CFR § 361.38(c)(3). We have been informed by the federal Rehabilitation Services Administration that 34 CFR § 361.38(c)(3) applies to disclosure of records received by OVRS from treating physicians. The federal agency's interpretation of its regulation prohibits OVRS from disclosing records it obtained from a physician, excepting disclosure that complies with the conditions for disclosure established by that physician. *See* attached electronic mail message, dated April 13, 2004, to Assistant Attorney General Karl Goodwin from Diana Koreski, Rehabilitation Services Administration. This prohibition is echoed in OVRS' administrative rule, OAR 582-030-0030(1)(a), which states that "treatment records * * * may only be released [to an OVRS client or the client's representative] under the conditions established by the treatment provider or source of the records or under the conditions established by agreement between OVRS and the treatment provider or source of the records."

We spoke with Robert Trachtenberg, Policy Analyst for OVRS, about your petition. He told us that the requested records received from Dr. Tran and Dr. Davidson were marked as confidential when received by OVRS. OVRS contacted the offices of both physicians to request permission to disclose the records to you. Dr. Tran has authorized disclosure by OVRS, and Mr. Trachtenberg has agreed to disclose those records to you. For this reason, with regard to Dr. Tran's records, your petition is denied as moot.

At this time, OVRS has not received authorization from Dr. Davidson to disclose the requested records to you. In light of 34 CFR § 361.38(c)(3), without the doctor's authorization, those records are exempt from disclosure under ORS 192.502(8).[2] Mr. Trachtenberg told us that, if OVRS receives authorization from Dr. Davidson, it will disclose the records to you. However, you may also seek disclosure directly from Dr. Davidson, at (503) 585-0575. Dr. Davidson's office has indicated to OVRS that he would readily release the documents to you pursuant to a signed release from your client.

Because federal law prohibits the disclosure of Dr. Davidson's records without his authorization, thereby making them exempt from disclosure under ORS 192.502(8), we deny your petition as it relates to those records.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/AGS13833
c: Robert Trachtenberg, Policy Analyst, OVRS
Encl: a/s

[2] ORS 192.502(8) exempts from disclosure "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations."