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September 2, 1988

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Re: Public Records Disclosure Request

Dear Mr. Smith:

This letter is the Attorney General's order on Mr. Smith's petition for disclosure of records of the Board of Nursing. The petition, dated August 22, 1988 and received on August 24, 1988, asks the Attorney General to direct the board to make the following information available for public inspection under the Public Records Law, ORS 192.410 to 192.505:

1) All Board of Nursing records regarding circumstances of the death of Pamela Jennings at North Lincoln Hospital on or about May 7, 1986;

2) all records relating to any board actions, after May 7, 1986, regarding board licensee S. Massie, R.N.

For the reasons stated below, Mr. Smith's petition is granted in part, but denied in part.

Pursuant to ORS 192.470(2), the board has transmitted to us its records, regarding the circumstances surrounding the above-referenced death, that the board refused to disclose to Mr. Smith. The first record is a report to the board of a possible violation of the statutes regulating the nursing profession, ORS 678.010 to 678.410. The report, made pursuant to ORS 678.135, is confidential under ORS 678.126(1), which provides:

> "Any information provided to the board pursuant to ORS 678.021, 678.111, 678.113, 678.123 or 678.135 is confidential and shall not be subject to public disclosure."

Consequently, this report is exempt from the public disclosure requirements of the Public Records Law by virtue of ORS 192.502(8), the exception for "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

The board thus lawfully withheld disclosure of this report.

The second record is a July 11, 1986 letter from Mary Amdall-Thompson, R.N., M.S., the board's Program Executive for Professional Services, to the nurse who was the subject of the previously mentioned report. That letter contains both exempt and nonexempt information. Most significantly, the letter not only contains the name of the nurse complained against, but recites other information provided to the board in the report concerning the nurse and in the board's further investigation. All of that information is confidential under ORS 678.126(1) and, therefore, not subject to public disclosure under the Public Records Law. We construe ORS 678.126(1) to make confidential not only information provided to the board when that information is contained in a document submitted to the board, but also that same information when it is recited in a document prepared by the board. That is, by the terms of the statute, the exemption follows the information, not the document. In a previous public records order, we applied similar reasoning under ORS 657.665(1)(a). That statute makes confidential "[i]nformation secured from employing units, employes or other individuals pursuant to this chapter." We interpreted that statute to make confidential not only the documents supplied to the Employment Division by employing units, employes or other individuals, but the same information when compiled in reports prepared by the Employment Division. See Public Records Order of October 8, 1981 (Stephen M. Johnson).

Accordingly, those portions of the July 11, 1986 letter that contain information submitted to the board under ORS chapter 678 are confidential and exempt from disclosure. Because the letter also contains nonexempt information that may be segregated, the board is directed to supply you with a copy of that letter, with the confidential information deleted.

The board's file contains several other documents. The "Checklist for Discipline File" contains no exempt information, and should be disclosed.

The "Case Log" contains handwritten notes on this matter by Ms. Amdall-Thompson. As with the July 11 letter, that document contains exempt and nonexempt information. The exempt information includes the name of the nurse who was the subject of the report, the name of the complainant, and other information provided to the board pursuant to ORS chapter 678. The board is directed to provide you with a copy of that document, with the exempt information deleted.

A typed "Memorandum" concerning the complaint against the nurse is wholly exempt, because its entire contents are information provided to the board pursuant to the complaint.

The "Death Summary" is a medical record concerning the decedent, which also is wholly exempt as information provided to the board in this matter.

A June 4, 1986 letter from Gail Visscher, R.N., a board investigator, and Ms. Amdall-Thompson, to the subject nurse contains a mix of exempt and nonexempt information. The board is directed to provide you with a copy of that letter, with the exempt information deleted.

A June 8, 1986 letter from the subject nurse to Ms. Amdall-Thompson also contains a mix of exempt and nonexempt information. The board is directed to provide you with a copy of that letter, with the name of the nurse and other identifying information deleted.

A June 8, 1986 letter from an individual to Ms. Amdall-Thompson is wholly exempt as information provided to the board pursuant to the complaint.

A June 25, 1986 letter from the nurse's attorney to Ms. Amdall-Thompson is mostly nonexempt. The board is directed to provide you with a copy of that letter, with the nurse's name and attorney's name deleted.

The next document apparently is a copy of a page from the hospital's policy manual. That document is exempt as information provided to the board pursuant to the complaint.

The next document appears to be medical chart notes concerning the decedent. That document is exempt as information provided to the board pursuant to the complaint.

The last document is two pages of handwritten notes by Ms. Amdall-Thompson concerning her interview with the subject nurse. That document is entirely exempt as information provided to the board pursuant to the complaint.

Your petition also requested "any reports/standards/ memoranda generated by the Board of Nursing regarding withdrawal or advancement of endotracheal tubes." (Emphasis in original) We interpret that request to cover any general reports or standards on that subject that the board may have generated, whether or not directly related to the death of Pamela Jennings. The board advises us that it has not generated any such reports.

Only two small points remain, which concern the information you have requested concerning S. Massie, R.N. The board previously provided to you copies of all unprivileged records concerning S. Massie, R.N., but deleted, among other things, her social security number and her home telephone number. Under the circumstances of which we are aware, neither piece of information qualifies for the personal privacy exemption under ORS 192.502(2). Accordingly, the board is directed to provide you with that information.

Yours very truly,

RICHARD D. WASSERMAN
Assistant Attorney General

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