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September 10, 2003

Luis A. Martinez
Attorney at Law
456 State Street, Suite 200
Salem, OR 97301

Re: *Petition for Public Records Disclosure Order*:
Driver and Motor Vehicle Services Division of the Dept of Transportation Records

Dear Mr. Martinez:

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 September 5, 2003, asks the Attorney General to direct the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) to disclose a February 3, 2003 "Report of Disorders Affecting Consciousness" submitted by Dr. Adam Solomon regarding your client, David Leroy Squires. 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 who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1). You included with your petition a copy of DMV's denial of your request for a copy of the "Report of Disorders Affecting Consciousness." Craig Daniels, Manager of the DMV Records Policy Unit, denied your request on the basis that the report is protected from disclosure under ORS 807.710.

By statute, DMV is responsible for determining whether a person is ineligible for a driver license because that person's ability to drive safely is impaired due to a physical or mental disease or disability. ORS 807.060, 809.410. To help fulfill its responsibility for monitoring the eligibility and continuing qualification of licensed drivers, and to insure that motor vehicles are being operated safely, ORS 807.710 requires DMV to adopt rules requiring physicians and health care professionals to submit a report if a person has a cognitive or functional impairment

affecting the person's ability to safely operate a motor vehicle. Pursuant to this statutory mandate, DMV adopted OAR 735-074-0005:

> Any physician or health care provider authorized by the State of Oregon to diagnose and treat disorders of the nervous system must immediately report to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) each person over 14 years of age that they diagnose as having a disorder characterized by momentary or prolonged lapses of consciousness or control that is, or may become, chronic.

This rule was in effect and applicable to any "Reports of Disorders Affecting Consciousness" submitted on or after January 1, 2003. Any reports submitted after January 1, 2003, have been submitted pursuant to this administrative rule.

ORS 807.710 has been amended, effective June 24, 2003, to provide that reports required by DMV under the rules adopted pursuant to ORS 807.710 are confidential, except as provided in ORS 802.240. Or Laws 2003, ch 462, § 1(5)(HB 2886). In the same bill, ORS 802.240 was also amended to state that these reports are confidential except for use in an administrative hearing or appeal from an administrative hearing related to the person's qualification to operate a motor vehicle. Or Laws 2003, ch 462, § 2(7). Because you are not requesting that the record be disclosed for use in such an administrative hearing, or an appeal from an administrative hearing, it is confidential under Oregon law and is therefore exempt from disclosure under ORS 192.502(9).[1]

DMV's denial of your request states that you also requested "letters submitted to DMV stating that your client may be unsafe to drive." Mr. Daniels responded to that request by stating that "driver evaluation requests submitted to DMV are protected under ORS 192.502(4)." Because you did not petition for review of this portion of DMV's denial, we do not consider it in this order. However, we note that, after consultation with this office, Mr. Daniels has determined that a letter sent to DMV on May 5, 2003, by Dr. Solomon is subject to disclosure. Mr. Daniels has stated that he will disclose this letter to you upon request.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

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[1] ORS 192.502(9) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."