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October 16, 2001

John M. Puskas, M.D.
193 Iron Mountain Blvd.
Lake Oswego, OR 97034-2823

Dear Dr. Puskas:

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 October 9, 2001, asks the Attorney General to direct the Board of Medical Examiners for the State of Oregon (BME) to make available to you copies of records pertaining to the BME's investigation into your conduct and fitness to practice as a licensed physician in the State of Oregon.[1] As a licensed physician, you are subject to the jurisdiction of the BME. ORS 677.015. As discussed below, we respectfully deny your petition because you did not follow the procedure established by law for petitions relating to health professional regulatory boards.

If a health professional regulatory board denies a request for disclosure of any of its records, the requestor may petition the Attorney General for review of the board's denial. Either on or before the date the petition is filed with the Attorney General, the requestor must also send a copy of the petition to the board. ORS 192.450(4). Mike Sherman, Chief Investigator of the BME, has informed us that you did not provide the BME with a copy of your petition to the Attorney General. For this reason, we are unable to consider the merits of your petition.

We enclose for your information and convenience copies of ORS 192.450, 676.175 and ORS 677.425.[2] If you still wish to petition the Attorney General for review of the BME's

[1] Your petition also requests that this office provide information about "penalties for failure to provide requested documents under the Freedom of Information Act." The Attorney General has jurisdiction to review a state agency's denial of a request for records made under the Oregon Public Records Law, ORS 192.410 to 192.505, which is distinct from the federal statutory scheme known as the Freedom of Information Act. The Oregon Public Records Law does not provide the Attorney General with authority to impose penalties for failure to disclose records.

[2] Health professional regulatory boards, including the BME, generally are prohibited by law from disclosing information they obtain as part of an investigation of any licensee. ORS 676.175(1),

records, you may do so by following the procedures described in ORS 192.450(4). In order to prevail, you also must demonstrate by clear and convincing evidence that the public interest in disclosing this information outweighs any other interest in nondisclosure. ORS 192.450(5).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08803
Enclosures
c. w/o encl.: Mike Sherman, Chief Investigator, BME

677.320(5) and 677.425. Under certain circumstances, however, disclosure of this information is required. ORS 676.175(2) requires disclosure when two conditions are met: 1) the board votes not to issue a notice of intent to impose a disciplinary sanction; and 2) the person requesting the information "demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure."