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April 14, 1994

Eric J. Neiman
TOOZE, SHENKER, DUDEN,
CREAMER, FRANK & HUTCHISON
333 Southwest Taylor Street
Portland, OR 97204

Re: *Petition for Public Records Disclosure Order; Driver and Motor Vehicle Services Records*

Dear Mr. Neiman:

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 March 28, 1994,[1/] asks the Attorney General to direct the Driver and Motor Vehicle Services Branch (DMV) of the Department of Transportation to make available the responses of Linda Jean Shaw to certain medical questions asked on driver license application forms, where such responses were deleted from documents previously furnished to Mr. Neiman under the Oregon Public Records Law.[2/] For the reasons that follow, we respectfully deny your petition.

The deleted material consists of three pre-printed questions, with boxes to be marked for either a "yes" or "no" response. The applicant is required to answer all three questions. The first question asks:

> "Have you had a loss of consciousness or physical control, or has your ability to drive been impaired within the last two years?"

If the answer is yes, the applicant must mark one of an additional set of boxes to identify the condition either as epilepsy or seizures, insulin-treated diabetes, heart condition, stroke, drug use, mental illness, a problem with alcohol, or other. If the "other" box is marked, the applicant must explain the condition.

The second question asks:

"Have you had a problem involving your use of alcohol or drugs within the last four years?"

The third question asks:

"Have you had a change in vision, a loss of limb or any other physical change within the last four years that might affect your driving ability?"

If this last question is answered yes, the applicant must describe the change.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. The medical information you seek comes within the "personal privacy" exception established by ORS 192.502(2), which provides:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

In a letter dated March 4, 1988, from James E. Mountain, Jr., Special Counsel to the Attorney General, to the Board of Naturopathic Examiners, we were asked if the "yes" or "no" responses to certain questions on the licensure application were subject to disclosure under the Public Records Law. We concluded that the responses relating to criminal convictions and to unprofessional or unethical conduct were subject to disclosure. However, we concluded that the questions relating to problems or treatment for drug addiction, alcoholism and mental illness were exempt from disclosure under ORS 192.502(2) as medical information. The fact that the medical information was not contained in a medical file was irrelevant. Medical information was broadly characterized as information relating to the person's health, and we therefore concluded that the responses, whether "yes" or "no," were exempt from disclosure, concluding:

> A person reasonably may expect that medical history information regarding the person's illness or good health, will not be shared with strangers, in the absence of the person's consent.

The same reasoning would apply with respect to your request. The first question deals with loss of consciousness, loss of physical control, or impairment of ability to drive. Although this question is general in nature the response, involves the disclosure to DMV of medical and health

information that the applicant reasonably could believe was none of the general public's business and the disclosure of which would be an unreasonable invasion of privacy. The second question, which deals with drug or alcohol problems, clearly falls within the exception, as it was applied in the letter to the Board of Naturopathic Examiners.

The third question requires the applicant either to deny, or to admit and specify, the existence of any physical change, including change of vision or loss of limb, occurring within the last four years and which "might affect" the applicant's driving ability. Again, we conclude that the applicant's responses concerning these matters of personal health are not matters of general concern or interest to the public at large, and disclosure would constitute an unreasonable invasion of privacy.

We find no evidence in this particular instance that the public interest would require disclosure. Moreover, there is a public safety need for the greatest degree of candor by the applicant in responding to these questions, which would be adversely affected if applicants knew that their personal medical information would be subject to public disclosure.

For these reasons, we conclude that the information which you seek is exempt from disclosure under ORS 192.502(2). Accordingly, we respectfully deny your petition.

Sincerely,

Amy Vecchio for

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:JGR:cfs:bjs/JGG09675
c: Bill Seely, Manager
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[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

[2/] This is the specific description of the request as clarified through telephonic discussions between Mr. Neiman and Assistant Attorney General Jim Russell.