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DEPARTMENT OF JUSTICE

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April 29, 2008

Phyllis L. White
4426 NE 41st Ave
Portland, OR 97211

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

Dear Ms. White:

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 22, 2008, asks the Attorney General to direct the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) to disclose the confidential records in your DMV medical file that DMV withheld from disclosure. 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 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 192.420(1). You indicate in your petition that according to Debbie Rico, DMV Record Services, not all of the papers in your medical file were sent to you. According to Robert Reed, DMV Records Custodian, the documents DMV did not provide to you were a copy of a Mandatory Impairment Referral submitted by a physician, and a response letter from DMV to the physician who submitted the referral.

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, 809.419. 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. DMV has adopted rules which require a physician to submit a Mandatory Impairment Referral under these circumstances. OAR 735-074-0090, 735-074-0110, 735-074-0120. Under ORS 807.710, a Mandatory Impairment Referral is 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. ORS 802.240. It is therefore exempt from disclosure under ORS 192.502(9).[1]

The letter sent by DMV to the referring physician is a "motor vehicle record" as defined under ORS 802.175[2] and contains the physician's name and address. Subject to certain exemptions for which you do not qualify, DMV is prohibited from disclosing "personal information" in a motor vehicle record. ORS 802.177. "Personal information" includes an individual's name and address. ORS 802.175(3). Therefore, the physician's name and address cannot be disclosed to you. After consultation with this office, Mr. Reed has determined that with the name and address of the physician redacted, the body of the letter is subject to disclosure and he will disclose this letter to you upon request. Accordingly, we deny your petition as it relates to the Mandatory Impairment Referral and deny your petition as moot as it relates to the letter to the referring physician.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Robert Reed, DMV

[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."
[2] ORS 802.175(1) defines a motor vehicle record as "any record that pertains to a grant of driving privileges" * * *.