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September 15, 1998

Mr. Robert Goldman
5638 Springwood Avenue S.E.
Salem, Oregon 97306

Re: *Petition for Public Records Disclosure Order: Oregon State Board of Nursing Records*

Dear Mr. Goldman:

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 4, 1998, asks the Attorney General to direct the Oregon State Board of Nursing to make available all records pertaining to its investigation of one of its licensees. As discussed below, we must respectfully deny your petition because you did not follow the procedure established by law for petitions relating to health professional regulatory boards.

Health professional regulatory boards, including the Board of Nursing, generally are prohibited by law from disclosing information they obtain as part of an investigation of any licensee. ORS 676.175(1); 678.126(1). Under certain circumstances, however, disclosure of this information is required. If the board votes not to impose a sanction in a particular case, it must disclose information obtained as part of the investigation if the person requesting that 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." ORS 676.175(2).

If the board denies a request for disclosure under ORS 676.175(2), 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 also must send a copy of the petition to the board. Within 48 hours, the board must send a copy of the petition to the licensee whose investigation records were requested and a notice stating that the licensee has the right to file a written response to the petition with the Attorney General. The licensee then has seven days in which to file a written response. If the licensee files a response, the Attorney General must send a copy of the response to the original petitioner. ORS 192.450(4).

After this process has been followed, the Attorney General must issue an order granting or denying the petition within 15 days after receipt of the petition. The Attorney General may grant the petition only if the petitioner 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. ORS 192.450(5).

In your case, the Board of Nursing has informed us that you did not provide it with a copy of your petition to the Attorney General. Consequently, the licensee has not been notified of the petition or given the opportunity to respond, as required by law. 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 678.126. If you still wish to petition the Attorney General for review of the board's determination, 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,

DAVID SCHUMAN
Deputy Attorney General

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