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November 8, 1996

Matthew Gruber, MD, JD
Organization for Fairness in Medical Practice
P.O. Box 1004
Salem, OR 97308

Re: ***Petition for Public Records Disclosure Order***
Board of Medical Examiners Records

Dear Dr. Gruber:

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 November 1, 1996, asks the Attorney General to direct the Oregon Board of Medical Examiners (board) to produce a copy of the following records:

1. Draft of Board responses to Performance Audit of the Board by the Secretary of State.

2. [A] copy of names, addresses and phone numbers (if of record) of persons or organizations on the Board's mailing list for notices re: rules, amendments and adoption.

For the reasons that follow, we respectfully deny your petition.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1). In this case, your petition identifies two specific requests. The first of these, the request for the board's responses to the Performance Audit, was responded to by letter dated October 28, 1996, from the board's Executive Director, Kathleen Haley, granting your request upon the payment of the board's costs. A copy of Ms. Haley's letter is attached. Because the board has agreed to provide these records upon payment of its fees,[1/] we deny this portion of your petition as moot.

With respect to the second request, for the names, addresses and phone numbers from the board's mailing list, you state in your petition that board staff denied your request unless it was in writing. The Public Records Law requires a custodian of public records to furnish "reasonable opportunity to assure access." ORS 192.430(1). We are informed by Ms. Haley that the board's policy is to require written public records requests, particularly where copies of documents are being sought so that the board and staff can properly evaluate and respond to the requests. Lucille Wood, the board's Business Manager, informs us that the board staff who deal with public records requests have all been instructed that any requests for public records, particularly those requesting copies rather than inspection, are to be reduced to writing. The purpose of this requirement is to avoid uncertainty or confusion about the records that are sought and to assure proper board accountability. We conclude that this requirement is reasonable and does not unlawfully deter or restrict requests for records under the Public Records Law.

The board received from you a copy of your petition to the Attorney General. This satisfies the board's requirement that the records request be in writing. Glenda Nabors, Executive Assistant to Ms. Haley, informs us

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[1/] An agency may charge for its actual costs of making public records available. ORS 192.440(3).

that the board has not yet had an opportunity to evaluate and respond to this request for the mailing list information. Because the board has not denied your request for these records, the Attorney General has no authority to order disclosure. Accordingly, as to these records, your petition is denied as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:TWC:AV:jpl:JAA02124
Enclosure
c: Kathleen Haley, Executive Director, Board of Medical Examiners