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March 17, 2005

Brad Cain
Associated Press, Salem Bureau
bcain@ap.org (electronic mail address)

Re: *Petition for Public Records Disclosure Order*:
Oregon Department of Human Services, Oregon State Hospital Records

Dear Mr. Cain:

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 14, 2005, contests the Oregon Department of Human Services' (DHS) denial of your request to make available the records of Oregon State Hospital patients whose cremated remains are stored in canisters at the Salem facility. 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 denied the right to inspect or to 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. ORS 192.450(1).

We spoke with Jim Sellers, Communication Officer for DHS, about your petition. Mr. Sellers told us that you made an oral request for the identified records on March 3, 2005, and that he denied your request the same day, on the basis of the requirements imposed by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

DHS is a "covered entity" subject to the requirements of HIPAA. 42 USCS § 1320d *et seq.*; 45 CFR § 160.103; ORS 192.519(2). As a HIPAA covered entity, DHS may only release "individually identifiable health information" as permitted by state and federal law. 45 CFR § 164.502(a); ORS 192.520(2)(b). The records that you have requested are "individually identifiable health information" under HIPAA. 42 USCS § 1320d(6); 45 CFR § 160.103; ORS 192.519(8). Permissible disclosures of individually identifiable health information do not include disclosure to members of the press. 42 CFR § 164.502(a).

As you pointed out to Mr. Sellers, the records that you requested are deceased persons' records. However, this fact does not alter the protected status of those records under federal law. HIPAA regulations state that "[a] covered entity must comply with [their] requirements * * * with respect to the protected health information of a deceased individual." 45 CFR § 164.502(f).

HIPAA states that it "preempts [a] provision of State law" that is contrary to a requirement of HIPAA, unless the provision of State law is "more stringent" than HIPAA. 42 USCS § 1320d-7(a); 45 CFR § 160.203. In this context, "more stringent" means that the state law is more protective of the privacy interests safeguarded by HIPAA than the federal law. Although there arguably are state laws that would compel release of the records you seek,[1] those laws are not "more stringent" than HIPAA. Thus, those state laws are preempted, and DHS must comply with the federal law.

For these reasons, we respectfully deny your petition to compel disclosure.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS15252
c: Jim Sellers, Department of Human Services

[1] *See, e.g.*, ORS 192.495 (providing for disclosure of records more than 25 years old).