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**SENT VIA EMAIL ONLY**

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Re: Petition for Public Records Disclosure Order
*Oregon Board of Dentistry*
DOJ File No. 834001-GA0117-14

Dear Mr. Budnick and Mr. Braatz:

This letter is the Attorney General's order in response to Mr. Budnick's petition asking our office to direct the Oregon Board of Dentistry (OBD) to provide him with certain information under the Oregon Public Records Law, ORS 192.410 to 192.505. Mr. Budnick's petition relates to OBD's implementation of a prior order by this office directing the disclosure of some information concerning a particular complaint received by OBD. Mr. Budnick's petition takes issue with the following:

1. OBD's decision to provide Mr. Budnick with a transcript of the recording of the executive session in which the complaint was discussed, rather than a copy of the actual audio recording;
2. OBD's redaction of the transcript to mask the identities of three organizations that provide dental care;
3. OBD's redaction, in the complaint itself, of the name of the managed care organization that was the subject of the complaint; and
4. OBD's reaction of portions of the complaint that specifically describe the conduct of licensees.

We grant Mr. Budnick's petition with respect to the first three of these items, and respectfully deny it with respect to the fourth.

The Oregon Public Records Law provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). A public body that asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1); ORS 192.490(1). OBD asserts that its decisions are supported by ORS 676.175(1), which provides that "[a] health professional regulatory board shall keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants." In a case where the board decides not to issue a notice of intent to impose discipline, such as this one, otherwise confidential information is subject to public disclosure "if the person requesting the 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)(a).

## Our Prior Order

Our prior order essentially concluded that the public interest in this case clearly required disclosure of information that, though related to a complaint that partly concerned licensees, was not among the types of information specifically enumerated as confidential. Consequently, we generally ordered disclosure of the materials, but concluded that information "concerning licensee conduct" could be redacted, along with information that would "permit[] identification of complainants [or] licensees." Our present order takes the same approach.

## Copy of the Audio Recording

OBD asserts that it is not reasonably possible to redact the audio recording, and that therefore the disclosure of the transcript fulfills its obligations under the Oregon Public Records Law. We need not address in detail the assertion that redaction is not reasonably possible, because we conclude that the information that OBD initially redacted should be disclosed by OBD in any event. The recording indisputably is a "public record" under the Public Records Law, as it "contains information relating to the conduct of the public's business" and is "prepared, owned, used or retained by a public body." ORS 192.410. Our conclusion that the recording does not contain information that is exempt from disclosure, explained below, compels the conclusion that the recording should be disclosed in its entirety. We therefore order OBD to provide Mr. Budnick with a copy of the recording.

**The Identities of Dental Care Entities**

In both the transcript and the complaint disclosed to Mr. Budnick, OBD redacted the names of dental care organizations. In the case of the complaint, the only named organization was the organization complained about. In the case of the transcript, OBD also redacted two other dental care entities, including one that was the subject of an earlier complaint to the board. OBD acknowledges that these organizations are not, themselves, licensees entitled to the confidentiality protections of ORS 676.175(1). But OBD argues that, because a licensee must be on file with OBD as being responsible for the overall care provided by such an organization, disclosing the names of the entities is tantamount to disclosing the name of the licensees with overall responsibility for those organizations' practice of dentistry.

Although we can see OBD's argument in this regard, we do not ultimately believe that this information fits neatly within the specific enumerated types of confidential information. Consequently, we believe that this information fits within our prior conclusion that the public interest in this circumstance favors disclosure of most of the information related to this complaint. In relevant part, ORS 676.175(1) makes confidential "information obtained by the board as *part of an investigation of a licensee* or applicant, including *complaints concerning licensee* or applicant *conduct*." Ultimately, we do not think that the complaint can be fairly characterized as a complaint about any conduct of the licensee who is nominally responsible for the organization's overall dental practice. The organization is large, employing many licensees. And indeed, the few parts of the complaint that discuss specific licensees are specific to other licensees. (As explained below, we have concluded that those sentences were appropriately redacted by OBD). Similarly, we are not persuaded that OBD conducted "an investigation of" the licensee nominally responsible for the organizations dental care. Consequently, we conclude that disclosing the identity of the care organization complained about would not effectively disclose "information obtained by the board as part of an investigation of a licensee," nor any "complaint about licensee conduct." Because this information does not fall squarely within the particular categories of information specifically identified as confidential by ORS 676.175(1), it is governed by our prior conclusion that the public interest requires its disclosure under the circumstances. For the same reasons, we reach the same conclusion with respect to the other organizations redacted by OBD from the transcript of the executive session recording; indeed the complaint does not even name either entity.

With respect to the organization that was the subject of the complaint, OBD also argues that disclosing the organization's identity would effectively disclose the identity of the complainant to that organization. The problem with this argument is that the organization itself is already aware of its own identity – and is also aware that it was the subject of the complaint. ORS 192.450(4) requires that petitions like Mr. Budnick's previous and current petitions be provided to the licensees complained about. In this case, a number of the licensees forwarded that information to counsel for the managed care organization. Consequently, the organization itself clearly knows that it was the subject of the complaint. If that is information that would enable the organization to identify the complainant, the organization already has possession of that information. Under the circumstances, redacting the name of the managed

care organization does not serve the stated purpose of protecting the complainant from being identified by the organization. In any event, it seems inevitable that in many cases dentists will ultimately learn the identities of individuals who complain about them.

We conclude that the name of the managed care organization should not be redacted, and order OBD to provide Mr. Budnick with a copy of the complaint without those redactions. However, we agree with OBD that disclosing the particular office in which the complainant worked would effectively identify the complainant, as well as identifying the specific licensees who were named in the complaint. We do not understand Mr. Budnick to be arguing that the specific office should be disclosed. To the extent he is arguing that, we disagree, for essentially the same reasons we give below in denying part of his petition.

**Portions of the Complaint Concerning Specific Licensee Conduct**

We turn finally to the few sentences of the complaint that actually concern specific conduct of OBD licensees. Mr. Budnick asks that we order those sentences unredacted, except for licensee identity. Mr. Budnick points out that such a disclosure would be unlikely to disclose licensee identities. Be that as it may, however, ORS 676.175 clearly applies to "complaints concerning licensee * * * conduct," meaning that we can only order this disclosure if Mr. Budnick "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)(a). Mr. Budnick argues that disclosure would illustrate concretely the more general complaints about the problems of the managed care model that are described in the already-disclosed portions of the complaint. But our review of the redacted portions of the complaint describing conduct of specific licensees suggests that disclosing those complaints would add little if anything to public discussion of how managed care practices may affect dentistry. We consequently deny the petition in this regard.

**Conclusion**

For the reasons described above, Mr. Budnick's petition is granted in part and denied in part. We order OBD to unredact the name of the managed care organization that was the subject of the complaint at issue We also conclude that the names of the other managed care organizations OBD redacted from the transcript are not exempt from disclosure under the circumstances, and therefore order OBD to provide Mr. Budnick with a copy of the audio recording it previously transcribed for him. We deny Mr. Budnick's petition insofar as he asks that we order OBD to disclose those portions of the complaint that describe licensee conduct. OBD has seven days within which to comply with this order.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General