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December 21, 1987

Rob Cagen, N.D.
527 N. Tucon Blvd.
Tucson, Arizona 85716

Kathy Soderberg
Executive Secretary
Board of Naturopathic Examiners
Room 908 State Office Building
Portland, Oregon 97201

Re: Request for Public Records Disclosure Order

Dear Dr. Cagen and Ms. Soderberg:

This letter responds to Dr. Cagen's December 11, 1987 letter to Attorney General Dave Frohnmayer. In that letter, which we received on December 14, 1987, Dr.Cagen states that the State of Oregon Board of Naturopathic Examiners denied his request for copies of the following board records relating to a board licensee, William "Bill" Henry:

> "1. Application for Oregon Naturopathic Physician's license
>
> "2. Diploma and transcripts from all Naturopathic Colleges submitted in support of this license."

Dr. Cagen asks the Oregon Attorney General to "clarify" the dislcosure issue and "to determine whether the action taken by the Oregon Board of Naturopathic Examiners is consistent with Oregon statutes concerning public documents."

We treat Dr. Cagen's letter as a petition for an Attorney General's order directing the Board of Naturopathic Examiners to comply with Dr. Cagen's disclosure request. After examining the records sought to be reviewed, and after conferring with board representatives, we allow the petition in part and deny it in part. Specifically, we direct the board to disclose to

Dr. Cagen the particular licensee's application for an Oregon license, the licensee's diploma, and the licensee's transcripts from naturopathic colleges with the exception of the grades shown on those transcripts.

The issue of whether these particular records should be disclosed to Dr. Cagen is controlled by the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410 to 192.505. Under that law, documents such as the licensee records compiled by the Board of Naturopathic Examiners are "public records." Such records must be made available for inspection by members of the public to the extent that the records contain information that is not exempt from disclosure under the Public Records Law. When a member of the public asks to inspect a public record that contains exempt and non-exempt information, the custodian of the public record must "separate the exempt and nonexempt material and make the nonexempt material available for examination." ORS 192.505 (1985), former ORS 192.500(3).

In the present matter, the board's denial of the disclosure sought by Dr. Cagen was prompted by concerns about the personal privacy interests of a board licensee. The Oregon Public Records Law takes personal privacy interests into account when it exempts the following type of information from disclosure under ORS 192.410 to 192.505:

> " . . . Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy." ORS 192.502(2).

This exception, however, does not exempt all personal information from disclosure; it exempts only personal information that is essentially private in nature. This matter is a case in point.

A licensee's diploma is personal information, but it is a document that is often displayed, even quite prominently, in a licensee's office to patients, staff and strangers. A copy of licensee Henry's diploma should be disclosed.

A license application, on the other hand, may contain information about an applicant's personal and private medical condition or treatment (i.e. mental health, drug addiction, and alcoholism). But in this case, the licensee's application disavows any such condition. The licensee's application should be disclosed in full.

Finally, the transcripts from naturopathic colleges, submitted in support of licensure, contain personal information some of which is sufficiently private to qualify for exemption from public disclosure. Our recognition of a privacy interest in student transcripts is based on our experience in dealing with transcripts in the hands of state educational institutions that receive federal funds. In those circumstances, transcripts are student records, disclosure of which is restricted by federal law without the consent of the student (i.e., the so-called Buckley Amendment to the Federal Freedom of Information Act). However, when transcripts from a professional school are submitted to a licensing agency in support of a license in that profession, we conclude that the listing of professional courses taken is not sufficiently private to qualify for exemption, but that actual grades received do qualify for exemption. Information about courses taken to qualify for a professional diploma is information normally shared even with strangers; particular grading information generally is not.

For these reasons, we direct the Oregon Board of Naturopathic Examines to disclose to Dr. Cagen copies of the licensee's diploma and application, and a copy of the licensee's naturopathic college transcripts with grading information deleted.

Respectfully submitted,

James E. Mountain, Jr.

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Tom Twist, Assistant Attorney General
Don Walker, N.D.
William Henry, N.D.
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