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November 27, 1985

Richard S. Pope
Attorney at Law
Suite 1212, Commonwealth Building
421 SW Sixth Avenue
Portland, Oregon 97204

Re: Public Records Request: Joshua Benson

Dear Mr. Pope:

You have petitioned the Attorney General to order the Health Division to produce a copy of "all reports, conclusions, and records associated with the polio review study conducted by the Health Division regarding Joshua Benson." This letter constitutes an order of the Attorney General with regard to your petition.

ORS 192.500(2)(h) provides that the following records are exempt from disclosure under ORS 192.410 to 192.500 (the Public Records Law):

> "(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under . . . ORS chapter 432."

ORS 432.060 provides:

> "(1) All records of interviews, reports, studies, and statements procured by or furnished to the Health Division, any federal health agency or any nonprofit health agency that is exempt from taxation under the laws of this state or procured by any agency, organization or person acting jointly with or at the request of the division or health agency, in connection with special morbidity and mortality studies, are confidential insofar as the identity of an individual patient is concerned. Such records may be used solely for the purpose of the studies.

> "(2) The furnishing of morbidity and mortality information to the division or health agency, to its authorized representatives or to any other agency, organization or person cooperating in a special study, does not subject any hospital, sanitarium, rest home, nursing home or other organization or person furnishing such information to an action for damages.
>
> "(3) Subsection (1) of this section does not prevent the division or a health agency from publishing:
>
> "(a) Statistical compilations and reports relating to special morbidity and mortality studies, if such compilations and reports do not identify individual cases and sources of information.
>
> "(b) General morbidity and mortality studies customarily and continuously conducted by the division or health agency that do not involve patient identification.
>
> "(4) Nothing in this section prevents disposition of records described in subsection (1) of this section pursuant to ORS 192.105." (Emphasis added.)

The information which you have requested, except as specified below, consists entirely of:

> " . . . interviews, reports, studies, and statements procured by or furnished to the Health Division . . . [and a] federal health agency [the Center for Disease Control] . . . in connection with special morbidity . . . studies."

ORS 432.060(1) provides that such information "is confidential insofar as the identity of an individual person is concerned." More importantly, however, this subsection goes on to provide that "such records may be used solely for the purpose of the studies." Subsection (3) identifies two exceptions from

the direction in subsection (1) that the information is confidential and may be used "solely" for purposes of the studies. The information may be used to publish:

> "(a) Statistical compilations and reports relating to special morbidity and mortality studies, if such compilations do not identify individual cases and sources of information."
>
> "(b) General morbidity and mortality studies customarily and continuously conducted by the division or health agency that do not involve patient identification." (Emphasis added.)

This statute, read as a whole, demonstrates two major policy considerations: First, that the privacy of individual patients who may be the subject of these studies be protected. This policy, standing alone, would not justify withholding information concerning an individual patient from that patient, given a proper release.

The second policy consideration, however, goes to the heart of the purpose of this statute, and overrides any right an individual patient ordinarily would have to review records concerning him or herself. This second and overriding purpose is to assure the confidentiality of any information provided to the Health Division or the federal Center for Disease Control "in connection with special morbidity and mortality studies," to ensure the ability of these agencies to obtain the information required to conduct these special health studies. It is necessary to ensure the confidentiality of information provided to the Health Division and the CDC so that individuals and institutions will be willing to provide complete and accurate information to the Health Division and the CDC for purposes of these studies.

This second purpose of the confidentiality statute is implemented by the directive that records compiled "in connection with" those studies "may be used solely for the purpose of the studies." As noted above, the statute then goes on to create two specific exceptions, in subsection (3), from the general nondisclosure requirement. Neither of these exceptions contemplate disclosure of any material obtained in connection

with these studies except in the form of general, non-case-specific statistical or other reports on morbidity and mortality, prepared by the Health Division as part of its regular course of business.

We therefore conclude that all information and reports, including patient medical records, obtained by or prepared for the Health Division or the CDC for purposes of the morbidity study are confidential under ORS 432.060. Your request for these records is therefore denied.

The only material in the file which is not confidential under ORS 432.060 consists of correspondence to and from you concerning your request for records, a memorandum from Lorraine Duncan to Ernie Moore, dated July 9, 1984, and a Red Cross immunization survey form. You are entitled to review or copy this correspondence, memo and form, and this constitutes an order to the Health Division to make these materials available to you at your request.

Finally, you requested a summary of the contents of this file. Lorraine Duncan of the Health Division has prepared a summary, which may be obtained from her. Ms. Duncan's telephone number is 229-5534.

Yours very truly,

DONALD C. ARNOLD
Special Counsel to the
Attorney General

DCA:cm
cc: Len Pearlman, Assistant Attorney General
Lorraine Duncan