DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

DEPARTMENT OF JUSTICE

100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4400

May 19, 1982

Henry Kane
Attorney at Law
12275 S.W. Second
P.O. Box 518
Beaverton, Oregon 97075

Re: Petition for Financial Records
of Portland Metro Health

Dear Mr. Kane:

We have sought to determine whether financial records which you requested exist and are in the custody of the Insurance Commissioner or members of her staff. We have determined that the information you seek in 4(a), (b), (c), (d), (e), (g), (h), (i) and (j) is available on either trial balance forms, which have been run for each month through March 1982, or operating statements, which have also been compiled for those same months. The final balances and operating statements are not yet available. The information you request at 4(f) is presently being compiled and is available in a rough form. The information you request at 4(k) and (l) is available, but only through the end of April. This will not be a total compilation of all claims. The information you request at 4(m), (n), (o) and (p) is not available in any column or summary form record in the possession of the Insurance Commissioner.

We express no opinion as to whether these records are public records, other than to note that appointing the Commissioner as a receiver of an insolvent insurer may not convert the insurer into a public agency nor convert the insurer's private records into public records. As a receiver, the Commissioner is acting as a neutral. We have inquired as to the existence of financial records that may be covered by your request for your convenience and that of the court. We conclude that the Attorney General lacks jurisdiction to consider the petition. ORS 192.480 provides

that in the case of public records in the custody of an elected official or in the custody of any person to which the elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General, and if a petition is filed, it shall not be considered. The judge appointing the Insurance Commissioner as a receiver is, of course, an elected official, and the receiver acts subject to the direction of the court. Thus, the receiver is an arm of the appointing court and owes a duty only to that court. Simply put, we lack jurisdiction to require the court or any of its agents to release documents, and for that matter, cannot consider the petition beyond ascertaining that we lack jurisdiction to issue an order on the merits.

We are also mindful that the institution of an action against a receiver, without leave of the court, is in some jurisdictions deemed an interference and punishable by contempt. We believe that the appropriate course of action is to make a request to the court for disclosure of these records, which in turn will require the court to decide if they are public records or otherwise available for disclosure. If the court, as an elected official, declines disclosure, the institution of proceedings for injunctive or declaratory relief is authorized by statute.

Again, for your convenience and that of the courts should you wish to pursue the matter, we have determined what financial records are available, and the Insurance Commissioner as a court-appointed receiver stands ready to proceed as the court may direct.

Yours very truly,

STANTON F. LONG
Deputy Attorney General

John A. Reuling Jr

JOHN A. REULING, Jr.
Special Counsel to the Attorney General and Signatory on behalf of Deputy Attorney General

SFL:tlg
cc: The Honorable Donald C. Ashmanskas
Josephine Driscoll, Insurance Commissioner
Kathi Dahlin, Assistant Attorney General