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January 18, 1994

Pamela Leitch
Noon and Kraemer
Suite 402
6 SW Centerpointe Dr.
Lake Oswego, OR 97035

Re: ***Petition for Public Records Disclosure Order: Office of Medical Assistance Programs' Records***

Dear Ms. Leitch:

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 January 10, 1994, asks the Attorney General to direct the Office of Medical Assistance Programs (OMAP) to make available the following files and records:

1. Payless Drug Store;
2. Michael Erickson, DMD
3. Metro West Ambulance
4. Physician's Med Lab
5. Providence Medical Center
6. Caleb Siaw
7. Portland Medical Pharmacy
8. Documents, instructions, and policies, including notes of auditors taken or reviewed at anytime during any meetings with Dr. Lyle Calvin; and,
9. Notebook of miscellaneous documents that Mr. George Ostertag collected in a binder.

For the reasons that follow, we respectfully deny your petition.

The Attorney General may order a state agency to disclose records only where the agency has first denied a request for public records inspection. ORS 192.450(1). A public body does not deny a request merely because it fails to comply with a deadline the requestor seeks to impose. Public Records Order, October 6, 1992 (Neal). Although an unreasonable delay in responding to a records inspection request may in some circumstances constitute a denial, here there has been no denial.

Kathryn Ross, Manager of the Quality Assurance Unit, OMAP, has informed us that after receiving your letter of November 18, 1993, requesting the documents listed above she asked OMAP's general counsel for advice regarding her public records inspection obligations. She was informed that in order for OMAP's general counsel to provide such advice, the general counsel will first need to review the inspection request and all the documents and files requested.[1]

In a letter dated November 30, 1993, Ms. Ross informed you that the requested records "will be made available to you" after all exempt information is removed. In a letter dated January 3, 1994, Ms. Ross again informed you that the requested records must be "reviewed with respect to privileged or client-specific information before they can be provided," and notified you regarding the progress made on your November 18 and other public record requests. Ms. Ross has informed us that Items ## 5 and 9, above, are being made available to you. Ms. Ross also indicated that the "rules and/or policies in regards to fees for the actual cost in making the records available" which was also part of your November 18, 1993, request have been made available to you.

Review of the remaining public records you requested is currently ongoing and should be completed within the next few weeks. The Office of Medical Assistance Programs has not denied your public records request, and in fact has made several of

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[1]Providing legal advice to state agencies is a regular part of the responsibilities of assistant attorneys general. See ORS 180.060(7). Agencies do not violate the Public Records Law when they delay responding to a request in order to obtain needed legal advice. Attorney General's Public Records and Meetings Manual (1993) at 12.

the requested public records available. Given the volume of records requested and the need for careful review to ensure that information exempt from disclosure is properly redacted, we do not find the delay in making available the remainder of the records to be unreasonable. Accordingly, your petition is denied as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

CMO:AV:aml/JGG08B01

c: Kathryn Ross, OMAP