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May 19, 1992

Richard J. Reedal, President
Home Parenteral Care, Inc.
1000 South Bertelsen, Suite 5
Eugene, Oregon 97402-5434

Re: Petition for Public Records Disclosure Order of Oregon Health Sciences University's Records on HPC #40

Dear Mr. Reedal:

This letter is the Attorney General's response to your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received May 12, 1992, asked the Attorney General to order the Oregon Health Sciences University (OHSU) to disclose various records relating to OHSU's awarding of a contract to a competitor of yours (OPTION Care, Inc.) under a Request For Proposals (RFP) procurement process. That RFP resulted in OHSU entering into a patient referral contract with OPTION Care to provide home parenteral care for OHSU hospital patients who desire such services. For the reasons expressed below, we respectfully deny your request as premature.

Your petition proceeds on the assumption that OHSU's delay in responding to your request amounted to a constructive denial, thus permitting Attorney General review under ORS 192.450(1). We do not interpret the facts to be so. Some of the records from the OPTION Care proposal you previously requested have been provided to you. Anya Averill of OHSU has asked OPTION Care for additional information concerning OPTION Care's assertion of trade secret confidentiality for the remaining exhibits, and has been informed that OPTION Care wishes to confer with its general counsel for his input and analysis. OHSU officials have also asked their General Counsel attorney to analyze the issues and

are awaiting his advice. Thus, OHSU is still actively exploring and has not denied, your request. See, Attorney General's Public Records and Meetings Manual at 9 (1989). (It is reasonable for an agency to consult counsel about disclosure of documents that appear to be exempt, in whole or in part, from disclosure.)

Without a denial of your request by OHSU, we have no jurisdiction under ORS 192.450(1) to entertain your petition. For reasons stated, we deny your petition as premature.

Sincerely,

Pamela L. Abernethy
Special Counsel to the
Attorney General

PLA:cm
c: Ania Averill, OHSU
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