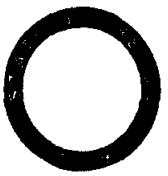
THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
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Salem, Oregon 97310
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December 15, 1994

Howard Asinoff
11735 SE Market
Portland, Or 97216

Re: *Petition for Public Records Disclosure Order: Oregon Board of Naturopathic Examiners Records*

Dear Mr. Asinoff:

This letter is the Attorney General's order on your petition for disclosure of records in the possession of the Oregon Board of Naturopathic Examiners (OBNE). Your request for disclosure is governed by Oregon Public Records Law, ORS 192.410 to 192.505 and is subject to review by the Oregon Attorney General. ORS 192.450(1). Your petition, which we received on November 29, 1994,[1/] asks the Attorney General to direct OBNE to make available any and all documents or letters written by Dr. Mark Cooper or other persons who may have made comments, accusations, or charges against Howard Asinoff.

The OBNE has five documents that are within the scope of your request, Documents A, B, C, D and E. For the reasons that follow, we respectfully deny your petition for disclosure.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exceptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material." Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

1/ We appreciate your extending the time within which the law would have otherwise obligated us to respond.

Oregon Statute Establishing Specific Exemptions

ORS 192.502(8) exempts from disclosure under the Public Records Law:

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law[.]

This provision incorporates into the Public Records Law the confidentiality provisions of any other state statute.

ORS 685.115(1) states:

> Any information provided to the [OBNE] under ORS 685.110 is confidential and shall not be subject to public disclosure * * *.

ORS 685.110 governs OBNE's disciplinary authority with respect to granting, suspending or revoking licenses to practice naturopathic medicine or imposing civil penalties.

Document A, dated November 17, 1992, is a two-page document addressed "To whom it may concern." We find Document A to be a complaint concerning conduct that is subject to OBNE's authority to refuse licensure. Document A is information that was provided to OBNE under ORS 685.110; it is not subject to public disclosure.

Document B, dated May 26, 1993, is a one-page handwritten communication from OBNE Chairman Andrew W. Elliott, N.D. to OBNE Executive Officer Kathy Soderberg with suggested investigation procedures concerning the November 17, 1992 complaint. To the extent that Document B contains information other than that provided to OBNE under ORS 685.110, it is not confidential under ORS 685.115(1) and, therefore, the statutory exemption outlined in ORS 692.502(8) does not apply. However, Document B also includes references to information contained in the November 17, 1992, complaint and, to this extent, Document B is exempt from disclosure. Thus, OBNE would need to segregate the exempt and non-exempt information.

Document C, dated June 1, 1993, is a one-page handwritten summary by Kathy Soderberg of a telephone conversation between complainant and Kathy Soderberg regarding Howard Asinoff. We find various portions of the information contained in Document C to be information provided to OBNE under ORS 685.110 and exempt from disclosure. All other information contained in Document C is subject to public disclosure.

Document D, dated June 21, 1993, is a one-page typewritten letter from Kathy Soderberg to Jim Miller, President of the National College of Naturopathic Medicine. Ms. Soderberg requests Dr. Miller to provide OBNE with information regarding Howard Asinoff. Those portions of Document D that reference information provided to OBNE in Document A are exempt from disclosure; the remaining portions of Document D are not exempt.

Document E, dated June 30, 1993, is a one-page typewritten letter from James V. Miller, President of the National College of Naturopathic Medicine to Kathy Soderberg. Those portions of Document E that reference information provided to OBNE in Document A are exempt from disclosure. We find that the remaining portions of Document E also contain information provided to OBNE under ORS 685.110 that is, therefore, exempt from disclosure.

In summary, all information submitted to OBNE under ORS 685.110 and those portions of other documents that reference such information are confidential under ORS 685.115. We deny your petition as to this information because it is exempt from disclosure under the Public Records Law, ORS 192.502(8).

Ms. Soderberg informs us that OBNE has agreed to release all of the non-exempt information to you within seven days of the date of this order. As to this information, we deny your petition because it is moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA01577.W51
ESH:AMG:AV:amg/JGG0AD51

c: Kathy Soderberg
Executive Officer
Oregon Board of Naturopathic Examiners