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October 23, 1990

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Re: **Petition for Public Records Disclosure Order; Oregon Health Division Records**

Dear Dr. Fleming and Ms. Troutwine:

This letter is the Attorney General's order on Ms. Troutwine's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on October 11,[1] asks the Attorney General to order the Health Division to disclose copies of the materials contained in the individual files of Ms. Troutwine's clients, including information supplied by the clients themselves to the Health Division in conjunction with the epidemiology studies of L-Tryptophan. For the reasons that follow, we grant the petition in part and deny it in part.

The Public Records Law confers a right to inspect public records of a public body in Oregon, subject to certain exceptions. Here, ORS 432.060, as incorporated into the Public Records Law by ORS 192.502(8), prohibits disclosure of part of the information sought by Ms. Troutwine.

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 non-profit health agency that is exempt from taxation under the law 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 or mortality studies, are confidential insofar as the identity of an individual patient is concerned. Such records may be used solely for the purposes 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 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.)

We analyzed this statute in a prior public records order. See Public Records Order, November 27, 1985, Pope. In that order we concluded that, despite a release from the patient, the statute compelled the Health Division to withhold from the patient all materials within the patient's file developed as part of a special morbidity study. We noted that ORS 432.060 embodies two distinct policies. The first policy is to protect

> "the privacy of individual patients who may be the subject of these studies * * *. 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.
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> "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[s] 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."

Order at 3-4.

On October 22, 1990, we fully reconsidered and reaffirmed the view we took in the Pope public records order. See Public Records Order, October 22, 1990, Fleming/Taylor (a copy of which is attached to Ms. Troutwine's copy of this order). As construed in the Pope and Fleming/Taylor public records orders, ORS 432.060 bars the Health Division from disclosing any information in Ms. Troutwine's clients' files obtained by the Health Division from sources other than Ms. Troutwine's clients.

Our prior orders, however, do not fully resolve the petition. We understand that some of the files at issue contain information supplied by Ms. Troutwine's clients themselves during telephone interviews as part of the L-Tryptophan study. We also understand that the Health Division can segregate this information from other information in the files. The current petition, therefore, presents a question we have not previously addressed: Does ORS 432.060 bar the Health Division from releasing to persons information in their own files that they themselves have supplied to the agency?

We conclude that the answer is no. To release such information would not undermine either of the policies underlying ORS 432.060: (1) patient privacy, and (2) assuring the Health Division's ability to obtain accurate information for special morbidity and mortality studies. Cf. Letter of Advice dated June 7, 1977, to Kathleen M. Straughan (OP-3928) (personal privacy exemption does not bar a person from inspecting his or her own medical file; disclosure could not conceivably invade that person's privacy). We must construe ORS 432.060 narrowly, keeping in mind that the presumption is always in favor of disclosure of public records. See Guard Publishing Co. v. Lane County School Dist., 301 Or 32, 39, 791 P2d 854 (1990). We decline to construe and apply ORS 432.060 in a fashion not mandated by its guiding purposes.

Therefore, we conclude that the Health Division must disclose to Ms. Troutwine information supplied to the division by Ms. Troutwine's clients, to the extent that the information may be segregated from exempt information in the clients' files. See ORS 192.505 (duty to segregate exempt from nonexempt materials). We understand that Ms. Troutwine already has forwarded to the division the necessary medical releases from her clients. We respectfully deny the remainder of Ms. Troutwine's petition. The Health Division has seven days from the date of this order in which to comply. ORS 192.450(2).

Sincerely,

James C. Abernethy Jr.

for PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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[1] We acknowledge Ms. Troutwine's courtesy in allowing us to exceed the statutory seven-day deadline for issuing this order.