DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

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Douglas A. Harrison
Howe, Harris & Vigna
Attorneys at Law
Suite 1400 - One Main Place
101 Southwest Main Street
Portland, OR 97204-3280

Robin Bower
Supervisor
Drive Control Unit
Motor Vehicles Division
1905 Lana Avenue, N.E.
Salem, OR 97314

Re: Petition for Public Records Disclosure Order; Motor Vehicles Division Records

Dear Mr. Harrison and Ms. Bower:

This letter is the Attorney General's order on Mr. Harrison's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on March 27, 1989, asks the Attorney General to direct the Motor Vehicles Division (MVD) to disclose the following records relating to Bruce J. Nielsen:

(1) Any and all information in MVD's medical files pertaining to Mr. Nielsen, including but not limited to any information regarding medical examinations of Mr. Nielsen because of an automobile accident of May 9, 1987, and any medical examinations of Mr. Nielsen before or after that accident;

(2) Any reports by any physicians, including any driver medical certification forms; and

(3) Any information regarding requests by law enforcement officials or others for medical examinations of Mr. Nielsen.

For the reasons stated below, we respectfully deny the petition for an order releasing medical information regarding Bruce J. Nielsen. We grant the petition for disclosure reports of physicians, including driver medical certification forms, to the extent that exempt medical information is deleted and only non-exempt information is disclosed. We also grant the petition for disclosure of information about requests to MVD by law enforcement officials or others for a medical examination of Mr. Nielsen.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. Insofar as the records you seek contain medical information, those records are exempt under ORS 192.502(2), the personal privacy exemption.

ORS 192.502(2) exempts from disclosure:

> "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy". (Emphasis added.)

ORS 192.502(2) thus expressly exempts from disclosure personal information in a medical file, if the other statutory criteria are met. Ordinarily, public disclosure of personal medical information would constitute an unreasonable invasion of privacy, and Mr. Harrison has not suggested the contrary in this instance. Nor does it appear that the public interest clearly and convincingly requires public disclosure in this particular instance. For these reasons, the personal medical information contained in the requested records is exempt from disclosure.

The exemption extends only to information in those records pertaining to any medical examination, diagnosis or treatment of Mr. Nielsen. The other information in those records, including the name of the physician, is subject to disclosure. The only two colorably relevant exemptions do not apply here.

The medical reports in Mr. Nielsen's file are not confidential under ORS 807.710, because the reports were not submitted under the mandate of this statute. Instead they were submitted at Mr. Nielsen's request pursuant to ORS 807.090. The physician-patient privilege established by ORS 40.235 does not apply, because the reports were intended to be disseminated to third parties (the State Health Officer and Motor Vehicles Division). Finally, there is no basis here to exempt information regarding a request by law enforcement officials or others for a medical examination of Mr. Neilsen.

In sum, we deny the petition to compel disclosure of information about the medical examination, diagnosis and treatment of Mr. Nielsen. We otherwise grant the petition. MVD must segregate the exempt from the non-exempt information, and disclose the latter.

In the petition, Mr. Harrison asked to inspect or copy the original records at his law office in Portland. ORS 192.430 requires MVD to provide reasonable opportunities to inspect these records "in the office of the custodian." We lack authority to order MVD to deliver the original documents to Mr. Harrison's law office, or otherwise to establish inspection procedures.

ORS 192.450(2) affords MVD seven days from the date of this order in which to comply. The agency may charge for its actual cost in making the records available to Mr. Harrison. ORS 192.440(2).

Very truly yours,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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