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September 16, 1994

Steven R. Scharfstein
Attorney at Law
1001 SW Fifth Avenue, Suite 1100
Portland OR 97204-1175

Re: *Petition for Public Records Disclosure Order: Driver and Motor Vehicle Service Branch Records*

Dear Mr. Scharfstein:

This letter is the Attorney General's order on your petition[1/] for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on September 9, 1994, asks the Attorney General to order the Driver and Motor Vehicle Service Branch (hereafter "DMV") to make available:

> Any and all records relating to David Milton Boozer, ODL # 1771947, including a complete driving record, Reports of Disorders Affecting Consciousness, Driver Medical Certifications, doctor reports, and any other notices, letters, or other documents relating to the Department of Motor Vehicles and the restriction, cancellation, suspension, and reinstatement of David Milton Boozer's driver's license.

For the reasons stated below, we deny the petition in part and grant it in part.

[1/] Your petition came to our attention accompanied by a subpoena duces tecum requiring the production by DMV, on September 13, 1994, of the identical materials sought in the petition. In a conversation on September 12, 1994, with Tom Twist, one of the lawyers who represent DMV, you indicated that the subpoena need not be honored and that you were electing to pursue the petition remedy provided by ORS 192.450.

"Reports of Disorders Affecting Consciousness"

In your petition, you ask for documents you describe as "Reports of Disorders Affecting Consciousness." We conclude that you refer to a Health Division and DMV form entitled "Certificate of Medical Eligibility." DMV has custody of this document pursuant to ORS 807.710. That statute provides in part:

> (1) All persons authorized by the State of Oregon to diagnose and treat disorders of the nervous system shall report immediately to the Health Division every person over 14 years of age diagnosed as having a disorder characterized by momentary or prolonged lapses of consciousness or control that is, or may become, chronic.
>
> * * *
>
> (3) On or before the 15th day of each month the State Health Officer shall forward to the Department of Transportation a copy of each report or a list of the information in all reports received in the preceding calendar month as required by subsection (1) of this section. The reports are confidential and shall be used by the department only to determine the qualifications of persons to operate motor vehicles upon the highways. (Emphasis added)

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. 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.

The confidentiality of any record covered by a statute outside the Public Records law is incorporated into the Public Records Law by ORS 192.502(8). The Certificate of Medical Eligibility is "confidential" pursuant to ORS 807.710(3). Therefore, it is exempt from disclosure under the Public Records Law.

Documents Describing Medical Condition

You have requested other documents in DMV's custody which allude generally to Mr. Boozer's medical condition. Ordinarily such records would be exempt pursuant to ORS 192.502(2) which provides, in pertinent part:

> 192.502. The following records are exempt from disclosure under ORS 192.410 192.505:
>
> (1) * * * *
>
> (2) 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 requies 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.

With your petition, you provided a Limited Release, executed by Mr. Boozer, that irrevocably waives any physician-patient privilege respecting records regarding the medical information you seek. You have also provided a court order entered by the Honorable Lee Johnson which requires the production to you of **all** medical records relating to Mr. Boozer in his treating doctor's custody. Because Mr. Boozer has waived a privilege that would protect from disclosure documents that contain the same or similar information concerning Mr. Boozer's medical condition, we conclude that disclosing documents which allude only generally to medical information about Mr. Boozer, would not constitute an unreasonable invasion of Mr. Boozer's privacy.

Accordingly your petition is granted as to:

1) Health Division Memo-undated- Dr. Foster to Robin Bower, DMV

2) Request for Driver's License Exam- Stamped Jan 8, 1992

3) Traffic Accident and Insurance Report, signed 1/6/92-two pages, double-sided

4) Health Division Memo-undated-stamped 12/5/91- Dr. Foster to Robin Bower

5) Driver Medical Certification-stamped 7/29/91

6) A form dated 2/16/87 bearing the stamped signature of George Barton M.D.

The Driver and Motor Vehicle Service Branch has seven days from the date of this order in which to disclose these documents. ORS 192.450 (2).

Other DMV Documents

Finally, Beth L. Humphreys, Manager of Driver Safety Case Management advises us that she mailed to you, on September 13, 1994, Mr. Boozer's complete driving record, and on September 15, 1994, various administrative forms, copies of correspondence from DMV to Mr. Boozer and copies of correspondence between the Health Division and DMV. As to these records, we deny your petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA013C7

c: Beth L. Humphreys, Manager
Driver Safety Case Management