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April 20, 1999

Priscilla M. Taylor
Attorney at Law
4248 Galewood Street
Lake Oswego, Oregon 97035

Re: *Public Records Petition, Board of Medical Examiners*

Dear Ms. Taylor:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition,[1/] which we received on April 14, 1999, asks the Attorney General to direct the Board of Medical Examiners to produce copies of information identified in the petition pertaining to John M. Puskas, M.D. [licensee], a physician licensed to practice medicine in the State of Oregon. For the reasons discussed below, we respectfully deny your petition because you did not follow the procedure established by law for petitions relating to health professional regulatory boards.

If a health professional regulatory board denies a request for disclosure of any of its records, the requestor may petition the Attorney General for review of the board's denial. Either on or before the date the petition is filed with the Attorney General, the requestor must also send a copy of the petition to the board. ORS 192.450(4). Within 48 hours, the board must send a copy of the petition to any licensee who is the subject of any record for which disclosure is sought and a notice stating that the licensee has the right to file a written response to the petition to the Attorney General. The licensee then has seven days to file a written response. If the licensee files a response, the Attorney General must send a copy of the response to the original petitioner. *Id.*

[1/] Your petition was filed as the attorney for John M. Puskas, M.D.

After this process has been followed, the Attorney General must issue an order granting or denying the petition within 15 days after receipt of the petition. The Attorney General may grant the petition only if the petitioner demonstrates, by clear and convincing evidence, that the public interest in disclosure outweighs other interest in nondisclosure, including but not limited to the public interest in nondisclosure. ORS 192.450(5).

In your case, Michael Sherman, Chief Investigator of the Board of Medical Examiners, has informed us that you did not provide the Board of Medical Examiners with a copy of your petition to the Attorney General. Consequently, the board has been unable to notify any licensees who are the subject of any of the requested records of the petition so they might have an opportunity to respond as required by law. For this reason, we are unable to consider the merits of your petition.

We enclose for your information and convenience copies of ORS 192.450, 676.175 and ORS 677.425.[2/] If you still wish to petition the Attorney General for review of the board's determination, you may do so by following the procedures described in ORS 192.450(4). In order to prevail, you also must demonstrate by clear and convincing evidence that the public interest in disclosing this information outweighs any other interest in nondisclosure. ORS 192.450(5) and 677.175(2).

Sincerely,



DAVID SCHUMAN
Deputy Attorney General

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Enclosures

[2/] Health professional regulatory boards, including the Board of Medical Examiners, generally are prohibited by law from disclosing information they obtain as part of an investigation of any licensee. ORS 676.175(1) and 677.425. Under certain circumstances, however, disclosure of this information is required. ORS 676.175(2) requires disclosure when two conditions are met: 1) the board votes not to issue a notice of intent to impose a disciplinary sanction; and (2) the person requesting the information "demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure."