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June 4, 1998

Matthew Gruber, M.D., J.D.
490 Miller Street SE
Salem, OR 97302

Re: *Petition for Public Records Disclosure Order: Board of Medical Examiner Records*

Dear Dr. Gruber:

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, which we received on May 12, 1998,[1/] asks the Attorney General to direct the Board of Medical Examiners (BME) to make available:

1. Timely agendas of Investigative Committee meetings

2. Home address of BME members.

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a public record contains exempt and non-exempt material, the public body must separate the materials and make the non-exempt 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 otherwise have obligated us to respond.

1. Investigative Committee Meeting Agendas

The agendas referenced in your petition are prepared by BME staff for meetings of the Investigative Committee to discuss records pertaining to the investigation of licensee and applicant conduct. ORS 676.175(1) makes the records obtained by the BME as part of such investigations confidential, stating:

> A health care professional regulatory board shall keep confidential and not disclose to the public any information obtained by the Board as part of an investigation of a licensee or applicant, ***including*** complaints concerning licensee or applicant conduct and ***information permitting the identification of complainants, licensees or applicants.***

(Emphasis added.) To the extent the agendas you seek contain information obtained by the BME as part of its investigations, including any information that would permit identification of any licensee or applicant who is the subject of the investigation or identification of a complainant, ORS 676.175(1) prohibits disclosure of that information.

ORS 192.502(9) exempts from disclosure under the Public Records Law:

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

Accordingly, any information on the Committee agendas that is confidential under ORS 676.175(1) is exempt from disclosure under the Public Records Law.

With respect to your request for agendas from March 5, 1998 and April 2, 1998, Rebecca Fordyce, BME Investigations Coordinator, informs us that the BME has provided to you copies of those agendas with the confidential information redacted therefrom. Because the BME has already provided you with copies of the records you have requested with the exception of information that is statutorily confidential, and therefore exempt, your petition to compel further disclosure is denied as to those agendas.[2/]

[2/] Your petition asks for "timely" agendas. The Public Meetings Law requires the governing body of a public body to provide notice of its meetings, including "a list of the principal subjects anticipated to be considered at the meeting." ORS 192.640(1). This statute does not require the meeting notice to contain an agenda with the degree of specificity that you apparently would like, but only a list of the "principal subjects." If the board staff have prepared a more specific agenda for members of the Investigative Committee, that document may be subject to disclosure under the Public Records Law, subject to redaction of any information that is exempt from disclosure.

(continued...)

2. Board Member Home Addresses

You also seek the home addresses of the members of the BME. ORS 192.502(3)(a) exempts from disclosure:

> Public body employee or volunteer addresses and telephone numbers contained in personnel records maintained by the public body that is the employer or recipient of volunteer services. This exemption does not apply:
>
> (A) To such employees or volunteers if they are elected officials * * * ; or
>
> (B) To such employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in the particular instance.

This exemption, which was added to the Public Records Law by the 1997 legislature, Or Laws 1997, ch 825, protects from disclosure the home addresses of public body employees and volunteers. Thus, we must determine whether, for purposes of this exemption, the members of the BME are employees or volunteers.

The statutes creating the BME and describing its general powers do not use either the term "employee" or the term "volunteer" with respect to board members, but merely refer to them as "members." *See* ORS 677.235 to 677.305. We do not believe that necessarily means they are not employees or volunteers. Instead, we must determine what the legislature meant by the terms "employee" and "volunteer" in ORS 192.502(3).

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; ***PGE v. Bureau of Labor and Industries***, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as "words of common usage typically should be given their plain, nature, and ordinary meaning." *Id.* at 611.

[2/] (...continued)

The Public Records Law allows a public body a "reasonable" time to respond to a records request. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 7. The amount of time that is reasonable will depend upon several factors, including the extent to which exempt information must be redacted from the requested records.

The Public Records Law does not define either the term "employee" or the term "volunteer." The plain meaning of "employee" is "one employed by another usu. in a position below the executive level and usu. for wages." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged 1993) (WEBSTER'S) at 743. The verb "employ" means "to use or engage the services of," *id.*, and "wages" are "payment of usu. monetary remuneration by an employer esp. for labor or services usu. according to contract and on an hourly, daily, or piecework basis." *Id.* at 2568. The members of the BME are engaged to provides services to the board, *see, e.g.*, ORS 677.240, 677.265, and they are paid compensation on a daily basis for time spent in performance of official duties. ORS 292.495, 677.280(2). Thus, the board members are "employees" under the plain meaning of that term.

The plain meaning of the term "volunteer" is "one who enters into or offers himself for any service of his own free will." WEBSTER'S at 2564. Board members would also appear to be "volunteers" under the plain meaning of that term.

For purposes of ORS 192.502(3), we need not determine whether board members are employees rather than volunteers, or vice versa. Their addresses are exempt from disclosure in either case.[3/] The purpose of the 1997 legislation was to protect from disclosure the addresses of both employees and volunteers, excluding only "elected officials." Board members are not elected officials, they are appointed by the Governor. *See* ORS 677.235(1).

Accordingly, ORS 192.502(3) exempts from disclosure the home addresses of board members contained in the BME's personnel records. Mary Boucher, BME Personnel/Payroll Coordinator, informs us that the only records that the BME has containing the home addresses of its board members are its personnel records.

This exemption does not apply if "the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in the particular instance." ORS 192.502(3)(A)(b). You have not provided any evidence that the public interest requires disclosure in this instance, nor have we identified such an overriding public interest.

[3/] Although we need not reach the legislative history of ORS 192.502(3), it is clear from that history that the legislature intended to protect the home addresses of board and commission members. *See* Testimony of Representative Liz VanLeeuwen, House General Government Committee (HB 2491), March 31, 1997, tape 59, side B at 185 (expressing concerns with bill because citizens need home addresses of board members in order to communicate to them) and testimony of Michael J. Tedesco, Senate Business, Law, and Government Committee (HB 2492), May 20, 1997, tape 236, side A at 272 (supporting bill because it would protect personal lives of "people who provide public service").

Therefore, we conclude that ORS 192.502(3) exempts from disclosure the records that you seek and we deny your petition with respect to the home addresses of board members.

Sincerely,

STEPHANIE L. STRIFFLER
Special Counsel to the Attorney General

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c: Kathleen Haley, Executive Director
BOARD OF MEDICAL EXAMINERS