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January 15, 1997

Paul W. Ketcham
5151 N.W. Cornell Road
Portland, OR 97210

Jon Milton
2047 S.W. Daybreak Way
Troutdale, OR 97060

Re: *Petition for Public Records Disclosure Order*
State Board of Psychologist Examiners Records

Dear Mssrs. Ketcham and Milton:

This 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 December 31, 1996,[1/] asked the Attorney General to direct the State Board of Psychologist Examiners (BPE) to allow you to review the files of all candidates who have sat for oral examinations before the BPE or its agent from 1991 to present, including each candidate's application and licensing file including examination reports and examination rating sheets. In your petition, you state that BPE denied your request regarding the files of those candidates (about 35) who were not licensed (i.e., had taken the oral examination but had not passed). You also stated that the BPE allowed you to review the files of more than 300 candidates who passed oral examinations since 1991, but removed from those files transcripts and references by letter, code or number sequence of the questions and vignettes asked the candidates. You ask the Attorney General to order BPE to disclose the information it withheld from you, not including the transcripts that BPE claims are exempt from disclosure under ORS 192.502(2) and 192.501(4), or the questions or vignettes, which are not included in the licensing files.

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

Bonnie Wilson, Administrator of the Board of Psychologist Examiners, informs us that on January 10, 1997, the Board reconsidered its refusal of your requests and agreed to allow you to examine the information that you requested (which does not include questions, vignettes and transcripts). Please make arrangements with Administrator Wilson to review those records. Because the agency has agreed to permit you to inspect the records that are the subject of the petition, we respectfully deny as moot your petition seeking a disclosure order.

In your petition, you also request a waiver of BPE's costs for copying all records requested from BPE. ORS 192.440(4) provides:

> The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

The Board of Psychologist Examiners, not the Attorney General, is the custodian of the records you seek. Ms. Wilson informs us that you have not requested BPE to waive its copying fees. The Attorney General's authority over BPE records is limited to reviewing BPE's action. *See* ORS 192.440(5). Because the BPE has not denied any such request, the Attorney General has nothing to review and has no jurisdiction over your fee waiver request.

For these reasons, we deny your petition to order disclosure of records as moot and decline to rule on your request for a fee waiver for lack of jurisdiction.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:RLH:AV:jpl/JAA021F9

c: Bonnie Wilson, Administrator