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May 12, 1988

Alan M. Spinrad
Samuels, Yoelin, Weiner, Kantor & Seymour
Attorneys at Law
200 Willamette Wharf
4640 S.W. MacAdam Avenue
Portland, Oregon 97201

Dear Mr. Spinrad:

This letter is the Attorney General's order on your May 4, 1988 petition for disclosure of records of the Oregon Board of Dentistry. Your petition, filed pursuant to ORS 192.450(1) of the Public Records Law, asks the Attorney General to order the Board of Dentistry to disclose records, reports, notes and letters compiled by Janet Helzer, an investigator for the Board of Dentistry, "regarding allegations relating to Dr. Goodman-Cherrier[.]" A copy of the petition, listing 12 items of information, is attached to and incorporated in this order. We respectfully deny your petition.

The public record information you wish to inspect is exempt from the public disclosure requirements of the Public Records Act, ORS 192.410 to 192.505. The information has been compiled by Ms. Helzer in the course of performing her duties as the Board of Dentistry's investigator. The board is investigating a complaint against Dr. Goodman-Cherrier. Consequently, the information is exempt from public disclosure requirements under ORS 192.505(8) and ORS 670.320(1).

ORS 192.502(8) provides that the following are exempt 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."

ORS 192.502(8) thus incorporates confidentiality laws, outside the Public Records Law, such as ORS 679.320(1).

That particular law, enacted in Oregon Laws 1985, chapter 323, section 12, expressly states that:

> "Any information provided to the [Board of Dentistry] as the basis of a complaint or in the investigation thereof shall not be subject to public disclosure during the period of investigation." ORS 679.320(1).

The information you seek to inspect under the Public Records Law is "made confidential" by ORS 679.320(1).

We conclude that the Board of Dentistry may withhold the investigatory information from public disclosure. Accordingly, we deny your petition for disclosure under the Public Records Law.

In closing, we set out the following points of clarification regarding the 12 items in your petition:

a) Items 1 and 2 refer to the same document.

b) The report identified as no. 3 in the petition identifies the report as dated June 6; in fact, it is dated June 9.

c) The item identified as no. 4 in the petition, an undated type-written note signed by Gretta Franklin, is presently in the possession of Dr. Goodman-Cherrier. It was obtained from him and returned to him by Ms. Helzer.

d) Items 5, 6 and 8 identify existing public records; however, notes described in item 7 do not exist, according to Janet Helzer.

e) Items 9, 10, 11 and 12 identify records that are held by the Dentistry Board. However, item no. 10 is in the form of a hand-written note, not a report. It also should be noted regarding item 12 that the Dental Board has copies of insurance forms, not treatment records.

If you have any questions, please call me or Assistant Attorney General Frank Mussell, the board's contact lawyer in the Department of Justice.

Respectfully submitted,

James E. Mountain Jr.

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:ti
Enclosure
cc (w/ incoming):
Frank Mussell, Assistant Attorney General
Janet Helzer, Investigator, Board of Dentistry, Health Division, 620 S.W. 5th, Suite 405, Portland, Oregon 97204
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