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November 8, 2004

Norma Anderson
Amy Dawson
422 SW 10th Street
Newport, OR 97365

Re: Petition for Public Records Disclosure Order:
Oregon Health Licensing Office Records

Dear Ms. Anderson and Ms. Dawson:

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 November 1, 2004, asks the Attorney General to order the Oregon Board of Cosmetology[1] to provide you with copies of Files Nos. 04-4264 and 04-4250 as well as "any and all records and documents outlining the exact charges being filed." For the reasons that follow, we partially grant and partially 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 state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450.

We spoke with Larry Peck, Compliance Manager at the HLO, about your petition. Mr. Peck told us that the requested files each contain three records: the proposed final order, an investigative report and a copy of the complaint. According to Mr. Peck, the HLO has no other records concerning the charges against you. The HLO disclosed the proposed final orders from both files to you on October 25, 2004. Mr. Peck told us that the HLO has agreed to provide you with copies of the investigative report. Because your petition is moot in regard to the records

[1] While you have petitioned for an order directed to Oregon Board of Cosmetology, the attachments to your petition indicate that your request was made to, and denied by, the Oregon Health Licensing Office (HLO), which works in conjunction with the Cosmetology Board on licensing issues. The HLO maintains the records that are the subject of your petition, and this order addresses the actions of the HLO, not the Cosmetology Board.

HLO either has disclosed or has agreed to disclose, the only record remaining to be addressed is the complaint.

In an electronic mail message dated October 25, 2004, Benjamin Rodriguez of the HLO denied your request for a copy of the complaint on the basis of the complainant having requested confidentiality, citing ORS 192.502(4). The cited statute exempts from disclosure records that have been submitted to a state agency in confidence.[2] For the exemption to apply, five conditions must be met, one of which is that the agency obliged itself in good faith not to disclose the information that was provided on the condition of confidentiality. Talking with the HLO staff, we have been unable to determine that such a good faith obligation was made by the agency in relation to the complaint that you have requested. Because this condition has not been met, we conclude that the complaint is not exempt from disclosure. Therefore, we grant the petition in part and deny the petition in part, as follows.

The petition is granted with respect to, and the HLO is ordered to disclose to you, the complaint that is part of File Nos. 04-4264 and 04-4250. The HLO has seven days from the date of this order in which to comply.[3] ORS 192.450(2). We deny the petition as moot to the extent that it is for disclosure of the records that the HLO has already disclosed or has agreed to disclose to you, namely the proposed final orders and the investigative report.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS: AGS14640
cc: Larry Peck, HLO
Lori Lindley

[2] ORS 192.502(4) exempts from disclosure: "Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure."

[3] The HLO may charge you a fee to reimburse it for its actual cost in making records available. ORS 192.440(3).