



**DEPARTMENT OF JUSTICE**

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April 22, 1988

Robert C. Joondeph  
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Mental Health Program  
Oregon Advocacy Program  
635 Board of Trade Building  
310 SW Fourth Avenue  
Portland, Oregon 97204

**Re: Petition for Public Records Disclosure Order;  
Oregon State Hospital Records**

Dear Mr. Joondeph:

This letter responds to your April 7, 1988 letter requesting the Attorney General to order the Oregon State Hospital to disclose certain records to you. We treat your request as a petition for an Attorney General's order under ORS 192.450(1). Specifically, you seek disclosure under the Public Records Law (ORS 192.410 to 192.505) of the following:

" . . . an 'incident report' prepared pursuant to OSH Administrative Memorandum 1.021 and/or an 'abuse report' prepared pursuant to OAR 309-116-015 by staff of Oregon State Hospital and/or other similar written account documenting an investigation of the suicide of patient Richard Akre on December 27, 1987."

For the purposes of the Attorney General's review of your petition, the Oregon State Hospital (OSH) has transmitted to us a Patient Incident Report, dated 12/27/87, relating to Mr. Akre's suicide. OSH evidently has no "abuse report" relating to the suicide. However, OSH has furnished us with a copy of a 12/30/87 "Report on Suicide;" a copy of a 1/8/88 "Death Summary;" and a copy of a 3/18/88 "Morbidity and Mortality Case Review."

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Our review discloses that all of the information in the records furnished to us is exempt from public disclosure under the Public Records Law. The information is of two types: 1) information relating to the medical history and treatment of a patient at OSH; and 2) quality assurance information relating to the condition and treatment of that patient at OSH. This record information is exempt from public disclosure under the unconditional terms of ORS 192.502(8).

ORS 192.502(8) provides:

"The following public records are exempt from disclosure under ORS 192.410 to 192.505:

" . . . .

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

The Public Records Law incorporates two statutes outside the Records Law, ORS 179.505 and 41.675, that bar public inspection of the information you seek to inspect.

ORS 179.505(2) restricts disclosure of the medical history and treatment records of patients at state institutional health care facilities. It states in pertinent part:

"Except as provided in subsections (3), (4), (6), (7), (9), (10), (12), (13) and (14) of this section [relating to discrete disclosure of information to limited persons or entities], case histories, clinical records, X-rays, treatment charts, progress reports and other similar written accounts of the patients of any provider maintained in or by the provider by officers or employees thereof who are authorized to maintain such histories, records, X-rays, reports, charts and other accounts within the official scope of their duties shall not be subject to inspection." (Emphasis added.)

This statute denies the public access to OSH record information about the medical history and treatment of Mr. Akre. See also, ORS 192.525 (declaring state policy to protect the

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confidentiality of patient medical records); and ORS 192.502(2) (the Public Records Law exemption for information of personal information such as that kept in a medical file).

Moreover, ORS 41.675 makes privileged certain information compiled by a health care facility, such as OSH, for internal quality assurance purposes. In pertinent parts, ORS 41.675 provides:

"(1) As used in subsection (2) of this section 'data' means written reports, notes or records of . . . governing bodies or committees of a health care facility licensed under ORS chapter 441, [and] medical staff committees . . . in connection with the training, supervision or discipline of physicians. . . ."

"(2) All data shall be privileged. . . ."

Thus, quality assurance information compiled by OSH which pertains to the care and treatment of the institution's patients is privileged under ORS 41.675 and consequently exempt from public inspection under ORS 192.502(8). See public records order in companion case, Public Records Order, Joondeph/Dammasch State Hospital (April 22, 1988).

We therefore conclude that your petition for disclosure based on the Public Records Law should be denied. We acknowledge that in your petition you correctly state that your office, the Oregon Advocacy Center, ". . . is granted special access to records under ORS 179.505(14)." That statute however, grants the Advocacy Center access to health care facility records in the Center's capacity as "the officially designated protection and advocacy system for developmentally disabled and mentally ill persons in the state under 42 U.S.C. § 6012." ORS 179.505(14) does not confer a public right of access to health care facility records. This distinction is significant.

In making a request for disclosure of State Hospital records under the Public Records Laws, you and the Advocacy Center stand in the shoes of any member of the public. The Public Records Law provides a right of public inspection (see ORS 192.420), and a petition for an Attorney General's disclosure order presents the issue whether a public record "may be withheld from public inspection." ORS 192.450(1). (Emphasis added.) The records that are the subject of your

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petition may be withheld from public disclosure. Accordingly, your petition based on the Public Records Law respectfully is denied.

This public records order thus is not the proper vehicle for resolving the question whether ORS 179.505(14) itself grants the Advocacy Center access to the quality assurance data of an institutional health care facility, as well as access to a patient's medical records. We note only that legislative history, including your own testimony before the Senate Subcommittee on the Judiciary, April 15, 1987 (SB 879), tape 105, side b, indicates that the grant of Advocacy Center access to "records necessary to investigate and resolve a complaint," ORS 179.505(14), was not intended to permit Advocacy Center inspection of data other than patient medical record information. I encourage you to discuss this issue with the State Hospital's assigned attorney, Assistant Attorney General Diane Brissenden.

Thank you for your courtesy and cooperation in this matter. If you have any further questions, please give me or Assistant Attorney General Diane Brissenden a call.

Respectfully submitted,



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

JEM:cm

cc: George W. Bachik, Superintendent, Oregon State Hospital  
Stanley F. Mazur-Hart, Phd, Superintendent, Dammasch  
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