

OREGON DEPARTMENT OF CORRECTIONS
Operations Division
Health Services Section Policy and Procedure #P-H-02

SUBJECT: CONFIDENTIALITY OF HEALTH RECORDS

POLICY: Information contained in an inmate's health care record is confidential and may not be released except as provided by Oregon statute or by order of an Oregon or federal court. Health care providers in the Oregon Department of Corrections are obligated to maintain the confidentiality of inmate health care including that contained in the health care record unless authorized to release specific information.

REFERENCE: NCCHC Standard P-H-02
ORS 135.139
ORS 179.495 - 179.505
ORS 419B.010
ORS 433.001 - 433.770
OAR 291-37-005 through 291-37-025
OAR 291-124-075
OAR 333-18-005
OAR 847-012-0000
HIPAA 164.512 (5) (i) (D) (E)

PROCEDURE:

In General

- A. The health records of inmates are maintained in the health services area of the institution under secure conditions.
- B. The only persons with access to inmate health records are persons employed by Health Services or otherwise authorized by the Health Services Administrator or designee. During times when no health services staff are present, the health records room or file cabinets containing health records will be locked.
- C. Access to electronic health care records is protected by use of passwords and lock out screens if left unattended.
- D. All requests for release of health information will be directed to the Medical Services Manager, Chief Medical Officer, or health care staff specifically designated to handle release of information. Requests for mental health record information will be directed to Behavioral Health Services (BHS) staff.

- E. Health Services employees receive instruction on maintaining confidentiality during orientation and reviewed periodically.
- F. During the intake receiving screening process, inmates are provided disclosure information per the "Health Services Information Disclosure" form (attachment 3) which states, in part:

Some information obtained in a provider-patient relationship is not confidential and will be reported to non-Health Services staff and/or other agency personnel as needed even without written consent of the patient. According to State and Federal laws, this includes knowledge of:

- danger to self or others;
- abuse of a child under 18 years of age, abuse of an adult 65 years of age or older, or abuse of individuals who meet the legal requirement of developmentally disabled or mentally ill, and a specified victim can be identified;
- staff physical or sexual abuse of inmates;
- escape plans or attempts;
- sexual abuse of or by another inmate.

Confidentiality will not apply to information when it poses an immediate threat to the health and safety of self, other inmates, staff, or to the community. Reports will be limited to what is necessary to maintain safety and stay within legal parameters.

- G. Release of information contained in an inmate's health record shall occur only where properly requested or pursuant to a statute or an order by an Oregon court. The following circumstances illustrate most, but not all, areas where release of records may occur:
1. Upon receipt of a fully completed authorization form signed by the inmate (see **Inmate Authorizations**);
 2. Where records of a deceased inmate are requested, there must be legal documentation identifying the appointment of a personal representative of the inmate's estate who must then provide a completed, signed release of information authorization that must be dated after the appointment.
 3. Upon request from an Oregon county or state health provider as provided in ORS 179.505(6) (see **County & State Providers**);
 4. As part of a Communicable Disease Report as required by ORS 433.004 and OAR 333-18-005 (see **Communicable Diseases**);
 5. As a report of suspected child abuse as required by ORS 419B.010 (see **Child Abuse Reports**);
 6. When a Medical Emergency exists (see **Emergencies**);
 7. When another Oregon state agency or department is assisting or representing DOC in an administrative or court proceeding (see **Other Oregon State Agencies**);

8. When requested by persons engaged in scientific research, program evaluation, peer review and fiscal audits (see **Reviews and Audits**);
9. Upon receipt of a subpoena duces tecum and/or a signed court order from an Oregon or federal court (see **Subpoenas & Court Orders**).

Requests that do not fall into the above categories must be referred to the Medical Services Manager and/or Medical Records Manager for clarification before responding to the request.

- H. **Information contained in the inmate's health record that was obtained from another health care organization or provider prior to incarceration may not be released except when required for continuity of care purposes.** The requesting person should be told to obtain this information directly from the provider.
- I. Information received from an outside provider during incarceration is part of the ODOC health care record and can be released as allowed by law.
- J. When satisfied that the release is authorized, copy the information specifically requested.
- K. The charges and methods of billing for release of information are to be followed as described in DOC Administrative Rule 291-037, Release of Public Records.
- L. Place the original signed release in the inmate's health record with a notation on the form explaining what information was sent, and to whom, with your signature and date. If the request was denied, place the original signed release with an explanation of the denial, signed and dated, in the health record. Return a copy of the request to the requesting person with an explanation of the denial.

Inmate Authorizations

- A. Requests for release of information contained in an inmate's health record should be accompanied by a fully completed and signed Oregon DOC Authorization to Use and Disclose Health Information form (CD728CH 7/05) form. Other authorization forms are acceptable if they meet the six requirements listed in section C below.
- B. ORS 179.505 requires that information properly requested by an inmate **must be provided** within five days of the request.
 1. If any of the necessary information for a properly executed release is missing the request should be returned **immediately** with a blank copy of the DOC Authorization to Use and Disclose Health Information.
 2. Questions about the specific extent or nature of the information requested may be resolved by promptly telephoning the requesting party or the

inmate for clarification, provided that the clarified request does not exceed the authorization given on the signed release.

- C. Health record information may be released upon receipt of any fully completed and signed authorization that includes:
1. The name of the provider directed to make the disclosure (i.e., Oregon Department of Corrections Health Services Section);
 2. The name and/or title of the person or organization to which the information is to be disclosed;
 3. The name and SID number of the inmate (other identifying factors may be substituted for the SID number if they allow positive identification of the inmate);
 4. The specific extent or nature of the information to be released;
 5. A statement that consent is subject to revocation at any time and a specific date on which consent is automatically revoked;
 6. The signature of the inmate, and the date of the signature.

Items 1-6 are mandated by ORS 179.505.

- D. A completed signed CD 28 should also accompany the request. In compliance with ORS 192.521, the Oregon Department of Corrections may apply charges to each request for Health Care Records:
1. \$1.25 for each page for pages 1 through 10 and then \$.25 for each additional page thereafter, and
 2. Postage costs to mail copies of protected health information or any explanation or summary of said information, if requested by an individual or a personal representative of the individual, and
 3. Actual cost of preparing an explanation or summary of protected health information if requested by an individual or a personal representative of the individual.

- E. Grounds for denying inmate requests.

1. Requests for release of mental health information must be reviewed by the treating psychiatrist (or designee), who may deny disclosure if releasing the information would create an immediate and grave detriment to the inmate's treatment. (ORS 179.505). If the request is denied, a written explanation of the denial **must** be placed in the inmate's Health Record by the person making the decision, with their signature and date.
2. If the information requested relates to an individual other than the requesting inmate, or would, if released, constitute a danger to another individual or compromise the privacy of a confidential source, the release may be denied.

- a. **If your review of the requested information suggests that any of the above is possible, consult the Medical Services Manager within 24 hours.**
 - b. If the request is denied, a written explanation of the denial **must** be placed in the inmate's Health Record by the person making the decision, with their signature and date.
3. For security reasons, **certain health record information, such as HIV status, requested by an inmate may not be sent directly to the inmate, however, the information may be discussed verbally and the results reviewed, while they are in custody of the Department of Corrections or an Oregon county correctional facility. HIV results can only be provided to health care providers or pursuant to a court order while incarcerated.**

County & State Providers

ORS 179.505(6) allows the release of inmate health records without inmate authorization to medical providers within the Mental Health and Developmental Disability Services Division (OSH, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center), local correctional facilities (county jails, but not probation offices), and community mental health and developmental disabilities programs (e.g., Mental Health West, Marion County Developmental Disabilities Program), when the release is necessary or beneficial to treatment of the inmate. This authorization does not extend to non-medical personnel at those facilities.

Communicable Diseases

- A. Policy and Procedure #P-B-01, Infection Control Program, provides instructions on making the required Communicable Disease Reports to the Health Division.
 1. Reports should be made on the 43-36 Form provided by the Health Division.
 2. OAR 333-018-005 provides a list of the communicable diseases that must be reported (see Attachment 1). This rule is updated regularly; updates are available from the Health Division, Communicable Disease Section.
 3. For clarification of the status of a particular disease, contact the Communicable Disease Section Program Manager of the Health Division.
- B. Communicable disease information **cannot be released to anyone other than the Health Division** without inmate authorization, valid subpoena, or an order of an Oregon court.

Child Abuse Reports

ORS 419B.010 requires that a report be made if you are given reasonable cause to believe that any person with whom you come into contact has abused a child (unless

you are a psychiatrist or psychologist and the information was communicated to you under privilege as defined in ORS 40.225 to 40.295).

In the unlikely event that an inmate informs Health Services staff that they have committed child abuse, a Report of Suspected Child Abuse form is to be used to report the suspected abuse. All information should be completed, if known. If the information is not known, you are **not** required to obtain it from the inmate. The completed form should be sent to the Inspector General who will refer it to the appropriate state agency for further action.

Emergencies

ORS 179.505(4)(a) allows the release of health records "to any person to the extent necessary to meet a medical emergency."

The procedure to be followed upon receiving an emergency request by telephone is:

- A. Write down the name of the person and/or agency requesting release, the information needed, and their telephone number. If possible, note the type of emergency.
- B. Inform them that you need to locate the information and that you will call back immediately.
- C. Locate the needed information and call back immediately.

This procedure protects against unauthorized release by providing at least minimal confirmation of the caller's identity and the existence of an actual emergency.

Other Oregon State Agencies

In only two situations may release of Health Record information be made to other Oregon State Agencies without inmate authorization.

- A. Where an inmate has filed a lawsuit against DOC claiming that their medical treatment while in custody was constitutionally inadequate, information may be released **to the Department of Justice and/or the Department of General Services (Risk Management Division) to assist them in providing legal services on behalf of DOC.**
- B. Where an inmate has filed a worker's compensation (SAIF) claim, the inmate's custody status at the time of the injury determines the procedure for release of the health record. **Because of this potentially confusing situation it is essential to confirm with Inmate Records the inmate's custody status on the date of injury listed on the request.** If the date of injury is not listed on the request, contact the SAIF agent making the request to obtain the information.
 1. If an inmate was **injured while in DOC custody** and filed a Worker's Compensation claim with SAIF, information may be released to SAIF based on their contract with the Department of General Services (Risk

Management Division). In this situation, SAIF is acting on DOC's behalf as well as the inmate's.

2. If the inmate was **not injured while in DOC custody**, a signed release is required before releasing information. In this situation, SAIF is not acting on DOC's behalf or the inmate's, and ORS 179.505 prohibits release of the health record without the inmate's consent. **Therefore SAIF claim forms do not meet the requirements of ORS 179.505 for authorizing release of information. If SAIF sends a claim form as a release:**
 - a. Send a return letter requesting a valid authorization (**see form letters of explanation in appendix**).
 - b. Upon receipt of valid authorization, send a statement of costs for copying.
 - c. Upon receipt of payment, send copies of the authorized records to SAIF.

Reviews and Audits

ORS 179.505(4)(b) allows release of inmate medical records without prior authorization to persons engaged in scientific research, program evaluations, peer reviews, and fiscal audits, **provided that the identity of the inmates whose health records are released are not disclosed**. The decision to release records in this situation is left to the discretion of the Medical Services Manager and/or Medical Records Manager. Disclosure of identities may be made if the disclosure will benefit the inmate or the Department of Corrections, or where the disclosure is essential to the purposes of the requesting party. Contact Medical Records Manager if there is any doubt regarding the validity of a request for health records for these purposes.

Subpoenas and Court Orders

A. In General

ORS 179.495(1) prohibits the inspection of inmate health records except in the situations provided in the earlier sections of this procedure, or "upon the order of a court of competent jurisdiction."

Thus, Oregon courts and federal (U.S.) courts can require the Oregon Department of Corrections to release inmate health records without the inmate's signed authorization.

Court orders from other States cannot by themselves require the Oregon Department of Corrections to release inmate health records. A signed inmate authorization or Oregon/federal court order is required.

- B. ORS 135.139 allows a sentencing Oregon court to order an inmate convicted of an offense involving sexual contact to undergo AIDS/HIV testing. The order should include the name of the physician designated by the victim to receive the test results.

1. Court ordered AIDS/HIV test results will be released to the attending physician designated by the victim.
2. Release of court ordered test results to anyone other than the victim's physician or the Health Division (as a Communicable Disease report) is a Class C misdemeanor.
3. Court orders from other states for AIDS/HIV testing, or release of test results, are not enforceable in Oregon. The inmate's authorization or an order from an Oregon or federal court is required.
4. If the court order does not specify a treating physician for receiving the test results, contact the court issuing the order to request the information.

C. Subpoenas

1. A subpoena is a command for a person to appear in court. A subpoena duces tecum is a command for a person to appear in court and bring requested items of evidence with them. If you are served with a subpoena that commands you to appear in court, you must be ready to appear in court. If the subpoena is not "duces tecum" you are not required to bring any requested items of evidence with you.
2. When served with a subpoena for inmate health records, check to make sure that it is a subpoena "duces tecum".
3. Note the date of the court hearing. If the hearing date is less than seven days away, contact Medical Records Manager right away to discuss further action, such as contacting the Department of Justice for advice, or the need to obtain reasonable costs for copying.
4. Locate the records requested. If the request is very broad, contact the attorney listed on the subpoena as requesting the records to explain the problem and ask whether specific records would be enough to satisfy the request. Take notes of the conversation for future reference.

5. If a signed court order or completed, signed authorization by inmate is not included with the subpoena, contact the attorney and explain that ORS 179.495 requires a court order or signed authorization by inmate before releasing inmate health records.
6. **Be ready to comply with the subpoena duces tecum on the required date** (even if no signed court order has been received yet). If the date of the hearing is less than seven days away and you have not received the signed court order, contact Medical Records Manager immediately.
7. When you receive the signed court order, provide the records **to the court. Do not provide the records to the attorney's office, or any other requested location, until directed by the Attorney General's office. If the court order indicates a location other than the court for delivery of the records, contact Medical Records Manager immediately.**

Effective Date: _____
Review date: August 2014
Supersedes P&P dated: March 2012

333-018-0015

What Is to Be Reported and When

(1) Health Care Providers shall report all cases or suspected cases of the diseases, infections, microorganisms, and conditions specified below. The timing of Health Care Provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When Local Public Health Authorities cannot be reached within the specified time limits, reports shall be made directly to DHS, which shall maintain an around-the-clock public health consultation service.

(3) Licensed Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); *Severe Acute Respiratory Syndrome (SARS)* and infection by SARS-coronavirus; *Yersinia pestis* (plague); intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source Outbreaks; any Uncommon Illness of Potential Public Health Significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); measles (rubeola); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Pesticide Poisoning; poliomyelitis; rabies (human or animal); rubella; *Vibrio* (all species).

(c) Within one Local Public Health Authority working day: *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); *Campylobacter* (campylobacteriosis); *Chlamydia psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydiosis; lymphogranuloma venereum); *Clostridium tetani* (tetanus); *Coxiella burnetii* (Q fever); *Creutzfeldt-Jacob* disease and other transmissible spongiform encephalopathies; *Cryptosporidium* (cryptosporidiosis); *Cyclospora cayatanensis* (cyclosporidiosis); *Escherichia coli* (Shiga-toxigenic, including *E. coli* O157 and other serogroups); *Francisella tularensis* (tularemia); *Giardia* (giardiasis);

Haemophilus ducreyi (chancroid); *hantavirus*; *hepatitis A*; *hepatitis B* (acute or chronic infection); *hepatitis C* (acute infection only); *hepatitis D* (delta); *HIV infection* (does not apply to anonymous testing) and AIDS; *Legionella* (legionellosis); *Leptospira* (leptospirosis); *Listeria monocytogenes* (listeriosis); *mumps*; *Mycobacterium tuberculosis* and *M. bovis* (tuberculosis); *Neisseria gonorrhoeae* (gonococcal infections); *pelvic inflammatory disease* (acute, non-gonococcal); *Plasmodium* (malaria); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (salmonellosis, including typhoid); *Shigella* (shigellosis); *Taenia solium* (including cysticercosis and undifferentiated *Taenia* infections); *Treponema pallidum* (syphilis); *Trichinella* (trichinosis); *Yersinia* (other than pestis); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, yellow fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); human bites by any other mammal; hemolytic uremic syndrome.

(d) Within 7 days: suspected Lead Poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

(5) Licensed laboratories shall report, within seven days, the results of all tests of CD4+ T-lymphocyte absolute counts and the percent of total lymphocytes that are CD4 positive, and HIV nucleic acid (viral load) tests.

Stat. Auth.: ORS 433.004, ORS 433.006.

Stats. Implemented: ORS 431.110, 432.060, 433.001, 433.004, 433.006, 433.012, 433.110, 433.019, 433.130, 437.010 – 437.990, 616.745 & 624.080.

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2006, f. & cert. ef. 4-17-06; PH 13-2006 (Temp), f. 6-27-06, cert. ef. 7-1-06 thru 12-27-06; PH 19-2006, f. & cert. ef. 9-13-06; PH 11-2007 (Temp), f. & cert. ef. 8-22-07 thru 2-18-081; PH 13-2007, f. & cert. ef. 11-7-07

INMATE REVIEW OF HEALTH CARE RECORDS

An inmate may request to purchase their health care records. Health care record reviews will not be scheduled.

Reference: OAR 291-037-0020
Letters from Oregon Department of Justice dated 3/14/02 and 7/19/83 attached

Procedure:

- A. An inmate may request in writing to purchase all or parts of their health care record through the department's kyte system along with a signed inmate withdrawal form (CD28).
- B. Upon receiving a request, an inmate will be given the copies of the health care record except for the hard copy of the HIV results.
- C. A Patient Purchase - Debt form (CD1091H) will be filled out and sent to Central Trust along with the signed CD28. If the inmate is indigent, copies will be provided once and the inmate's account indebted for the cost of the copies.
- D. An authorization form will be completed as well as the 1091 and CD28 (see **Inmate Authorizations**).
- E. If the inmate wants to discuss the information in the health care record, the inmate must kyte their provider for an appointment.
- F. If the inmate wants to discuss or review information contained in the Mental Health section of the health care record, the inmate must kyte Mental Health.

Jun. 30. 2005 9:45AM
App-80-2005 U1:01 PM

9:45AM

CoffeeCreek Correctional Fac

Attachment 3
P&P P-H-02

06/00ep. 1888

MARDY MYERS
ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

168 Court Street NE
Justice Building
Salem, Oregon 97301-0566
Telephone: (503) 378-1400
TTY: (503) 378-9933

March 14, 2002

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

Charles Williams, SID #3851427
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

Re: Public Records Disclosure and Fee Waiver Orders:
Oregon Department of Corrections Records

Dear Mr. Williams:

This letter is the Attorney General's order on your petition for disclosure of records and for a partial fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 8, 2002, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to: (1) provide you with copies all blood test results maintained by ODOC pertaining to you from 1973 through 1996; (2) grant you a partial fee waiver for the copies of blood test results provided to you; and (3) permit you to inspect the medical file pertaining to you at the Eastern Oregon Correctional Institution (EOCI). For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.430. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. See ORS 192.450(1).

ORS 192.430 authorizes public bodies to adopt reasonable rules necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. The Public Records Law also permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available, including the time spent by agency staff in locating the requested records and reviewing them for exempt material. See ORS 192.440(3); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG MANUAL) (2001) at 13. ODOC has adopted such a rule, which provides for charges for copying and staff time. OAR 291-037-0020.

Charles Williams
March 14, 2002
Page 2

1. ODOC Blood Test Records

This is your second petition seeking a public records disclosure order from the Attorney General relating to records of blood test results maintained by ODOC. In your current petition you state that EOCI Health Services staff have provided you with copies of some, but not all, of the blood test results that ODOC maintains in its files pertaining to you. More specifically, your petition states that you have received copies of blood test results from the years 1997 to January, 2002, but that you have not been provided with any test results from prior years even though you have been incarcerated in the state's prison system since 1973.

We have spoken with Barbara McLean, Health Services Manager at EOCI, regarding your petition. Regarding what EOCI Nurse Manager Debra Gardner told us in February, in connection with your previous petition, Ms. McLean states that the Health Services staff at EOCI has provided you copies of all blood test results from medical files maintained at EOCI. Ms. McLean also tells us that, since the filing of your current petition, she caused a search to be conducted of ODOC's archived records pertaining to your prior state incarceration(s). As a result of that search, ODOC has provided you an additional 9 pages of blood test results from 1982, photocopied from microfiche. According to Ms. McLean, ODOC has provided you copies of all the blood test results pertaining to you that it maintains. Because ODOC has provided you with copies of the requested records, we deny your petition to order their disclosure as moot.

2. Reduction of Fees

Your petition states that you requested EOCI Health Services staff to reduce its \$1.25 per page fee for making copies of the requested ODOC blood test records available to you, but that your request was denied.¹ According to Ms. McLean, ODOC provided the blood test records to you without first requiring that you prepay ODOC's fees. However, Ms. McLean says that, in accordance with OAR 291-037-0020(3)(a)(B) and (5), ODOC charges your inmate trust account to recover the fees, at the rate of \$1.25 per page, if and when funds in the account become available in an amount that corresponds to the number of copies provided.

The Public Records Law authorizes a public body to waive or reduce fees if the public body "determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4). The "public interest standard" requires an analysis of whether disclosure of the records would benefit the public, and not merely the private interests of the requestor. Because the proper focus must be on the benefit to the public, a personal benefit to be derived by the requestor alone is insufficient cause for a fee waiver or reduction. See AG MANUAL at 16-17. According to Ms. McLean, you made no representation or showing to EOCI Health Services staff that the disclosure to you of the requested information serves any purpose other than your private interests. Neither does your

¹ Your petition states that fees established at the rate of \$1.25 per page are "unreasonable." The Public Records Law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" of making records available. ORS 192.440(3). However, the Public Records Law does not authorize a person to petition the Attorney General to review the fees established by a state agency and, likewise, does not authorize the Attorney General to determine whether such fees represent the agency's actual cost. See AG's MANUAL at 14-15.

Charles Williams
March 14, 2002
Page 3

petition state a benefit to the public of ODOC's disclosure of the requested records to you. Therefore, we conclude that the ODOC's denial of your request for a partial fee waiver was not unreasonable. ORS 192.440(5). Accordingly, we deny your petition that we order ODOC to grant you a fee reduction in this instance.

3. Inspection of EOCL's Health Services File

The last issue you raise in your petition is directed at the refusal of EOCL Health Services staff to permit you to inspect its original medical file pertaining to you in its offices at EOCL. Ms. McLean states that, because of space and staffing constraints and in order to preserve the integrity of the original records, it is the policy and practice at EOCL to furnish inmates making public records requests with copies of records, for a fee, in lieu of allowing inspection of original records.

Pursuant to ORS 192.430, ODOC has promulgated an administrative rule providing that "[p]roper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as the circumstances warrant." OAR 291-37-0020(7). ODOC has determined that, for a fee, it will provide copies of records to ODOC inmates in response to requests made under the Public Records Law, in lieu of allowing inspection of original records. We have previously concluded that ODOC's decision to furnish copies to ODOC inmates, in lieu of allowing inspection of original documents, is valid. See Public Records Order, July 19, 1982, *Baucum* (copy enclosed for your convenience); see also Public Records Order, October 30, 2001, *Remair*. Accordingly, we deny your petition that we order ODOC to allow inspection of original records.

Sincerely,

Peter D. Shepherd
PETER D. SHEPHERD
Deputy Attorney General

AG309770
Enclosure
cc: Barbara McLean, Health Services Manager, EOCL



Attachment 4
P&P P-H-02

DEPARTMENT OF JUSTICE

100 State Office Building
Salem, Oregon 97310
Telephone: (360) 578-4400

July 19, 1982

John Baucom
P.O. Box 1363 (PSN #211)
Portland, Oregon 97310

Re: Public Records Inspection
Request

Dear Mr. Baucom:

This constitutes the order of the Attorney General in response to your public records petition filed under ORS 192.4450. You have requested an order to the Corrections Division to permit you to inspect:

- "(1) The complete file or files compiled by the Corrections Division in connection with my incarceration and parole.
- (2) Any documents added to such file or files subsequent to my release from parole."

You were informed that you "could not inspect the records in question but would have to purchase copies at 50 cents per page."

ORS 192.450(1) provides that:

"... any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection."
(Emphasis supplied).

ORS 192.420 grants you a right to "inspect" non-exempt material in the files. ORS 192.420 provides, in part:

"The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties."



Oregon

John A. Kitzhaber, M.D., Governor

Attachment 5
P&P P-H-02

Department of Corrections
Health Services
2575 Center Street NE
Salem, OR 97301-4667
(503) 378-5593
FAX (503) 378-5597



Memorandum

To: ODOC Health Service Staff

From: Steven Shelton, MD, Medical Director

Date: 1/22/2003

Re: Obtaining medical records concerning patients we have sent to a consultant
or hospital

I know that occasionally some of the consultants and hospitals that we refer our patients to have concerns about how HIPAA affects their ability to return valuable medical information to us, the patients regular health care providers. This is often an area of some confusion especially since the HIPAA regulations make exceptions that apply to Corrections. I have copied this page from the most recent version of the Federal Government HIPAA publication that speaks directly to sharing of information concerning incarcerated individuals. I hope that this may be useful in discussions with your local medical records providers whenever concern arises.

service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) *Correctional institutions and other law enforcement custodial situations.*

(i) *Permitted disclosures.* A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

(E) Law enforcement on the premises of the correctional institution; and

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) *Permitted uses.* A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) *No application after release.* For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) *Covered entities that are government programs providing public benefits.*

(i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government

agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

(i) *Standard: disclosures for workers' compensation.* A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

(a) *Standard: de-identification of protected health information.* Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.

(b) *Implementation specifications: requirements for de-identification of protected health information.* A covered entity may determine that health information is not individually identifiable health information only if:

(1) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(i) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(ii) Documents the methods and results of the analysis that justify such determination; or

(2)(i) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their

equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

(P) Biometric identifiers, including finger and voice prints;

(Q) Full face photographic images and any comparable images; and

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

(ii) The covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

(c) *Implementation specifications: re-identification.* A covered entity may assign a code or other means of record identification to allow information de-identified under this section to be re-identified by the covered entity, provided that:

(1) *Derivation.* The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and

(2) *Security.* The covered entity does not use or disclose the code or other means of

HEALTH SERVICES INFORMATION DISCLOSURE

Information obtained within the patient/provider relationship, as well as information contained in a patient's health care record is confidential and may not be released except as provided by state and federal statute, or by order of Oregon or Federal Court. Information given to Health Services medical and mental health providers is confidential and not shared with anyone outside of Health Services without written consent with the following exceptions:

Non-Health services staff may be given the patient's name, services recommended or provided, provider's name, dates of treatment, and a brief comment about extent of participation. Treatment providers may also make recommendations to non-Health Services staff about ways to help patients with medical or mental health problems without giving details of diagnosis or medication prescribed.

Non-Health services staff may be given some health information (e.g. diagnosis, symptoms of decompensation, risk factors, etc.) if:

- they are currently acting within the official scope of their duties to develop or evaluate treatment strategies and plans;
- they are involved in developing correctional plans, medical treatment plans, risk or behavior management plans or suicide and crisis prevention plans as members (e.g. designated correctional counselors, mental health housing officers, etc.) of a multidisciplinary team, treatment team, committee, or other official;
- they are involved in release planning; or
- disclosure is necessary for the safety and security of the institution.

Some information obtained in a provider-patient relationship is not confidential and will be reported to non-Health Services staff and/or other agency personnel as needed even without written consent of the patient. According to State and Federal laws, this includes knowledge of:

- danger to self or others;
- abuse of a child under 18 years of age, abuse of an adult 65 years of age or older, or abuse of individuals who meet the legal requirement of developmentally disabled or mentally ill, and a specified victim can be identified;
- staff physical or sexual abuse of inmates;
- escape plans or attempts;
- sexual abuse of or by another inmate.

Confidentiality will not apply to information when it poses an immediate threat to the health and safety of self, other inmates, staff, or to the community. Reports will be limited to what is necessary to maintain safety and stay within legal parameters.

My signature below indicates I understand the confidentiality policy and practices used by HS treatment providers.

Inmate Comments:

Inmate Name: _____
SID #: _____
DOB: _____

Inmate Signature _____

Date _____

Staff Witness Signature _____

Date _____