

# **INVESTIGATIVE REPORT**

## *Finding and Closure -- Public Version*

*(The name of the complainant has been changed in this public report to protect her privacy.)*

Alaska Ombudsman Complaint J2000-0386

May 10, 2001

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### **SUMMARY OF THE COMPLAINT**

Jane Green (not her real name) underwent medical treatment that culminated in major surgery. Ms. Green came to believe that her physician had negligently misdiagnosed her condition. She alleged that he failed to read the reports of other physicians and misread her medical charts. She also believed her surgery might have been avoided or delayed had her physician provided an early diagnosis and appropriate treatment.

She contacted the State of Alaska Medical Board in the fall of 2000 to file a complaint about the way the physician handled her diagnosis and treatment. She further alleged that the physician improperly disclosed confidential medical information about her during a public meeting at which she testified about hospital issues.

Investigators with the Division of Occupational Licensing (Licensing) responded to Ms. Green's complaint by sending her a records release form. Ms. Green objected to the form because she thought it went far beyond the medical records that would be necessary to investigate her complaint. She spoke with Colin Matthews of Licensing, who investigates complaints for the Medical Board. After her discussion with Mr. Matthews, Ms. Green contacted the Office of the Ombudsman in mid-October 2000 to complain about the records release form.

The ombudsman opened an investigation into the following allegation:

***The Division of Occupational Licensing uses a release of information form for Medical Board***

***complaints that is unreasonably intrusive and discouraged the complainant from filing a complaint with the Medical Board.***

Assistant Ombudsman Mark Kissel investigated the allegation. He gave verbal notice of investigation to Mr. Matthews on November 11, 2000.

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**BACKGROUND**

The state Medical Board consists of seven members appointed by the governor and confirmed by the legislature. Licensing provides the board with administrative support, including an executive administrator, licensing examiner, part-time clerk, and two investigators from Licensing's investigations unit. The investigators provide two important services to the board: (1) they review applications of persons applying to be licensed by the Medical Board, and (2) they receive and investigate complaints against licensees governed by the board.

The board adopts regulations to carry out the laws governing the practice of medicine in Alaska. It makes final licensing decisions and takes disciplinary action against practitioners who violate the licensing laws. The board meets four times a year. It regulates five medical professions: osteopaths, paramedics, physicians, physician assistants, and podiatrists.

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**INVESTIGATION**

***Alaska's Release Form***

Ms. Green provided to the ombudsman investigator a copy of the release form she received from Licensing. Minus the signature, identification, and date blanks, the form reads as follows:

I, \_\_\_\_\_, residing at \_\_\_\_\_ hereby authorize the Alaska Division of Occupational Licensing to examine all medical/dental/pharmacy records, employment and education records, and any records pertaining to litigation, judgements, suits, and/or settlements, and any law enforcement records pertaining to me and discuss them with persons having possession of them. I expressly permit, and authorize the release of any and all requested records created before the date of my signature and all records created within one (1) year



following the date of my signature to the Alaska Division of Occupational Licensing and its investigators.

I authorize the Division to discuss my records with persons or organizations, which are, considered appropriate by the Division in connection with an official investigation and to provide copies of my records to those persons or organizations deemed appropriate by the Division.

This release also applies to any documents or records which contain information pertaining to psychiatric or psychological evaluation, drug or alcohol evaluation, diagnosis or treatment received by me and which were prepared or made in conjunction with, or under the authority or guidance of any local, state, or federal law which relates to psychiatric, drug or alcohol evaluation, diagnosis or treatment, including all information previously identified, collected, or stored under the authority of any state or federal law, including 42 CFR Part 2.

I request that upon presentation of this release, or a photocopy reproduction of this release, that you provide copies of those records to the Division and/or its investigators, and/or representatives of the Office of the Attorney General of the State of Alaska.

I understand that I have the right to revoke this release/disclosure authorization at any time except to the extent that the party disclosing records has already acted in reliance on it. This release is given in connection with an official Division investigation.

The Licensing investigations unit provided to the ombudsman investigator a copy of the release that is nearly identical to the one Ms. Green provided. At the bottom of the form provided by the agency is a blank for "Signature of Complainant/Applicant." At the bottom of the form provided by Ms. Green is a blank for "Signature of Applicant." The form provided by Licensing includes "psychological" in the first sentence of the form in the phrase "all medical/dental/pharmacy records." Otherwise, the forms are identical.

According to the Medical Board's executive administrator, Leslie Abel, the board does not design or approve the forms used by

Licensing investigators. These forms are designed and used within the investigations unit.

***Interviews with the Complainant***

Ms. Green said the release form Licensing sent to her made her feel “like a criminal instead of a victim.”

“It asks the victim to release information that has absolutely nothing to do with the situation,” she said. “When a person complains about a doctor’s behavior or a bad diagnosis or whatever, what does the patient’s education level have to do with anything?”

“I need to file a complaint about a doctor,” she said, “but I absolutely refuse to sign a release that allows the state Medical Board to check into every nook and cranny of my life. None of that has a thing to do with the fact that a doctor did not correctly diagnose my disease.”

Ms. Green said she spoke by phone with Colin Matthews, senior investigator for Licensing. Mr. Matthews is assigned to Medical Board investigations. She said Mr. Matthews urged her to sign the form because investigators needed to determine whether she had a “personal vendetta” against this doctor. She said he indicated Licensing would not or could not investigate unless she signed.

Ms. Green said her health is not good, and she has suffered stress from her dealings with Licensing. She said she decided not to press her complaint against the physician after she and Mr. Matthews “reached an impasse.” According to Ms. Green, Mr. Matthews told her he would not “debate the contents of the form.” She said she lost confidence that the agency would look at her complaint objectively, even after Mr. Matthews told her she could cross out sections of the release form to which she objected.

In an e-mail message to the ombudsman investigator, Ms. Green wrote:

I was not trying to sue, get money or anything else. There is no need for [Licensing] to have anything other than what I have already sent to them, which was several pages of my medical record from the [clinic] and my reasons for sending them. Those pages of my medical record prove my point adequately and anything else would be superfluous and none of their business anyway. My medical records from other doctors have no bearing on my problem with [this doctor’s] medical treatment of my heart disease or the fact that he did not



peruse my chart before entering the examination room. I'm angry that he passed off my angina as a panic attack every time I saw him about it up to and including the last time that I saw him at the clinic. I don't know exactly what it is that I want except what I can't have-- my health back.

***Interviews with the Senior Investigator***

Colin Matthews said he has been an investigator for the Medical Board for 13 years. He said he wrote the release form that Ms. Green found objectionable. He said this form, or one similar to it, has been used in Medical Board investigations for 10 years. He said Ms. Green is "maybe the third person" to complain about it.

In most cases, he said, he does not need all the information cited in the form. Sometimes, however, all the information is necessary, he said. Mr. Matthews said it is helpful to know whether the complainant has substance abuse problems or a history of suing physicians. Even if these appear, however, "it doesn't mean the complaint is invalid," he said.

Mr. Matthews clarified that in an e-mail to the ombudsman investigator:

The forms are regularly used by the Medical Board for applicants, licensees, and complainants, and the Assistant Attorney Generals over the years have regularly dealt with the releases we have, and do use, and they have passed muster. The Medical Board feels it is appropriate to use a release that will allow us to obtain the information necessary to determine if an applicant is suitable for licensure in the state. As we discussed yesterday, there may be some parts of the release which do not apply to complainant, such as the education part, but other records may have some impact on the validity of the complaint.

As stated above, a complainants education may not impact on the complaint, but it might, for instance if a health worker is complaining and providing information, that person's training and knowledge might very well add credibility to the complaint at the time the complaint is made, or at some future administrative proceeding.

Mr. Matthews said he understands how a complainant could get the wrong impression or be put off by the release form.

He said the form requires the signature of “Complainant/Applicant” because it is used as a release both for persons complaining about physicians and for physicians applying for Alaska licenses. The form serves a dual purpose, he said. Ms. Green’s form had a signature blank for “Applicant” alone. The form Ms. Green received was an older version, he said, although the differences between the versions were slight.

Mr. Matthews said Ms. Green could cross out the portions of the form that bothered her, and the Licensing investigation could proceed. That option is not mentioned on the form. He said he offered this solution to Ms. Green when they spoke, but she declined.

### ***Release Forms from Other States***

The ombudsman investigator obtained release forms used by medical board investigators in three other western states: California, Oregon, and Washington.

#### California’s Release

The Medical Board of California uses a form titled “Authorization for Release of Medical, Psychiatric, Alcohol or Drug Abuse Patient Records.” The form has blanks for the complainant to enter the names of specific physicians and medical facilities authorized to release information. Those listed are authorized to “disclose records in the course of my diagnosis and treatment, including medical, psychiatric, alcohol and drug abuse records.”

#### Oregon’s Release

The Oregon Board of Medical Examiners provided two release forms to the ombudsman investigator. Both forms are titled “Authorization to Disclose Medical Records” and are nearly identical. For simplicity, they will be addressed here as if they were one form.

On the Oregon form, the complainant can authorize for release specific types of medical records by initialing a list of 18 record categories. The list includes “all hospital records,” “clinician office chart notes,” “laboratory reports,” “pathology reports,” “physical therapy records,” and “billing records,” among others. Further, the complainant can limit the authorization to a specified treatment, time, or workers’ compensation claim.

#### Washington’s Release

The form used by the Washington Department of Health, Division of Professional Licenses, Medical Investigations Unit, is titled “Authorization to Release Confidential Records and Information.”



This form has blanks for the complainant to list those persons or facilities authorized to disclose confidential information to the Medical Investigations Unit concerning the complainant's "condition and course of treatment." The form describes the information:

Such information may include, but is not limited to the following: History; Physical Examination; Evaluation; Diagnosis; Report of Diagnostic procedure findings, including HIV test results; Treatment; Prognosis; Consultation reports; Operative reports; Drug and/or Alcohol treatment records; Psychiatric and Psychological evaluations; Progress and Nursing notes; Summaries of care and all information relating to confidential communications made during course of treatment.

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## **ANALYSIS & FINDING**

### ***Standards***

Ms. Green alleges that Licensing's use of its release form was unreasonable. The Office of the Ombudsman Policies and Procedures manual defines "unreasonable" at 4040(2). The portion of the definition that applies to this investigation reads as follows:

(A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program.

### ***Analysis & Finding***

One can easily understand why investigators of complaints against health professionals would need access to medical records. The "medical/psychological/dental/pharmacy records" described in Alaska's release of information form, although broadly stated, are those one would reasonably require in such an investigation, as are records describing drug and alcohol use. Less understandable is why investigators would need a complainant's "employment and education records, and any records pertaining to litigation, judgements, suits, and/or settlements, and any law enforcement record."

Colin Matthews, Licensing's senior investigator for the Medical Board, explained why records other than medical records are included in the release form. He said it is helpful to know whether a complainant has a history of suing physicians, but he also said that such history does not mean that the current complaint is invalid. He said some parts of the release "[may] not apply to complainants." As

an example, he cited education records, but then offered that education records may be significant if the complaint were filed by another health professional. He said in most cases he does not need all the information cited in the form.

A survey of three other West Coast states showed none requesting on their release forms anything other than medical, psychiatric, drug, and alcohol records. It is difficult to believe that California, Oregon, and Washington can conduct investigations with narrow and limited release authorization, while Alaska cannot.

Mr. Matthews said he understands how a complainant could get the wrong impression or be put off by the release form. In this case, Ms. Green was so offended by the release form that she decided not to press her complaint against a physician she believed had harmed her. She said the Alaska release form made her feel “like a criminal.” She got the impression that Licensing would begin its investigation of her complaint by investigating her. As a result, she no longer trusted the Medical Board investigation process.

Mr. Matthews said that Ms. Green’s objection to the form was only the third time in 10 years that anyone had complained about it. One cannot say, however, how many other persons were offended by the scope of the requested release of information and, like Ms. Green, decided not to pursue a complaint. Regardless of whether a complainant can cross out sections of the complaint form and still proceed, as Mr. Matthews suggested, the form by itself can set a tone of mistrust by requesting non-medical personal information. Nowhere does Alaska’s form indicate that complainants have the option of crossing out objectionable elements.

The purpose of the form is to allow Licensing investigators to gather the information necessary to conduct an investigation. The ombudsman defines “unreasonable” as a procedure adopted and followed by an agency that is inconsistent with, or fails to achieve, its purpose. The Alaska release form is unnecessarily broad to the extent that some persons have complained about it, and at least one person decided not to file a complaint. This result is inconsistent with the purpose of the form and the mission of the investigations unit. Consequently, the ombudsman found the allegation *justified*.

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## **RECOMMENDATIONS**

According to Mr. Matthews and Ms. Abel, the Alaska release form



serves a dual purpose. This one release form is used with persons complaining about physicians and with physicians seeking to be licensed to practice in Alaska. These purposes are incongruent. Physicians occupy a position of trust in relation to their patients. It is wise to know, therefore, whether a physician has appropriate education, a history of malpractice complaints, or a criminal record.

A complainant, on the other hand, offers a statement that must stand or fall on the facts uncovered through investigation. The education and legal history of the person making the complaint is largely irrelevant and can be obtained, if necessary, by investigators during the investigation.

The types of questions appropriate for these two purposes are different. It does not make good sense to combine disparate information needs in one release of information form, especially when, as Mr. Matthews conceded, complainants may be put off by it.

As a result of this investigation, the ombudsman forwarded to the agency two recommendations:

***(1) Licensing should develop a new release form for use with persons who complain about licensees regulated by the Medical Board. In developing the form, Licensing should omit requests for information not directly related to medical, psychiatric, drug, and alcohol evaluation, diagnosis, treatment, and billing. Licensing should use as models the release forms of other states. Licensing should have its new form reviewed by the Attorney General.***

***(2) Licensing should send a copy of the new release form to Ms. Green, along with a letter inviting her to sign it and file her complaint.***

#### ***Agency Response***

Gary Veres, chief investigator for the Division of Occupational Licensing, said that his agency agreed with the finding and would carry out the ombudsman's recommendations. The ombudsman, therefore, closed Ms. Green's complaint as ***justified*** and ***rectified***.