

VOLUME NO. 44

OPINION NO. 37

HEALTH - Disclosure of health care information concerning subject of HIV-related test;

HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - Disclosure of health care information concerning subject of HIV-related test;

MONTANA CODE ANNOTATED - Title 50, chapter 16, part 5; sections 50-16-501 to 50-16-553, 50-16-504(6), 50-16-529(9), 50-16-1001 to 50-16-1013, 50-16-1002, 50-16-1003, 50-16-1009(1), (3).

HELD: A health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact as defined by section 50-16-1003, MCA, without the subject's authorization, only when the health care provider "reasonably believes" that that disclosure will avoid or

minimize an imminent danger to the health or safety of the contact or another individual.

August 18, 1992

James C. Nelson
Glacier County Attorney
P.O. Box 428
Cut Bank MT 59427-0428

Dear Mr. Nelson:

You have requested my opinion concerning the following question:

What type of information may a health care provider release to a contact about a subject of an HIV-related test, without the subject's authorization?

Your question concerns the apparent conflict in the statutes about the type of information a health care provider may disclose to a contact of the subject of an HIV-related test without the subject's authorization. Specifically, the conflict appears to occur between section 50-16-529(9), MCA, of the Uniform Health Care Information Act and section 50-16-1009(3), MCA, of the AIDS Prevention Act. Section 50-16-529(9), MCA, suggests that a health care provider may, under certain conditions, disclose the identity of the subject of an HIV-related test, whereas under section 50-16-1009(3), MCA, a health care provider may notify contacts about the possibility of exposure to HIV under certain circumstances, but is not authorized to disclose the identity of the subject. The apparent conflict, however, is eliminated by the specific incorporation of section 50-16-529(9), MCA, by subsection (1) of section 50-16-1009, MCA, which provides that a subject's identity may be disclosed to the extent allowed under the Uniform Health Care Information Act, Tit. 50, ch. 16, pt. 5, MCA.

These two acts, the Uniform Health Care Information Act ("the Information Act") and the AIDS Prevention Act ("the Prevention Act"), focus on different subjects. The Legislature enacted the Information Act, §§ 50-16-501 to 553, MCA, in 1987. The Information Act addresses the confidentiality of a person's health care information, but also recognizes that under certain conditions the information may be disclosed. Under the Information Act, "health care information" is defined as "any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information." § 50-16-504(6), MCA. Section 50-16-529 of the Information Act addresses under what circumstances a health care provider may disclose health care information *without* a patient's authorization. During the 1991 legislative session, the Legislature amended this section by inserting subsection (9) as follows:

A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient *needs* to know the information, if the disclosure is:

....

(9) to any contact, as defined in 50-16-1003, if the health care provider *reasonably believes* that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual. [Emphasis added.]

§ 50-16-529(9), MCA.

The disclosure under section 50-16-529, MCA, is based upon a recipient's need to know. When enacting subsection (9) the Legislature specifically stated: "This language is based on the need to know. If the health care provider reasonably believes that disclosure will avoid or minimize an eminent [sic] danger to health or safety of the contact or another individual [sic]. This allows for the disclosure of results without the patients [sic] authorization." Minutes of Senate Public Health, Welfare & Safety Committee hearing on H.B. 917, Mar. 20, 1991, at 6 (statement by Rep. Howard Toole). Thus, under the Information Act, before a health care provider may disclose health care information about a person, which includes the person's identity, the health care provider must "reasonably believe" that disclosure will avoid or minimize an imminent danger to the health or safety of another person. It should be noted though, that this language allows disclosure of this information to a contact only, as defined by section 50-16-1003(2), MCA, and not a potential contact. Further, this information does not compel a health care provider to release the subject's identity. Rather, a health care provider must determine what information a contact *needs* to know, and in the majority of situations it would seem that a contact does not need to know the identity of the subject, but only that he or she has been exposed to the HIV virus. Thus, many circumstances may exist when a health care provider does not need to include disclosure of a subject's identity in order to avoid or minimize an imminent danger to the health or safety of another person.

The Prevention Act, §§ 50-16-1001 to 1013, MCA, was enacted in 1989 to help in preventing the transmission of the HIV virus by educating those who are infected or are at risk through testing and counseling. § 50-16-1002(1), MCA. Section 50-16-1009, MCA, of the Prevention Act addresses the confidentiality of records, notification of contacts and penalties for unlawful disclosures. In 1991, the Legislature amended this act by inserting subsections (2) and (4). Subsection (2) addresses when a governmental official may disclose a patient's identity under the Government Health Care Information Act, and subsection (4) addresses the penalties for a person who unlawfully discloses confidential health care information. The Legislature also slightly modified subsections (1) and (3), the subsections that pertain to your question. These subsections provide:

(1) *Except as provided in subsection (2)*, a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

....

(3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons *who are potential contacts*. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test. [Emphasis indicates the 1991 amendments.]

§ 50-16-1009(1), (3), MCA. "Contact" means

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

§ 50-16-1003(2), MCA.

After reviewing both of these acts, I conclude that under section 50-16-1009(3), MCA, a health care provider shall encourage the subject to notify persons who are potential contacts or, if the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identity of each contact and to authorize that he or she be notified. The notification may only state that the contact may have been exposed to HIV, and the health care provider may not expose the identity of the subject of the HIV-related test. However, if the specific requirements of section 50-16-529(9), MCA, are met, i.e., if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or another individual, then the health care provider may release health care information, including the identity of the subject to a contact. § 50-16-1009(1), MCA.

THEREFORE, IT IS MY OPINION:

A health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact as defined by section 50-16-1003, MCA, without the subject's authorization, only when the health care provider "reasonably believes" that that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or another individual.

Sincerely,

MARC RACICOT
Attorney General