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Health, State Board of--
State Departments and
Agencies-- Rules and
Regulations-- Diseases

State Board of Health
may require by rule that
health care workers
infected with HIV or
Hepatitis B cooperate in
Health Department
investigations, and that
others with relevant
records cooperate in
investigations of HIV
infections.

Dear Dr. Fox:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Does the statutory authority contained
in Code of Ala. (1975), Sections 22-11A-7 and
22-11A-13, provide the Board of Health with
the authority to require the following
individuals to make available to the
Department of Public Health all records
requested by the Department and to cooperate
fully with the Department in any relevant
investigation: any health care worker
reported as infected with HIV infection or Hepatitis B virus infection, any person having knowledge of an HIV-infected health care worker, any person serving as the guardian of or the conservator, etc., administrator or executor of the estate of any HIV-infected health care worker, or any person serving as the custodian of records of the patients of any HIV-infected health care worker or facility employing such health care worker?

FACTS AND ANALYSIS

On August 21, 1991, the State Board of Health adopted an emergency rule and at the same time promulgated for public comment an identical proposed permanent rule containing the above requirements. Alabama's Notifiable Disease Act, Acts 1987, No. 87-574, codified in Code of Ala. (1975), Sections 22-11A-1, et seg., provides the State Board of Health and the State Health Officer with broad authority to investigate outbreaks of notifiable diseases and to take measures to control the spread of the same. Section 22-11A-7 requires any person having a notifiable disease to obey the instructions or directions communicated to him by, among others, the State Board of Health and the State Health Officer or his designee, when those instructions or directions are given for the purpose of preventing the spread of the notifiable disease. Section 22-11A-13 conveys to the Board of Health authority to "promulgate rules for the testing, reporting, investigation, and treatment of sexually transmitted diseases." (Emphasis added.)

Code of Ala. (1975), Section 22-11A-1 gives the State Board of Health the responsibility and authority to designate notifiable diseases, and Code of Ala. (1975), section 22-11A-13 gives the Board of Health the same powers with respect to sexually transmitted diseases. In October 1987, the Board of Health officially designated Hepatitis B virus infection and HIV infection as notifiable diseases and, at the same time, designated HIV infection as a sexually transmitted disease.

Persons infected with Hepatitis B virus and HIV are required, pursuant to Section 22-11A-7, to obey the directions and instructions of the State Board of Health and the State Health Officer to prevent the spread of Hepatitis B or HIV. Both the Hepatitis B virus and HIV are blood-borne and may be transmitted to noninfected individuals during surgical procedures and other invasive medical procedures. Therefore, prevention
spread of the disease may include efforts by the Board of Health, the State Health Officer, or other individuals acting under the direction of the State Health Officer to ascertain how long a health care worker has been infected, and whether the health care worker has performed procedures which pose a risk that others were infected during the period the health care worker has been infectious.

Because Hepatitis B virus infection or HIV infection may have been spread to patients of the health care worker who may not immediately be aware of their own infectious condition, control of the disease could include efforts by the Board of Health to notify patients of infected health care workers, to encourage those patients to undergo testing for the diseases, and to counsel and advise infected patients of methods to avoid transmission of the diseases to others. This would necessarily entail examination of medical records, employment records, and other records of infected health care workers, and interviews with the infected health care workers.

Code of Ala. (1975), Section 22-11A-38 specifically contemplates that it may be necessary for the Board of Health or the State Health Officer to breach confidentiality strictures and notify third parties that a particular individual has contracted an infectious disease "when exposure is indicated or [there is] a threat to the health and welfare of others." This Code section does, however, provide that confidentiality may only be breached pursuant to a rule adopted by the State Committee of Public Health. I conclude from this statutory scheme that it is permissible for the Health Department to conduct investigations of health care workers who have contracted notifiable diseases, even where those investigations may be designed to evaluate whether, when, and under what circumstances third parties should be notified of the infectious condition of a health care worker. Such investigations may permissibly go forward even absent a rule by the Board of Health authorizing notifications, but any breach of confidentiality must await the adoption of a rule.

A rule of the State Board of Health requiring health care workers infected with notifiable diseases, such as Hepatitis B virus infection and HIV infection, to disclose records as requested by the Department of Public Health, and to cooperate in investigations by the Department into possible spread of the disease, is therefore a valid extension of the authority of the State Board of Health and the State Health Officer to require individuals infected with a notifiable disease to obey instructions and directions designed to prevent spread of the disease.
Similarly, the authority of the Board of Health to write rules for controlling the spread of sexually transmitted diseases permits the Board to adopt a rule requiring those in possession of records of HIV-infected health care workers, and the records of patients they may have treated, to allow representatives of the Alabama Department of Public Health to examine those records and to otherwise cooperate in the investigation of the spread of HIV infection. Because Hepatitis B virus has not been designated as a sexually transmitted disease, a rule requiring the cooperation of individuals other than those infected with this disease could not be adopted. The rule adopted by the Board of Health properly makes this distinction.

CONCLUSION

Code of Ala. (1975), Sections 22-11A-7 and 22-11A-13 provide authority for the State Board of Health to require the production of the records of and cooperation by health care workers infected with Hepatitis B virus and HIV, and to require those with relevant records to produce such records and to cooperate with the investigations of possible infections caused by HIV-infected health care workers.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Jimmy Evans
Attorney General
By:

James R. Solomon, Jr.
Chief, Opinions Division

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