

N.D.A.G. Letter to Sinner (May 15, 1990)

May 15, 1990

Honorable George A. Sinner
Governor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Governor Sinner:

I have reviewed the documents you submitted to me concerning the Casselton Ambulance Service's concerns with communicable disease notification.

The Casselton Ambulance Service raises these concerns because Fargo area hospitals will not provide them with knowledge of a patient's disease. The Casselton Ambulance Service is particularly concerned with the human immunodeficiency virus (HIV) and wishes to obtain a list of HIV positive persons so that they may use more care when they perform rescue operations on these persons. Finally, the Service believes testing of patients who are involved in a significant exposure should be required.

The Fargo hospital's position is that existing statutes do not permit a physician to provide information to an emergency medical service provider unless the emergency medical service provider completes a significant exposure form requesting the information. Additionally, the hospitals assert the patient must consent to testing.

Both N.D.C.C. chs. 23-07.3 and 23-07.5 may, under certain circumstances, be used by the Ambulance Service to obtain the information they seek.

N.D.C.C. ch. 23-07.3 pertains to those situations when there has been a significant exposure to the ambulance personnel. When a significant exposure occurs, is documented and a test is performed either by consent of the patient, or because of the death of a patient, the ambulance personnel are entitled to obtain the results of that test. N.D.C.C. § 23-07.3-02.

N.D.C.C. ch. 23-07.5 also authorizes a physician in his discretion to release information concerning a patient's medical condition to "health care providers." N.D.C.C. § 23-07.5-05(1)(b). A "health care provider" is a person who is "licensed, certified, or otherwise authorized by the law of this state to provide health care services." N.D.C.C. § 23-07.5-01. Ambulance personnel fall within this definition and become a particular person's "health care provider" once they have provided emergency care to the person. At that point a physician may release information concerning an HIV subject's test results. It should be noted that N.D.C.C. ch. 23-07.5 applies only to testing for the human immunodeficiency virus and not to other communicable diseases. However, I note that

this disease is the one which causes the ambulance personnel the greatest concern.

The Service's other two concerns are that a list of HIV positive persons be published and available to them and that mandatory HIV testing be performed.

With regard to mandatory testing, the law specifically requires testing only under certain circumstances. Those circumstances are when a documented significant exposure has occurred and the patient dies before having an opportunity to consent to testing (N.D.C.C. § 23-07.3-02(3)); testing of inmates and convicted individuals who are either incarcerated for more than 15 days, convicted of a sexual offense, or convicted of an offense involving the use of a controlled substance when the offense in question involves the use of paraphernalia (N.D.C.C. § 23-07-07.5); and persons who are blood and tissue donors (N.D.C.C. ch. 23-07.5). Other than the exemptions listed, submission to testing for HIV is a choice of the patient.

Finally, I cannot find a provision which would allow release of a list of HIV positive individuals. Knowledge about a particular individual can be obtained by using either of the two procedures described above. I acknowledge this does not give an ambulance personnel prior knowledge of a person's condition. If the ambulance personnel believe such knowledge is essential to their work, it would be my advice to have them approach the Legislature for a procedure authorizing release of the information they seek.

I trust this discussion will be of help to you. If you have other questions concerning this issue, please contact me again.

Sincerely,

Nicholas J. Spaeth

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cc: Tim Weidrich, Health Department
Eileen Lawler, Health Department