Opinion No. 6638

October 20, 1989

HEALTH:

Confidentiality of information of serious communicable diseases of students received by public school employees

The confidentiality provisions of MCL 333.5131; MSA 14.15(5131), apply only to information relating to serious communicable diseases of students received by school employees from public health officers.

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You have requested my opinion on the following question:

Are the confidentiality provisions of subsection (1) of MCL 333.5131; MSA 14.15(5131), concerning information associated with the serious communicable diseases of students, applicable to disclosures of information by public school personnel of information received from persons other than public health officers?

This question arises because at times, school district personnel may receive information regarding the serious communicable diseases of students from students, their parents, or school employees. Violation of the confidentiality provisions of subsection (1) of MCL 333.5131; MSA 14.15(5131), is punishable by certain criminal and civil sanctions. Thus, public school personnel need to know whether the information obtained from students, parents, or employees is covered by MCL 333.5131; MSA 14.15(5131), which prohibits the disclosure of information concerning certain serious communicable diseases.

The Legislature enacted 1988 PA 488 to add Secs. 5131 and 5133 to the Public Health Code, MCL 333.5131 and 333.5133; MSA 14.15(5131) and 14.15(5133), to require written informed consent for HIV testing, counselling before and after the testing, the performance of HIV testing, the confidentiality "of information on communicable diseases or infections (including HIV infection and AIDS)," and to provide criminal penalties and civil sanctions for unlawfully disclosing confidential information. House Legislative Analysis, HB 5189, January 23, 1989.

As amended by 1989 PA 174, MCL 333.5131(1) and (5)(a) and (c); MSA 14.15(5131)(1) and (5)(a) and (c), provide:

(1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with the serious communicable diseases or infections of HIV infection, acquired immunodeficiency syndrome, and acquired immunodeficiency syndrome related complex are
confidential, and shall be released only pursuant to this section, or if a report is required under the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.

(5) Subject to subsection (7), subsection (1) does not apply to the following:

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(c) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex, if the information is disclosed by an authorized representative of the department or a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to whom information is disclosed under this subdivision is subject to subsection (1). [Emphasis added.]

In subsection (8) of MCL 333.5131; MSA 14.15(5131), as amended by 1989 PA 174, the Legislature imposes criminal misdemeanor penalties of imprisonment for not more than one year or a fine of not more than $5,000.00, or both, and liability for actual damages or $1,000.00, whichever is greater.

Because MCL 333.5131; MSA 14.15(5131), is a penal statute, it must be strictly construed. People v Powell, 280 Mich 699, 703; 274 NW 372 (1937).

Read as a whole, MCL 333.5131; MSA 14.15(5131), clothes with confidentiality information pertaining to a person who is HIV infected or diagnosed as having acquired immunodeficiency syndrome (AIDS) or acquired immunodeficiency syndrome related complex (ARC) which has been furnished by the Department of Public Health or local health officers to school employees, subject in the event of disclosure to criminal penalties. It may not be extended to cover information pertaining to students with HIV, AIDS or ARC diseases received by school employees from the student, his or her parents, or other third persons. See People v Silver, 302 Mich 359, 367; 4 NW2d 687 (1942).

The information received by school employees from the student, his or her parents, or other third persons, however, may be confidential and protected by other statutory provisions, including the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g.

It is my opinion, therefore, that the confidentiality provisions of MCL 333.5131; MSA 14.15(5131), apply only to information relating to serious communicable diseases of students received by school employees from public health officers.

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