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Department of Justice
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VOLUME NO. 45

OPINION NO. 31

HEALTH - Patient's infectious disease: disclosure by health care facility to assisting emergency services provider;
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - Patient's infectious disease: disclosure by health care facility to assisting emergency services provider;
HOSPITALS - Patient's infectious disease: disclosure by health care facility to assisting emergency services provider;
ADMINISTRATIVE RULES OF MONTANA - Rule 16.30.801;
MONTANA CODE ANNOTATED - Title 50, chapter 16, part 5; sections 50-16-504(6), 525, -702, -703;
MONTANA LAWS OF 1989 - Chapter 390;
MONTANA LAWS OF 1993 - Chapter 476, section 3.

- HELD: 1. Mont. Code Ann. §§ 50-16-702 and -703 (1993) require a health care facility, whenever a patient transported to it is diagnosed with one of the transmittable infectious diseases designated in Mont. Admin. R. 16.30.801, to report that fact back to the designated officer(s) of the emergency medical services provider(s) who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence an actual exposure has occurred.
2. A disclosure of certain health care information is specifically provided by law in Mont. Code Ann. §§ 50-16-702 and -703 (1993). The Uniform Health Care Information Act contains an exception for disclosures specifically provided by law. The statutes are not in conflict.

December 30, 1994

Mr. Robert J. Robinson, Director
Department of Health and Environmental Sciences
Cogswell Building, Room C108
P.O. Box 200901
Helena, MT 59620-0901

Dear Mr. Robinson:

You have requested my opinion on the following questions:

1. When a patient transported to a health care facility is diagnosed with one of the transmittable infectious diseases designated in Mont. Admin. R. 16.30.801, do Mont. Code Ann. § 50-16-702 and -703 (1993) require the facility to report that fact to the designated officer of the emergency medical services provider(s) who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence an actual exposure has occurred?
2. Are the disclosure requirements in Mont. Code Ann. §§ 50-16-702 and -703 (1993) in conflict with the restrictions on release of health care information contained in the Uniform Health Care Act (Mont. Code Ann. tit. 50, ch. 16, pt. 5)?

In 1989, the Montana Legislature adopted an act to "allow emergency service personnel exposed to infectious disease during transport of patients to health care facilities to be notified of measures necessary to prevent or control the spread of disease." 1989 Mont. Laws, ch. 390. As adopted in 1989, Mont. Code Ann. §§ 50-16-701 to -705 required notification of an employed or volunteer emergency services provider after unprotected exposure to infectious disease only if the emergency services provider had filed a report of unprotected exposure with the health care facility.

The 1993 legislature extensively amended Mont. Code Ann. title 50, chapter 16, part 7. 1993 Mont. Laws, ch. 476. The statutes retain provision for a report of exposure by an emergency services provider followed by notification from the health care facility of whether the patient had an infectious disease, whether such a determination has been made, and the name of the disease and the date of transport if the patient was infected. Mont. Code Ann. § 50-16-702(1)(a), (c), (d) (1993). The diseases designated by the Department of Health and Environmental Sciences, in Mont. Admin. R. 16.30.801, as transmittable infectious diseases are AIDS or HIV infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, diphtheria, plague, hemorrhagic fevers and rabies.

Mont. Code Ann. § 50-16-702(2) (1993) is a new subsection added in 1993. It states:

If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall notify the designated officer

and the department [of health and environmental sciences] within 48 hours after the determination has been made. The department shall, within 24 hours, notify the designated officer of the emergency services provider who transported the patient.

For purposes of Mont. Code Ann. § 50-16-702(2) (1993), communicable pulmonary tuberculosis and meningococcal meningitis are considered airborne infectious diseases. Mont. Admin. R. 16.30.801(2). No requirement that a report of exposure be filed prior to the notification by the health care facility or the department is included in this section concerning airborne infectious disease. Nor is there any provision for a refusal to disclose if the health care facility is aware of no evidence an actual exposure occurred.

Further, the 1993 amendments deleted from Mont. Code Ann. §§ 50-16-703 and -704 any reference to an emergency services provider's report of exposure. 1993 Mont. Laws, ch. 476, § 3. Mont. Code Ann. § 50-16-703 (1993) now provides:

(1) After a patient is transported to a health care facility, a physician shall inform the health care facility within 24 hours if the physician determines that the transported patient has an infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis the designated officer of the emergency services provider who attended the patient prior to or during transport or who transported the patient with the infectious disease.

(3) The notification must state the disease to which the emergency services provider was exposed and the appropriate medical precautions and treatment that the exposed person needs to take.

The requirement that a report of exposure be filed by the emergency services provider as a prerequisite to notification of transport of a patient suffering from an infectious disease is no longer contained in the statute. Again, there is also no provision for a failure to notify if there is no evidence an actual exposure occurred.

In the construction of a statute, it is my function simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Mont. Code Ann. § 1-2-101 (1993). I find no basis

in the amended statutes for requiring a report of exposure or evidence of an actual exposure as a prerequisite to the notification required by statute. Whenever a patient transported to a health care facility is diagnosed with one of the transmittable infectious diseases designated in Mont. Admin. R. 16.30.801, the health care facility must report that fact back to the designated officer of each emergency medical services provider who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence an actual exposure has occurred.

My conclusion is in accord with the testimony of the sponsor of House Bill 220, the 1993 bill amending the statutes. The sponsor, Rep. Bruce Simon, testified before the Senate Committee on Public Health, Welfare and Safety that "[House Bill 220] does not require mandatory testing of anybody, but allows for emergency care providers who may have been exposed to know about it." Minutes, Senate Public Health, Welfare and Safety Committee, Mar. 10, 1993, at 8.

My conclusion is also in accord with the legal opinion on the statutes issued by the Department of Health and Environmental Sciences, the agency designated by law to promulgate rules and administer the law. A court would be obligated to show great deference to an interpretation given a statute by the agency charged with its administration, Norfolk Holdings v. Montana Dep't of Rev., 249 Mont. 40, 44, 813 P.2d 460, 462 (1991), and I have found no basis for rejection of the department's interpretation.

Your second question is whether the provisions in Mont. Code Ann. §§ 50-16-702 and -703 (1993), that a diagnosis of a specified communicable disease in a transported patient be reported back to the designated officer(s) of the emergency medical services provider(s) assisting the patient, and, ultimately, to the emergency medical services provider(s) who did the assisting, is in conflict with the requirements of the Uniform Health Care Information Act, Mont. Code Ann. §§ 50-16-501 to -553 (1993).

When a report of exposure has been filed by an emergency services provider, Mont. Code Ann. § 50-16-702(1)(c) (1993) requires notice to the designated officer and the emergency services provider who has assisted the patient, of whether or not the patient was infected with an infectious disease, the name of the disease, and the date of transport. Further, Mont. Code Ann. § 50-16-702(2) (1993) mandates that a health care facility disclose to the designated officer of the emergency services provider who transported a patient a determination that the patient has an airborne infectious disease. Similarly, Mont. Code Ann.

§ 50-16-703 (1993) specifically requires that the health care facility receiving a transported patient who has a specified infectious disease notify the designated officer of the emergency services provider who assisted the patient of the disease to which the emergency services provider was exposed and the appropriate medical precautions and treatment the exposed person needs to take. None of these disclosures would include the name of the patient. However, when coupled with the information regarding the time of exposure, the disclosures would often reveal "health care information" as defined in the Uniform Health Care Information Act, Mont. Code Ann. § 50-16-504(6) (1993), because they contain information that can readily be associated with the identity of a patient and relates to the patient's health care.

Nonetheless, I find no conflict between Mont. Code Ann. §§ 50-16-702 and -703 (1993) and the Uniform Health Care Information Act. While a disclosure of certain health care information is mandated in Mont. Code Ann. §§ 50-16-702 and -703 (1993), the Uniform Health Care Information Act contains an exception for disclosures specifically provided by law. Mont. Code Ann. § 50-16-525(1) (1993), expressly states:

Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization.

A disclosure pursuant to Mont. Code Ann. §§ 50-16-702 or -703 (1993) is a disclosure otherwise specifically provided by law, and does not conflict with the Uniform Health Care Information Act.

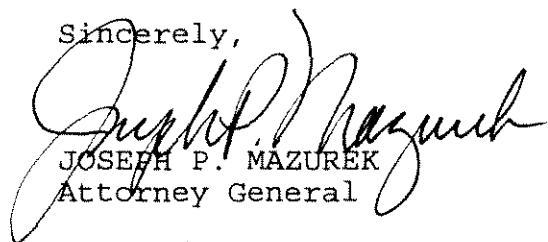
THEREFORE, IT IS MY OPINION:

1. Mont. Code Ann. §§ 50-16-702 and -703 (1993) require a health care facility, whenever a patient transported to it is diagnosed with one of the transmittable infectious diseases designated in Mont. Admin. R. 16.30.801, to report that fact back to the designated officer(s) of the emergency medical services provider(s) who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence an actual exposure has occurred.

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2. A disclosure of certain health care information is specifically provided by law in Mont. Code Ann. §§ 50-16-702 and -703 (1993). The Uniform Health Care Information Act contains an exception for disclosures specifically provided by law. The statutes are not in conflict.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/ks/brf