

The State of South Carolina



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July 11, 1991

The Honorable Carroll A. Campbell, Jr.
Governor of the State of South Carolina
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Dear Governor Campbell:

By your letter of May 29, 1991, you have advised that the South Carolina Department of Health and Environmental Control (DHEC) has requested that you advise that agency concerning the release of records to the United States Air Force concerning a dentist who is rumored to have died after acquiring the AIDS virus. The Air Force would then release certain information to or otherwise notify military families who were treated by the dentist if the rumor should be confirmed as truthful. You have asked whether a federal agency, such as the Air Force, could obtain the proper records from DHEC relating to this deceased individual.

This Office reviewed various AIDS-related issues in opinions of this Office dated October 15, 1987. From resources reviewed therein, it may be reasonably concluded that AIDS would be a sexually transmitted disease. This Office also noted that AIDS has become a national health priority and further that public apprehension about AIDS is widespread. Thus, the questions raised by your inquiry are particularly grave issues.

Confidentiality of records pertaining to sexually transmitted diseases is governed by S.C. Code Ann. § 44-29-135 (1990 Cum. Supp.), which provides in pertinent part:

All information and records held by the Department of Health and Environmental Control and its agents related to a known or suspected case of a sexually transmitted disease are strictly confidential except as provided in this section. The information must not be released

or made public, upon subpoena or otherwise,
except under the following circumstances:

....

- (c) release is made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related regulations concerning the control and treatment of a sexually transmitted disease;
- (d) release is made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of any person

Your letter notes that the apparent intent of § 44-29-135 is to protect the rights of the living rather than the rights of the deceased. We agree. When § 44-29-135 is examined as part of the statutory scheme relative to contagious and infectious diseases, Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934), the statutes seem to relate to living persons. For examples, see §§ 44-29-10 (attending physician to report the name and address of patients suffering from contagious or infectious diseases within twenty-four hours); 44-29-70 (relative to making a diagnosis or treating a case of sexually transmitted diseases); 44-29-80 (laboratories to report positive test results); 44-29-90 (examination, treatment, and isolation of infected persons, obtaining identity of contacts, notifying contacts); 44-29-100 (isolation and treatment of infected prisoners); 44-29-110 (discharge from confinement upon being cured of disease); 44-29-115 (procedure for isolation); 44-29-136 (due process safeguards of affected person when court is considering disclosure of HIV test results); 44-29-230 (conditions under which testing may be required; and 44-29-145 (prohibitions against certain acts undertaken by a person infected with HIV and criminal penalties therefor). Here, however, we are faced with a deceased individual rather than a living person.

Undoubtedly, one reason for a confidentiality statute such as § 44-29-135 is protection of an individual's right to privacy. However, as stated in Society of Professional Journalists v. Sexton, 283 S.C. 563, 566, 324 S.E.2d 313 (1984), "privacy rights are considered personal rights which do not survive." See also 62A Am.Jur.2d Privacy § 21. Thus, disclosure of information to a

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federal agency such as the Air Force concerning a deceased individual would not, in our view, violate that individual's right to privacy.

The issue here seems to be primarily one of public health and safety rather than privacy. We are aware of the professional medical societies' or health agencies' views on the likelihood of AIDS spreading from health care worker to patient; we are also aware of the need to identify and treat potential patients and to prevent the further spread of HIV and AIDS. The plain language of § 44-29-135 clearly contemplates that disclosure of information could be made if necessary to control or treat such a disease as AIDS, to protect the health or life of any person. In our opinion, the protection of public health and safety would override any concern for the privacy of a deceased person in this instance. Thus, we believe that such disclosure could be made pursuant to the express language of § 44-29-135(c) and (d), to the United States Air Force as a federal agency, as a means of further identifying and treating HIV and AIDS patients and preventing the further spread of this public health menace.

With kindest regards, I am

Sincerely,



T. Travis Medlock
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