

Date Issued: January 19, 1984 (AGO 84-5)

Requested by: James F. Twomey  
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- QUESTION PRESENTED -

Whether otherwise privileged information concerning the treatment of a child at a medical facility is available for review to determine if there exists probable cause to believe child abuse or neglect is indicated.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that otherwise privileged information concerning the treatment of a child at a medical facility is available for review to determine if there exists probable cause to believe child abuse or neglect is indicated.

- ANALYSIS -

Section 50-25.1-01 of the North Dakota Century Code states in part:

50-25.1-01. PURPOSE. It is the purpose of this chapter to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected . . . .

The contents of this remedial chapter "are to be construed liberally, with a view to effecting its objects and to promoting justice." Section 1-02-01, N.D.C.C.

Section 50-25.1-10, N.D.C.C., provides:

50-25.1-10. ABROGATION OF PRIVILEGED COMMUNICATIONS. Any privilege of communication between husband and wife or between any professional person and his patient or client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse or neglect resulting from a report made under this chapter.

There are two types of reports which are made under chapter 50-25.1, N.D.C.C. The first type of report is identified in section 50-25.1-04, N.D.C.C. This is the initial report of known or suspected child abuse or neglect which brings the matter to the attention of proper authorities. Section 50-25.1-05.2, N.D.C.C., contemplates a second type of report. This second type of report, to the juvenile court, cannot be made unless probable cause exists to believe that child abuse or neglect is indicated. A medical facility may possess otherwise privileged information which, although insufficient to require the reporting of known or suspected abuse or neglect, is corroborative of reported abuse or neglect. A failure to reveal this information may prevent the filing of a report with the juvenile court.

Still further, the character of that information may change as soon as the facility learns that the information may be corroborative of other abuse or neglect information. At the point the information takes on that corroborative character, staff of the medical facility may well be required to report the information under the provisions of section 50-25.1-03, N.D.C.C.

So long as the medical facility reports the information in its records in good faith, it "is immune from any liability, civil or criminal, that otherwise might result." Section 50-25.1-09, N.D.C.C. Conversely, a failure to furnish the information may well make the medical professionals involved liable to criminal penalties.

Section 50-25.1-13, N.D.C.C., provides:

50-25.1-13. PENALTY FOR FAILURE TO REPORT. Any person required by this chapter to report a case of known or suspected child abuse who willfully fails to do so is guilty of a class B misdemeanor.

The entire statutory scheme surrounding the reporting and investigation of child abuse or neglect reveals the legislative intent that notions of confidentiality or privacy should not be obstacles to the discovery of abuse and neglect, and to the protection of children.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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