

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 57

Timothy J. Chambers
Reno County Attorney
Law Enforcement Center
210 W. 1st St.
Hutchinson, Kansas 67501

Re: Public Health -- Secretary of Health and
Environment, Activities; General Powers and
Functions -- Reporting to Local Health Authority as
to Infectious or Contagious Diseases;
Confidentiality of Information; Disclosure

Procedure, Civil -- Rules of Evidence; Privileges
-- Physician-Patient Privilege; Confidentiality of
Information; Disclosure

Synopsis: A county health department may not be required to
disclose information regarding an individual's
treatment for venereal disease when such
information is intended to be used by the state as
evidence in a prosecution for indecent liberties
with a child. Cited herein: K.S.A. 1991 Supp.
38-1514; K.S.A. 38-1554; K.S.A. 1991 Supp. 60-427;
K.S.A. 65-118; 65-427; K.A.R. 28-1-2.

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Dear Mr. Chambers:

As county attorney for Reno county, you ask whether the
Reno county health department is required to disclose
information regarding an individual's treatment for venereal

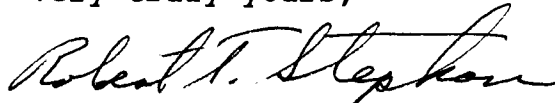
disease when such information is intended to be used by the state as evidence against that individual in the prosecution for indecent liberties with a child, a class C felony. More specifically, you ask whether the disclosure of such information falls within an exception to the doctor-patient confidentiality privilege, K.S.A. 1991 Supp. 60-427, or within an exception to the infectious or contagious disease confidentiality provision of K.S.A. 65-118.

In general, communications between a physician and patient are confidential. The patient holds a privilege to refuse to disclose or to prevent a witness from disclosing information transmitted between the physician and patient in a civil action or in a prosecution for a misdemeanor. K.S.A. 1991 Supp. 60-427. However, there is no privilege as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed. K.S.A. 1991 Supp. 60-427(e). As venereal diseases are considered to infectious or contagious diseases (K.A.R. 28-1-2), information indicating that a person is suffering from a venereal disease is required to be reported to a public official, i.e. the county or joint board of health or a local health officer, pursuant to K.S.A. 65-118(a). Such information is confidential and may not be disclosed or made public, upon subpoena or otherwise, with five exceptions. K.S.A. 65-118(c). The only exception potentially applicable to your question is, "if the information to be disclosed is required in a court proceeding and the information is disclosed in camera." K.S.A. 65-118(c)(5).

While information pertaining to an individual's treatment of venereal disease may be required by the state in an indecent liberties prosecution, pursuant to K.S.A. 65-118 such information may only be disclosed in camera, i.e. in private to the judge. K.S.A. 65-118 does not make such information admissible evidence in the prosecution of an indecent liberties case. It appears that the only court proceeding where such information would be admissible is a proceeding under the code for the care of children, K.S.A. 38-1501 et seq. and amendments thereto. In such court proceedings, certain information otherwise privileged may be received and considered by the court in camera pursuant to K.S.A. 38-1554 and K.S.A. 1991 Supp. 38-1514(c)(2).

In conclusion, a county health department may not be required to disclose information regarding an individual's treatment for venereal disease when such information is intended to be used by the state as evidence against that individual in a prosecution for indecent liberties with a child.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
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RTS:JLM:CN:bas