

MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Karen Perdue
Commissioner
Department of Health and
Social Services

DATE: July 31, 1996

FILE NO.: 663-96-0336

TELEPHONE NO.: 465-3600

SUBJECT: Confidentiality of Information
Presented to the Infant
Mortality Review Committee

FROM: Shannon K. O'Fallon
Assistant Attorney General
Human Services Section - Juneau

I have been asked for an opinion on three related questions regarding the confidentiality of information obtained by the Infant Mortality Review Committee (IMRC), a committee which reviews instances of infant or maternal death. First, is information presented to the IMRC confidential to the extent that individual members would be prohibited from acting on information gathered through the IMRC, in their professional roles outside the IMRC? Second, are there circumstances which would require the disclosure of information held by the IMRC? Finally, is the confidentiality of information presented to the IMRC assured, or are there circumstances whereby individuals could obtain information held by the IMRC?

Members of the committee may not act on information they have received through the committee since all information obtained by the committee is confidential. Furthermore, AS 47.17.020, which requires the reporting of suspected child abuse or neglect, does not apply to members of the committee while they are acting in their role as IMRC committee members. As will be explained further, confidentiality cannot be entirely assured, but AS 18.23.030 as applied to the IMRC would seem to allow the discovery of information held by the committee in only the most limited circumstances.

I. The Infant Mortality Review Committee

The IMRC was established by the Commissioner of the Department of Health and Social Services ("the department") to review public health issues regarding infant mortality, to identify causes of infant and maternal death, and to provide recommendations for preventive measures that might be instituted on a system-wide basis. Members of the committee include doctors, nurses, social workers, and police officers, among others. These members review information relating to maternal and infant deaths that have occurred in the state. Once the committee reaches a conclusion about a cause of death, the conclusion is consolidated with other reviews done over a period of time into an annual report. Significant data and findings are

published in a departmental newsletter. All reports and publications contain only aggregate data. For example, a report might indicate that between 1992 and 1994, 23 percent of the infant deaths the committee reviewed were caused by SIDS (Sudden Infant Death Syndrome). The department's objective is to reduce infant mortality and morbidity through a case review process that examines medical, environmental, socio-economic, and other factors that may have contributed to an infant or maternal death, and to make recommendations for action based on overall findings.

II. Confidentiality of information obtained by the IMRC

Pursuant to AS 18.23.070(5)(c), the IMRC is defined as a review organization. Review organizations have a confidentiality requirement which provides, in pertinent part:

all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization . . . [a] person described in AS 18.23.020 may not disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of the review organization . . .

AS 18.23.030(a). The penalty for violating the confidentiality of the records of a review organization is a misdemeanor. *See* AS 18.23.040. Information held by a review organization is discoverable if the review organization has issued an unreasonable denial to a health care provider; if a plaintiff in a civil suit claims information given to a review organization was false and the person providing the information knew it was false; and if a person's conduct or competence was reviewed by a review organization and that person wishes to challenge the action of the review organization. *See* AS 18.23.030(b) and (c); *see also* AS 18.23.070(5). For example, a hospital governing body, which is also defined as a review organization, might act on information received and deny a provider a fee for health care services that were furnished. *See* AS 18.23.070(5)(A). In that circumstance, the health care provider could obtain information otherwise inaccessible under AS 18.23.030 because it has been denied a fee and wishes to challenge the governing body's findings. *See* AS 18.23.030(b). The IMRC does not take action nor issue decisions that would impact an individual or an entity in a way which might be subject to challenge. Therefore, it is difficult to foresee a situation where a request for information from the committee would be granted.

III. Required reporting of suspected child abuse and neglect

At apparent odds with the confidentiality provision found in AS 18.23.030 are the mandatory reporting requirements for suspected child abuse and neglect. *See* AS 47.17.010 et seq. Social workers, police officers, doctors, and nurses, to name a few, are required to report

suspected cases of child abuse or neglect to the department.¹ AS 47.17.020. As stated above, some members of the IMRC have occupations which subject them to the mandatory reporting laws. The duty to report applies if someone is acting in the performance of their occupational duties.² *See AS 47.17.020(a).* However, members of the review committee are not functioning “in the performance of their occupational duties” while acting as a member of the IMRC. *See AS 47.17.020(a).* Individuals who make up the IMRC act as committee members and lend their particular expertise to the process, but they should not be considered to be “performing their occupational duties.”

The mandatory reporting of suspected child abuse and neglect is the only such required disclosure that could apply to the confidential information held by the IMRC. It is worth noting that in almost every incidence of an infant or maternal death, mandatory reporters will have been involved at some level and any reports of suspected child abuse or neglect are better addressed through these individuals.

IV. Conclusion

Five hypotheticals were included in the opinion request which describe situations where the disclosure of information might seem warranted. The discussion above should make it clear that in none of the hypotheticals presented would disclosure of information be allowed.

AS 18.23.030 prohibits members of the IMRC from disclosing or acting on any information obtained or considered by the committee. This is true even in light of the requirement to report suspected child abuse or neglect, since the individual committee members, while they are performing their role within the IMRC, are not persons required to report under AS 47.17.020. Finally, total confidentiality of the information held by the committee cannot be assured, but the circumstances under which information can be obtained will be extremely rare. The confidentiality provisions restricting the disclosure of information help to encourage candor by an individual who communicates information to the IMRC, which in turn allows the IMRC to better accomplish its mission.

If the IMRC has particular confidentiality questions which arise in the future, it should consult with this office before proceeding.

¹ Child abuse or neglect is defined as “physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby . . .” AS 47.17.290(2).

² The penalty for failing to report suspected child abuse or neglect is a class B misdemeanor. *See AS 47.17.068.*

The Honorable Karen Perdue, Commissioner
Department of Health and Social Services
A.G. file no: 663-96-0336

July 31, 1996
Page 4

SKO:ebc:bap