

OPINION NO. 91-074**Syllabus:**

The prohibition set forth in R.C. 3701.243 against the disclosure of the results of human immunodeficiency virus testing or the diagnosis of acquired immunodeficiency syndrome does not preclude a county coroner from including that information in an autopsy report as required by R.C. 313.13 or a death certificate as required by R.C. 3705.16.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion regarding the report by the county coroner in a death certificate or an autopsy report¹ of the presence of acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV). You are particularly concerned with whether the inclusion of this information by the county coroner in a death certificate or an autopsy report would violate R.C. Chapter 3701 or any other provision of the Revised Code, and thus subject the coroner to civil or criminal penalties. Additionally, you have asked whether, if the coroner is prohibited from including information concerning AIDS or HIV in a death certificate or autopsy report, the coroner must keep the entire document that makes reference to AIDS or HIV confidential, or whether the coroner may release that portion of the document that makes no reference to AIDS or HIV.

**The Coroner Has A Duty to Determine And Report
The Cause Of Death In Certain Cases**

R.C. 313.12 provides for notification of the county coroner "[w]hen any person dies as a result of criminal or other violent means, or by casualty, or by suicide, or suddenly when in apparent health, or in any suspicious or unusual manner." It is the duty of the county coroner to keep a complete record of each case coming under his jurisdiction. R.C. 313.09. The record "shall state the name, if known, of every deceased person as described in section 313.12 of the Revised Code, the place where the body was found, date of death, cause of death, and all other available information." *Id.* Thus, when a person dies in any of the circumstances described in R.C. 313.12, the coroner has a statutory duty to ascertain that person's cause of death. *Vargo v. Travelers Ins. Co.*, 34 Ohio St. 3d 27, 516 N.E.2d 226 (1987).

If the coroner determines that an autopsy is necessary to ascertain the cause of death, the coroner, deputy coroner, or pathologist shall perform the autopsy, except under certain circumstances where an autopsy is contrary to the deceased person's religious beliefs. R.C. 313.131. When an autopsy is performed, "a detailed description of the observations written during the progress of such autopsy, or as

¹ Your request letter mentioned, in addition to the death certificate and autopsy report, "related documents." A member of my staff has been informed that "related documents" refers to documents such as a toxicology report or a histology report that are relied upon by the coroner in ascertaining the cause of death and included as part of the autopsy report. Since such "related documents" are maintained as part of the autopsy report, which is treated more fully in the discussion that follows, I have not addressed them separately.

soon after such autopsy as reasonably possible, and the conclusions drawn from the observations shall be filed in the office of the coroner." R.C. 313.13(A). "[T]he detailed findings of the autopsy shall be attached to the report of each case." R.C. 313.09.

In addition to keeping his own record of the cause of death in each case coming under his jurisdiction, the coroner has a duty to certify the cause of death on a death certificate presented to him pursuant to R.C. 3705.16. That section requires a funeral director or other person in charge of the final disposition of the remains of a deceased person to present the death certificate to the physician who attended the deceased, or to the coroner. The physician or coroner is required to complete the medical certification, R.C. 3705.16, which is that portion of the certificate of death that sets forth the cause of death, R.C. 3705.01(I). *See also* 4 Ohio Admin. Code 3701-5-03 (requiring a funeral director or other person in charge of the final disposition of a dead human body to present a certificate of death to the attending physician or coroner for the medical certification).

In summary, the county coroner has a duty to report the cause of death of any person whose death comes under the coroner's jurisdiction pursuant to R.C. 313.12. R.C. 313.09. If an autopsy is performed, the coroner has a duty to make a detailed report of the autopsy findings, R.C. 313.13, and to attach the detailed findings to the report required by R.C. 313.09. The coroner, when so requested, also is required to complete the medical certification, which sets forth the cause of death, on a death certificate. R.C. 3705.16; rule 3701-5-03. Accordingly, if the coroner discovers the existence of AIDS or HIV during the autopsy, he must report that finding in the detailed report of autopsy findings compiled pursuant to R.C. 313.13. Likewise, if the coroner determines that AIDS or HIV is the cause of death, the coroner must report that fact and record it on the medical certification pursuant to R.C. 3705.16 and rule 3701-5-03.

**R.C. 3701.243 Does Not Prohibit The Coroner From Disclosing
The Presence Of HIV Or AIDS In An Autopsy Report Or
Death Certificate**

In light of the duty of the coroner to determine and report the cause of death in certain cases, you have expressed concern about the operation of R.C. 3701.243, which prohibits the disclosure of certain information concerning HIV testing and the diagnosis of AIDS.² R.C. 3701.243, which was enacted by Am. Sub. S.B. 2, 118th Gen. A. (eff. November 1, 1989), provides, in part, as follows:

(A) Except as provided in this section³ or section 3701.248 of the Revised Code, no person or agency of state or local government that acquires the information while providing any health care service

² You noted in your request letter that R.C. 3701.24(C) also maintains the confidentiality of certain information concerning HIV testing and the diagnosis of AIDS. R.C. 3701.24(C) requires that "[p]ersons designated by rule adopted by the public health council under section 3701.241 of the Revised Code shall report promptly every case of AIDS, every AIDS-related condition, and every confirmed positive HIV test to the department of health." *See* 4 Ohio Admin. Code 3701-3-12(A) (designating the persons required to report that information). R.C. 3701.24(C) further provides that the "[i]nformation reported under this division that identifies an individual is confidential" (emphasis added) and may be released only under certain circumstances. The limitation on disclosure of the information applies only to information reported under R.C. 3701.24(C), and thus has no application to the report of information concerning HIV testing or the diagnosis of AIDS under any other provision of law. Accordingly, it does not apply to the coroner's report of the cause of death pursuant to R.C. 313.13 or R.C. 3705.16 or 4 Ohio Admin. Code 3701-5-03.

³ R.C. 3701.243(B) and (D) provide limited exceptions to the prohibition against disclosure of HIV or AIDS information set forth in R.C. 3701.243(A). Additionally, division (C) of that statute provides a method by which any

or while in the employ of a health care facility or health care provider shall disclose or compel another to disclose any of the following:

- (1) The identity of any individual on whom an HIV test is performed;
- (2) The results of an HIV test in a form that identifies the individual tested;
- (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition. (Footnote added.)

The prohibition against disclosure applies only to information acquired by a person or agency of state or local government "while providing any health care service or while in the employ of a health care facility or health care provider." Thus, whether the coroner is subject to R.C. 3701.243(A)'s prohibition against disclosure depends upon whether the coroner acquires the information concerning AIDS or HIV while providing any health care service or while in the employ of a health care facility or health care provider. *See also* R.C. 3701.241 (setting forth the duties of the Director of Health with respect to counseling, testing, and treatment for AIDS or HIV); R.C. 3701.242 (enumerating the circumstances under which HIV testing shall be performed); R.C. 3701.244 (providing the exclusive civil remedies for violations of, *inter alia*, R.C. 3701.242 and R.C. 3701.243).

As used in R.C. 3701.24 and R.C. 3701.241-.249, R.C. 3701.24(A)(11) defines "health care provider" as "an individual who provides diagnostic, evaluative, or treatment services." Pursuant to R.C. 3701.24(A)(5), "[h]ealth care facility" has the same meaning as in R.C. 1742.01, which defines the term as "any facility, except a health practitioner's office, that provides preventive, diagnostic, therapeutic, acute convalescent, rehabilitation, mental health, mental retardation, intermediate care, or skilled nursing services." R.C. 1742.01(H). The coroner, while executing the duties of his office, clearly is not in the employ of either a health care provider or a health care facility.

"Health care service" is not defined for purposes of R.C. 3701.243. It is a general rule of statutory construction that a word that is not specifically defined for purposes of a statute must be accorded its natural, literal, common, or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Health" is defined as "[s]tate of being hale, sound, or whole in body, mind or soul, well being. Freedom from pain or sickness." *Black's Law Dictionary* 721 (6th ed. 1990). "Care" is defined, in relevant part, as "[p]rotection; supervision; charge: *in the care of a nurse.*" *The American Heritage Dictionary* 240 (2nd college ed. 1985). Without offering a complete definition of the term "health care service," it is nonetheless apparent that the term refers to the maintenance or protection of the physical, mental, and emotional well being of a person. *See, e.g.*, R.C. 1742.01(I) (as used in R.C. Chapter 1742 (health maintenance organizations) "[h]ealth care services" means any services involved in or incident to the furnishing to any individual of preventive, diagnostic, therapeutic, or rehabilitative care for the purpose of ensuring the protection, maintenance, and support of human physical, mental, and emotional health"). The services provided by the coroner in investigating and reporting the cause of death of a person pursuant to R.C. 313.09 and R.C. 313.13 or R.C. 3705.16 serve none of these purposes and, therefore, are not "health care services" for purposes of R.C. 3701.243. Accordingly, the information concerning AIDS and HIV that is acquired by the coroner in the course of investigating and reporting the cause of death of a person is not information acquired while providing any health care service. The prohibition in R.C. 3701.243 against disclosure of AIDS or HIV information, therefore, does not apply to the coroner when he acquires such information while engaged in investigating and reporting the cause of death of a person.⁴ Thus, the coroner may disclose, in a death certificate or an autopsy report, the presence of AIDS or HIV without violating

person or government agency may seek access to or authority to disclose the HIV test records of an individual.

⁴ There is an instance in which the coroner is prohibited from releasing the name of a person who has tested positive for HIV or AIDS. R.C. 3701.248 provides that an emergency medical services worker who believes he has suffered a significant exposure to a contagious or infectious disease

the provisions of R.C. 3701.243. Additionally, I am not aware of any other provision in R.C. Chapter 3701 or any other section of the Revised Code that prohibits the coroner from including this information in a death certificate or autopsy report.

Since I have determined that the prohibitions set forth in R.C. 3701.243 against the disclosure of the results of HIV testing or the diagnosis of AIDS do not apply to the coroner when he acquires that information in investigating and reporting of the cause of death of a person, I need not address your second question concerning the manner in which death certificates or autopsy reports containing references to HIV or AIDS may be released in the event the coroner is prohibited from disclosing information concerning HIV or AIDS.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that the prohibition set forth in R.C. 3701.243 against the disclosure of the results of human immunodeficiency virus testing or the diagnosis of acquired immunodeficiency syndrome does not preclude a county coroner from including that information in an autopsy report as required by R.C. 313.13 or a death certificate as required by R.C. 3705.16.

"may submit to the health care facility or coroner that received the patient a written request to be notified of the results of any test performed on the patient to determine the presence of a contagious or infectious disease." R.C. 3701.248(B)(1). The notification by the coroner of the test results "shall not include the name of the patient or deceased person." R.C. 3701.248(C). However, the coroner's duty to notify an emergency medical services worker under these circumstances is distinguishable from his duty to investigate and report the cause of death of a person. In fact, the coroner who performs the testing under R.C. 3701.248(B)(1) might not have a duty to investigate and report the cause of death. *See, e.g.*, R.C. 313.16 (providing for laboratory examinations to be undertaken by coroner in a county other than the county in which death occurred). The apparent object of the requirement of R.C. 3701.248 that the coroner notify the emergency medical services worker of the results of the test is the health of that worker rather than the investigation and report of the cause of death of a person.