



COMMONWEALTH of VIRGINIA

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September 14, 2007

The Honorable Donald S. Caldwell
Commonwealth's Attorney for the City of Roanoke
315 Church Avenue
Roanoke, Virginia 24016

Dear Mr. Caldwell:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether § 19.2-187.02 authorizes law-enforcement officials to interview health care providers to preserve vital blood samples, gather evidence, and secure the chain of custody of evidence for use in trials of persons charged with maiming or manslaughter while driving under the influence ("DUI"). Additionally, you ask whether the secondary disclosure by hospital personnel of health records obtained by law-enforcement officials pursuant to a valid search warrant that occurs incidental to a criminal investigation of DUI maiming or manslaughter cases violates the privacy requirements of § 32.1-127.1:03.

Response

It is my opinion that § 19.2-187.02 authorizes law-enforcement officials to interview health care providers to preserve vital blood samples, gather evidence, and secure the chain of custody of evidence for use in trials of suspected cases of DUI maiming or manslaughter. It further is my opinion that the secondary disclosure by hospital personnel of health records obtained by law-enforcement officials pursuant to a valid search warrant that occurs incidental to a criminal investigation of such cases does not violate § 32.1-127.1:03.

Applicable Law and Discussion

Section 19.2-187.02 provides that:

A. Notwithstanding any other provision of law, the written reports or records of blood alcohol tests conducted upon persons receiving medical treatment in a hospital or emergency room are admissible in evidence as a business records exception to the hearsay rule in prosecutions for any violation of § 18.2-266 (driving while intoxicated) or a substantially similar local ordinance, § 18.2-36.1 (involuntary manslaughter resulting from driving while intoxicated), ... § 18.2-51.4 (maiming resulting from driving while intoxicated), ... or § 46.2-341.24 (driving a commercial vehicle while intoxicated).

B. The provisions of law pertaining to confidentiality of medical records and medical treatment shall not be applicable to reports or records of blood alcohol tests sought or admitted as evidence under the provisions of this section in prosecutions as specified in subsection A. Owners or custodians of such reports or records may disclose them, in accordance with regulations concerning patient privacy promulgated by the U.S. Department of Health and Human Services, without obtaining consent or authorization for such disclosure. *No person who is involved in taking blood or conducting blood alcohol tests shall be liable for civil damages for breach of confidentiality or unauthorized release of medical records because of the evidentiary use of blood alcohol test results under this section, or as a result of that person's testimony given pursuant to this section.* [Emphasis added.]

“[A] fundamental rule of statutory construction requires that courts view the entire body of legislation and statutory scheme to determine the ‘true intention of each part.’ In construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment.”¹ One must look at the entire statute to ascertain the intent of the General Assembly.²

When examining § 19.2-187.02 in its entirety, it is apparent that the legislative intent is to allow a business records evidentiary exception to the hearsay rule for the written reports or records of blood alcohol tests as well as to provide authority for law-enforcement officials to interview health care providers to preserve vital blood samples, gather evidence, and secure the chain of custody of evidence for use in trial. Section 19.2-187.02 grants civil immunity to any person involved in taking blood or conducting blood alcohol tests who testifies about such procedures or communicates the findings to law-enforcement personnel. Thus, it follows that because the General Assembly has granted immunity to such individuals, it clearly intends that those same individuals would communicate with law-enforcement officials in DUI cases. Otherwise, there would be no need for the General Assembly to provide immunity.

The General Assembly added § 19.2-187.02 to Title 19.2 in 2002.³ However, even case law from prior to the enactment of § 19.2-187.02 supports the above conclusion. A circuit court has held that the inspection of materials that are necessary to lay a proper foundation for the admissibility of a toxicology report is permitted.⁴

Because § 19.2-187.02 directly provides for a “secondary disclosure” of chain of custody and other relevant information during the investigative process, these disclosures cannot violate the privacy

¹Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E. 622, 625 (1989) (quoting McDaniel v. Commonwealth, 199 Va. 287, 292, 99 S.E.2d 623, 627 (1957)).

²See Commonwealth v. Jones, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (noting that to derive true purpose of act, “statute should be construed so as to give effect to its component parts”).

³See 2002 Va. Acts ch. 749, at 1255, 1255.

⁴Commonwealth v. Faison, 51 Va. Cir. 1, 2-3 (1999).

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requirements in § 32.1-127.1:03.⁵ Additionally, the Federal Health Insurance Portability and Accountability Act of 1996 (HIPPA) permits such disclosures.⁶

Conclusion

Accordingly, it is my opinion that § 19.2-187.02 authorizes law-enforcement officials to interview health care providers to preserve vital blood samples, gather evidence, and secure the chain of custody of evidence for use in trials of suspected cases of DUI maiming or manslaughter. It further is my opinion that the secondary disclosure by hospital personnel of health records obtained by law-enforcement officials pursuant to a valid search warrant that occurs incidental to a criminal investigation of such cases does not violate § 32.1-127.1:03.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:1358; 1:941/07-057

⁵See generally 45 C.F.R. § 164.512(f) (2006).

⁶“There is hereby recognized an individual’s right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section *or by other provisions of state law*, no health care entity, or other person working in a health care setting, may disclose an individual’s health records.” VA. CODE ANN. § 32.1-127.1:03(A) (Supp. 2007) (emphasis added).