

HOSPITALS:
PHYSICIANS:
FEDERAL GRANTS:
PUBLIC RECORDS:
DIVISION OF HEALTH:

The State Board of Health is authorized by law to adopt and enforce regulations requiring hospitals licensed by the state to submit reports containing certain data relating to hospital discharges.

OPINION NO. 40

April 23, 1975

Mr. Lawrence Graham, Director
Department of Social Services
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Graham:

This is in response to your request for our legal opinion on the following question:

"I request your legal opinion as to whether the Board of Health has the authority to require all hospitals in the state to report certain patient discharge data to the Division of Health for use by the division in preparing the official state plan for the construction and modernization of hospitals and other medical facilities, Section 192.230-192.250 RSMO?"

We are advised that on October 24, 1974, the State Board of Health, acting pursuant to §§ 191.420 and 197.080, RSMo, amended the hospital licensing regulations by adding the requirement that all licensed hospitals submit monthly reports to the Division of Health providing information prescribed by the Division of Health on patients discharged from the hospital. Section III, Regulation Number 3, Missouri Hospital Licensing Regulations (1974). We understand that the Division of Health has subsequently prescribed the following information for inclusion in the required monthly report of patient discharges:

- (1) patient's hospital code number
- (2) patient's year of birth
- (3) patient's sex

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- (4) patient's race
- (5) patient's residence by state, county, and zip code, census tract, or rural route
- (6) hospital code number
- (7) admission date and hour
- (8) discharge date
- (9) attending physician by hospital code number
- (10) operating physician by hospital code number
- (11) diagnosis according to international classification of diseases
- (12) disposition of patient (home, nursing home, funeral home, etc.)
- (13) expected source of payment for patient's care and treatment
- (14) service in hospital from which patient discharged
- (15) medical procedures performed on patient during hospitalization and dates performed

The Hospital Licensing Law, §§ 197.010-197.120, RSMo (L.Mo. 1953, p. 631), states its purpose is:

" . . . to provide for the development, establishment and enforcement of standards for the care and treatment of individuals in hospitals and for the construction, maintenance and operation of hospitals, which, in the light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals." § 197.030, RSMo.

To implement the law, the Division of Health (now State Board of Health; § 191.420, RSMo (L.Mo. 1967, p. 284)), is empowered to:

" . . . adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals or different types

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of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare." § 197.080, RSMo.

Statutes conferring powers upon boards of health to enable them to safeguard the public health are given a liberal construction. State ex rel. Horton v. Clark, 9 S.W.2d 635, 638 (Mo.Banc 1928); Gaddy v. State Board of Registration for the Healing Arts, 397 S.W.2d 347, 353 (Spr.Ct.App. 1965).

We believe that there is a reasonable relationship between requiring all hospitals in the state to report information as to the care and treatment of their patients and the fulfillment by the Board of Health of its duty to secure safe and adequate hospital treatment for all citizens. Accordingly, we believe that the regulation requiring the patient discharge information from all licensed hospitals is authorized by the Hospital Licensing Law, Chapter 197, RSMo, and is a valid implementation of that law.

It appears that the confidentiality of the physician-patient relationship, as codified in § 491.060(5), RSMo, will not be disturbed by the State Board of Health's instant regulation because neither the names nor addresses of patients and physicians will be revealed to the Board or the Division of Health. See State ex rel. Benoit v. Randall, 431 S.W.2d 107 (Mo.Banc 1968). Thus, it is unnecessary at this time to express our opinion on whether or not the privilege of the physician-patient relationship would prevent disclosure to the State Board of Health of otherwise confidential hospital discharge data which is to be used by the Board in carrying out its statutory duties of planning adequate health care facilities and services and engaging in programs that deal with the incidence, distribution, and control of diseases. See Klinge v. Lutheran Medical Center of St. Louis, 518 S.W.2d 157 (Mo.Ct.App. at St.L. 1974).

The Open Records and Meetings Law enacted in 1973 (The Sunshine Law) states that ". . . except as otherwise provided by law, all . . . public records shall be open to the public for inspection and duplication." (emphasis added) § 610.015, RSMo Supp. 1973. § 491.060(5), RSMo, protects the privacy of the physician-patient relationship and so would prevent the Board or Division of Health from releasing or disclosing information that would identify the parties to any particular physician-patient relationship.

A law enacted in 1945 delegated the following powers and responsibilities to the Division (Board) of Health:

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"The division of health . . . shall be empowered and authorized to conduct a complete survey of all of the hospitals, both public and private, and all health centers and units in the state, and to make a public report of such survey and findings, and recommending a state plan for the construction of such additional hospital and health center facilities as may be deemed advisable by the division of health after consultation with the state [hospital] advisory council, . . ." § 192.230, RSMo (L.Mo. 1945, p. 972).

"The director of the division of health will approve such applications for federal assistance in the construction and modernization of hospitals and other medical facilities as may be considered advisable after consultation with the [hospital] advisory council." § 192.240, sub. 6, RSMo (L.Mo. 1945, p. 972).

"The division of health . . . is hereby designated the official state agency to receive any and all federal and other grants and aids for making a survey and for the construction of hospitals and health centers, . . ." § 192.250, RSMo (L.Mo. 1945, p. 972).

The emergency clause accompanying the above law indicates that it was enacted in response to the 1944 Federal legislation that made available government grant funds for construction and modernization of public and nonprofit hospitals and other medical facilities. 42 U.S.C.A. § 291 (Hill-Burton). Among the conditions which must be met under such Federal law to receive these funds is that ". . . the State agency shall determine the priority of projects based on the relative need of different areas lacking adequate [hospital and other medical] facilities. . . ." 42 U.S.C.A. § 291c. We believe the requirement for hospital patient discharge information bears a reasonable relationship to the Board of Health's statutory responsibility to survey existing hospitals and determine the need for new hospitals throughout the state.

Another duty and responsibility placed upon the Division (now Board) of Health relates to the use and disposition of Federal health funds granted to the state:

"The division of health . . . is hereby designated the official agency of the

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state of Missouri to receive federal funds for health purposes. The division shall comply with the acts of congress and with any rules and conditions made by any federal agency in regard to the use and distribution of such funds. . . ." § 192.025, RSMo (L.Mo. 1951, p. 761).

This statute is consistent with the following provision in our Constitution:

" . . . Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States." Article III, § 38(a), Constitution of Missouri.

We understand that the Division of Health has contracted with the United States Department of Health, Education and Welfare to receive funds from the United States for the purposes of developing and operating a hospital discharge data program which will meet the data needs of governmental and nongovernmental data users. This contract is based upon the Health Services Research and Evaluation and Health Statistics Act of 1974, 42 U.S.C.A. § 242k which provides in part:

" . . . the Secretary, acting through the [National] Center [for Health Statistics], may--

(1) collect statistics on--

(A) the extent and nature of illness and disability of the population of the United States (or of any groupings of the people included in the population), including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality,

* * *

(E) health resources, including physicians, dentists, nurses, and other health professionals by specialty and type of practice and the supply of services by hospitals, . . .

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(F) utilization of health care,
including utilization of . . . (ii)
services of hospitals, . . .

(G) health care costs and financ-
ing, including the trends in health
care prices and cost, the sources of
payments for health care services, and
Federal, State, and local governmental
expenditures for health care services,
. . .

* * *

(e) The Secretary shall (1) assist State and
local health agencies, . . . in the design
and implementation of a cooperative system
for producing comparable and uniform health
information and statistics at the Federal,
State, and local levels; . . . (3) undertake
and support (by grant or contract) research,
development, demonstrations, and evaluations
respecting such cooperative system; (4) pro-
vide the Federal share of the data collection
costs under such system; . . .

(f) . . . the Secretary shall cooperate and
consult . . . with State and local health de-
partments and agencies. . . . he shall util-
ize insofar as possible the services or facil-
ities . . . of any appropriate State or other
public agency, . . . Payment, if any, for
such services or facilities shall be made
in such amounts as may be provided in such
agreement.

(g) To secure uniformity in the registra-
tion and collection of mortality, morbidity,
and other health data, the Secretary shall
prepare and distribute suitable and neces-
sary forms for the collection and compila-
tion of such data . . ." 42 U.S.C.A. § 242k.

Use of the data obtained thereunder by the Division of Health would
be subject to the following restriction contained in the Federal
law:

". . . information obtained in the course
of activities undertaken or supported . . .

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[by this law] may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulation of the Secretary) to its publication or release in other form, . . ." 42 U.S.C.A. § 242m (d).

Finally, the Board of Health has been charged with the following duties and responsibilities:

". . . It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases within the state. It shall have power . . . to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state." § 192.020, RSMo (L.Mo. 1919, p. 372).

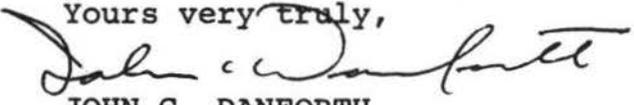
"The [board of health] . . . shall compile and issue reports and summaries of accomplishments and projects within the division [of health] as may be of benefit and advantage to the public, including information concerning vital and mortuary statistics, respecting diseases, and instructing in the subject of hygiene." § 192.040, RSMo (L.Mo. 1882, p. 95).

We believe the information yielded by the hospital patient discharge reports can substantially contribute to the Board of Health's efforts to control and prevent dangerous and contagious diseases and to issue statistical reports thereon.

CONCLUSION

It is the opinion of this office that the State Board of Health is authorized by law to adopt and enforce regulations requiring hospitals licensed by the state to submit reports containing certain data relating to hospital discharges.

Yours very truly,


JOHN C. DANFORTH
Attorney General