

Bill 26
Mr. Magnus

BILL 26

2006

MANDATORY TESTING AND DISCLOSURE ACT

(Assented to , 2006)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “applicant” means an individual who applies for a testing order or in respect of whom an application for a testing order is made;
- (b) “bodily substance” means a natural bodily fluid or secretion;
- (c) “Chief Medical Officer of Health” means the Chief Medical Officer of Health appointed under the *Public Health Act*;
- (d) “communicable disease” means a disease prescribed as a communicable disease in the regulations;
- (e) “communicable disease database” means a database prescribed in the regulations as a communicable disease database;
- (f) “firefighter” means a person employed by or volunteering for a municipality or Metis settlement who is assigned to fire protection and fire prevention duties and whose duties may include the performance of emergency medical or rescue services;
- (g) “guardian” means a guardian as defined in the *Dependent Adults Act* or a guardian within the meaning of Part 2 of the *Family Law Act*, as the case requires;
- (h) “medical officer of health” means a medical officer of health appointed under the *Public Health Act*;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (j) “paramedic” means a person who is registered as a member of the designated health discipline of Emergency Medical Technicians under the *Health Disciplines Act*;

- (k) “peace officer” means a police officer and any other person employed for the preservation and maintenance of the public peace;
- (l) “physician’s report” means a physician’s report required for the purposes of an application made under section 3;
- (m) “police officer” means a police officer as defined in the *Police Act* and includes a special constable who by the terms of his or her appointment is authorized to enforce this Act;
- (n) “qualified analyst” means a person who holds the qualifications set out in the regulations for conducting a type of analysis required by a testing order;
- (o) “qualified health professional” means a member in good standing of a health profession prescribed in the regulations;
- (p) “source individual” means an individual from whom a sample of a bodily substance is sought for the purposes of testing;
- (q) “testing order” means an order made by the Provincial Court that directs the Chief Medical Officer of Health to search the communicable disease databases or that directs a source individual to allow a qualified health professional to take a sample of a bodily substance from the source individual for analysis, or both.

Powers and duties

2(1) For the purposes of this Act and the regulations, the Chief Medical Officer of Health and medical officers of health have the powers and duties set out in the *Public Health Act* and have any other powers provided for under the regulations to carry out the requirements of a testing order.

(2) The Chief Medical Officer of Health or medical officers of health may in writing delegate to an employee under their direction any of the powers, duties and functions conferred or imposed on the Chief Medical Officer of Health or medical officers of health by this Act or the regulations.

Application for testing order

3(1) An individual may apply to the Provincial Court for a testing order if the individual

- (a) has come into contact with a bodily substance of a source individual
 - (i) while providing emergency assistance to a source individual who is ill, injured or unconscious as a result of an accident or other emergency,
 - (ii) while performing duties as a firefighter, paramedic or peace officer, or
 - (iii) while being involved in a circumstance or activity described in the regulations,

or

- (b) is a member of a class of individuals designated by the regulations that has come into contact with a bodily substance of a source individual as set out in clause (a).

(2) If an individual is unable to make an application under subsection (1), any person may make an application under subsection (1) on the individual's behalf.

(3) An application under this section must be by way of an originating notice.

(4) The originating notice and any other documents provided for in the regulations must be served personally on the source individual not less than 7 days before the application is to be heard by the Provincial Court.

(5) If the source individual is a minor, the originating notice and any other documents provided for in the regulations must be served personally on the parent or guardian of the source individual and, if the source individual is 14 years of age or older, on the source individual, not less than 7 days before the application is to be heard by the Provincial Court.

(6) If the source individual is a dependent adult, the originating notice and any other documents provided for in the regulations must be served personally on the source individual and on the

guardian of the source individual not less than 7 days before the application is to be heard by the Provincial Court.

(7) If the source individual is deceased, the originating notice and any other documents provided for in the regulations must be served personally on the next of kin of the source individual or on the executor or administrator of the estate of the source individual, if any, not less than 7 days before the application is to be heard by the Provincial Court.

(8) Notwithstanding subsections (4), (5), (6) and (7), a judge of the Provincial Court, on the ex parte application of the applicant, may dispense with service of the originating notice under subsection (4), (5), (6) or (7) or authorize a shorter period of notice if the applicant satisfies the Provincial Court that in the circumstances of the case, giving 7 days' notice to the source individual or the parent or guardian of the source individual is impossible or impractical.

(9) An application must

- (a) set out the circumstances in which the applicant came into contact with a bodily substance of the source individual,
- (b) state what attempts have been made to determine if the source individual is infected with a pathogen that causes a communicable disease,
- (c) be accompanied with a physician's report, and
- (d) meet any other requirements set out in the regulations.

(10) Subject to the regulations, an application for a testing order must be made within 30 days of the applicant's coming into contact with a bodily substance of the source individual.

Testing order

4(1) On hearing an application, the Provincial Court must consider all relevant factors and all relevant evidence submitted, either orally or by affidavit, including any evidence about the impact a testing order may have on the source individual's life or health.

(2) The Provincial Court may make a testing order if the Provincial Court is satisfied that

- (a) the applicant has come into contact with a bodily substance of the source individual,
- (b) there are reasonable grounds to believe that as a result of the contact the applicant might have become infected with a pathogen that causes a communicable disease,
- (c) having regard to the physician's report and to the incubation periods for pathogens that cause communicable diseases and the methods available for ascertaining the presence of pathogens in the human body, an analysis of the applicant's bodily substances would not accurately determine, in a timely manner, whether the applicant has, as a result of that contact, become infected with a pathogen that causes a communicable disease,
- (d) the information to be obtained under the proposed testing order cannot reasonably be obtained in any other manner, and
- (e) having regard to the physician's report, because of the contact, the testing order is necessary to treat or manage the health of the applicant.

(3) The testing order referred to in subsection (2) may

- (a) require the Chief Medical Officer of Health to search the communicable disease databases to determine if the source individual is recorded on a communicable disease database,
- (b) require the source individual to provide to the Chief Medical Officer of Health information required to perform a communicable disease database search,
- (c) direct how the testing order may be carried out,
- (d) require the source individual to comply with any directions of a medical officer of health,
- (e) require a parent or guardian of a source individual who is a minor to take all reasonable steps to ensure the source individual complies with the testing order,

- (f) require the guardian of a source individual who is a dependent adult to take all reasonable steps to ensure that the source individual complies with the testing order,
 - (g) allow the Chief Medical Officer of Health not to require a qualified health professional to take a sample of a bodily substance from the source individual if the communicable disease database search has provided sufficient information so that taking a sample of a bodily substance from the source individual is not necessary,
 - (h) subject to clause (g) and subsection (4), require a qualified health professional to take from the source individual a sample of a bodily substance as specified by the physician's report and deliver the sample to a qualified analyst for analysis for the purpose of determining whether the source individual is infected with a pathogen that causes a communicable disease,
 - (i) specify the tests a qualified analyst must conduct on the sample obtained from the qualified health professional under clause (h),
 - (j) authorize a police officer to assist a medical officer of health or a qualified health professional under this Act, including, but not restricted to,
 - (i) by apprehending the source individual,
 - (ii) by confining the source individual until the testing order has been complied with,
 - (iii) by entering the premises of the source individual, or
 - (iv) by using force to ensure that the source individual complies with the testing order,
- and
- (k) contain any additional directions that the Provincial Court considers necessary.

(4) If a sample of a bodily substance was acquired at the time the applicant came into contact with the bodily substance of the source individual and the sample can be used for the analysis, the Provincial Court may order that that sample must be sent to the

qualified analyst instead of requiring the source individual to provide another sample of the bodily substance.

(5) If the source individual is deceased at the time of the application, the Provincial Court may make an order that allows a qualified health professional to take a sample of a bodily substance from the deceased source individual.

(6) The applicant must serve a copy of the testing order on the Chief Medical Officer of Health and provide the Chief Medical Officer of Health with a copy of the physician's report.

Authority of police officer

5(1) If a medical officer of health or a qualified health professional requires the assistance of a police officer in carrying out the requirements of a testing order and the testing order does not provide sufficient authority for a police officer to effectively render assistance to the medical officer of health or the qualified health professional, the applicant, the medical officer of health, the qualified health professional or a police officer may by notice of motion make an application to the Provincial Court for further direction.

(2) Subject to subsections (3) and (4), the notice of motion referred to in subsection (1) must be served on the source individual not less than 2 days before the application is to be heard by the Provincial Court.

(3) If the source individual is a minor, the notice of motion must be served on the parent or guardian of the source individual and, if the source individual is 14 years of age or older, on the source individual, not less than 2 days before the application is to be heard by the Provincial Court.

(4) If the source individual is a dependent adult, the notice of motion must be served on the source individual and on the guardian of the source individual not less than 2 days before the application is to be heard by the Provincial Court.

(5) Notwithstanding subsections (2), (3) and (4), a judge of the Provincial Court, on the ex parte application of the applicant, the medical officer of health, the qualified health professional or a police officer, may dispense with service of the notice of motion under subsection (2), (3) or (4) or authorize a shorter period of notice if the applicant, the medical officer of health, the qualified

health professional or the police officer satisfies the Provincial Court that, in the circumstances of the case, giving 2 days' notice to the source individual or to the parent or guardian of the source individual is impossible or impractical.

Appeal and stay of testing order

6(1) The applicant or the source individual may, by notice of appeal, appeal to the Court of Queen's Bench any decision of the Provincial Court on a question of law relating to a testing order.

(2) An appellant may, by notice of motion, apply to the Court of Queen's Bench for a stay of a testing order until the appeal is determined.

(3) The appellant must serve the respondent and the Chief Medical Officer of Health with the notice of appeal and, if a stay of the testing order is being requested under subsection (2), with a copy of that notice of motion.

Physician's report

7(1) A physician's report required for the purposes of an application for a testing order under section 3 must

- (a) be made by a physician who holds the qualifications specified in the regulations,
- (b) be in a form and contain the information prescribed by the regulations, and
- (c) meet any other requirements prescribed by regulation.

(2) For the purposes of preparing a physician's report, a physician

- (a) may require the applicant to submit to an examination, testing or treatment, and
- (b) must assess the risk to the health of the applicant resulting from the applicant's contact with a bodily substance of the source individual.

Responsibilities of Chief Medical Officer of Health

8(1) On receiving a copy of a testing order and a copy of the physician's report, the Chief Medical Officer of Health

- (a) must, as soon as reasonably possible, provide a copy of the testing order and a copy of the physician's report to the medical officer of health for the health region where the source individual resides, and
 - (b) may require the medical officer of health to carry out the requirements of the testing order.
- (2)** The Chief Medical Officer of Health may provide the results of a search of the communicable disease databases to the medical officer of health referred to in subsection (1).
- (3)** The Chief Medical Officer of Health must provide the results of the communicable disease database search to the applicant's physician and deliver notice to the applicant that the results have been delivered to the applicant's physician.

Responsibilities of medical officers of health

- 9(1)** Subject to section 4(3)(g) and (4), on receiving a copy of a testing order, the physician's report and results from a search of the communicable disease databases under section 8, a medical officer of health must as soon as reasonably possible
- (a) designate a qualified health professional to take from the source individual a sample of any bodily substance specified by the testing order,
 - (b) designate one or more qualified analysts to conduct tests on the sample obtained from the source individual in accordance with the testing order and may provide any additional instructions if necessary, and
 - (c) subject to subsections (2) and (3), serve the source individual with a copy of the testing order and a notice that provides the source individual with directions respecting the manner in which he or she must comply with the order.
- (2)** If the source individual is a minor, a medical officer of health must serve a copy of the testing order and the notice described in subsection (1) on the parent or guardian of the source individual and, if the source individual is 14 years of age or older, on the source individual.

(3) If the source individual is a dependent adult, a medical officer of health must serve a copy of the testing order and the notice described in subsection (1) on the source individual and on the guardian of the source individual.

(4) If the Chief Medical Officer of Health is satisfied that the medical officer of health is unable to carry out the requirements of the testing order, the Chief Medical Officer of Health may require any other medical officer of health to carry out the requirements of that order.

Responsibilities of qualified health professionals

10(1) A qualified health professional referred to in section 9(1)(a) must

- (a) take from the source individual a sample of any bodily substance as specified by the testing order and deal with the sample in the manner directed by the medical officer of health, and
- (b) deliver the sample to a qualified analyst designated by the medical officer of health for the purpose of having the sample analysed.

(2) A qualified health professional who takes a sample of a bodily substance from a source individual pursuant to a testing order must not use the sample

- (a) in any manner other than the manner specified in the testing order, or
- (b) for any purpose other than the purposes set out in the testing order.

(3) The source individual must, on the request of the qualified health professional, provide the qualified health professional with the name, address, telephone number and fax number of the source individual's physician, if any.

(4) If the qualified health professional is unable to take a sample of a bodily substance from the source individual as specified by the medical officer of health under section 9(1)(a), the medical officer of health may require any other qualified health professional to take a sample of a bodily substance from the source individual.

Source individual at risk

11(1) If a medical officer of health or a qualified health professional believes that taking a sample of a bodily substance from the source individual will endanger the source individual's life or health, the medical officer of health or the qualified health professional must, by notice of motion, make an application to the Provincial Court for further direction.

(2) The notice of motion referred to in subsection (1) must be served on the source individual and on the applicant not less than 2 days before the application is to be heard by the Provincial Court.

(3) Despite subsection (2), if the source individual is a minor, the notice of motion must be served on the parent or guardian of the source individual and, if the source individual is 14 years of age or older, on the source individual, not less than 2 days before the application is to be heard by the Provincial Court.

(4) Despite subsection (2), if the source individual is a dependent adult, the notice of motion must be served on the source individual and on the guardian of the source individual not less than 2 days before the application is to be heard by the Provincial Court.

(5) Notwithstanding subsections (2), (3) and (4), a judge of the Provincial Court, on the ex parte application of the medical officer of health or the qualified health professional, may dispense with service of the notice of motion under subsection (2), (3) or (4) or authorize a shorter period of notice if the medical officer of health or the qualified health professional satisfies the Provincial Court that, in the circumstances of the case, giving 2 days' notice to the applicant or to the source individual or to the parent or guardian of the source individual is impossible or impractical.

Responsibilities of qualified analysts

12 A qualified analyst referred to in section 9(1)(b) must

- (a) conduct an analysis of a sample of a bodily substance delivered under section 10(1)(b),
- (b) promptly provide a written record of the results of the analysis to the medical officer of health who instructed the qualified analyst,
- (c) ensure the sample is not used for any purpose other than the analysis required by the testing order,

- (d) not release the sample to any person unless
 - (i) the sample is released to a person who is acting on behalf of the qualified analyst for the purposes of
 - (A) carrying out the analysis required by the testing order, or
 - (B) retention of the sample,
 - and
 - (ii) the qualified analyst ensures no other person has access to the sample while it is in the custody of that person,
- (e) ensure that the sample is retained for a prescribed period and then destroyed in accordance with the regulations, and
- (f) not disclose the results of the analysis except in accordance with this Act or the *Public Health Act*.

Results of analysis

13(1) As soon as practicable after receiving the results of an analysis, a medical officer of health must make all reasonable efforts to provide a copy of the results to the applicant's physician and to the source individual's physician.

(2) As soon as practicable after receiving the results of an analysis, a medical officer of health must make all reasonable efforts to deliver notice to the applicant and to the source individual that the results have been delivered to their respective physicians.

(3) If the results of an analysis are positive for a communicable disease, the medical officer of health must comply with Part 3 of the *Public Health Act*.

(4) The results of an analysis are not admissible as evidence in any criminal or civil proceeding other than in accordance with this Act or the *Public Health Act*.

Costs

14 The Minister is not responsible for any costs of the applicant or the source individual unless otherwise provided for by the regulations.

Service of documents

15(1) A document required to be served under section 5, 9 or 11 may be served personally or by being sent by registered mail to the last known address of the person being served.

(2) A document served by registered mail is deemed to have been received on the 7th day following the day of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or received it at a later date.

Confidentiality

16(1) Despite the *Health Information Act* and the *Freedom of Information and Protection of Privacy Act* and subject to subsection (2), no person shall use or disclose any information about an applicant or a source individual that comes to the person's knowledge in the course of carrying out any responsibility pursuant to this Act or the regulations.

(2) A person may disclose information described in subsection (1) if the disclosure is

- (a) required to administer this Act or the regulations,
- (b) required to carry out a responsibility or duties imposed or to exercise powers conferred by this Act or the regulations,
- (c) pursuant to a subpoena, warrant or order issued by the Provincial Court or the Court of Queen's Bench,
- (d) required by an enactment,
- (e) ordered by the Minister for the purposes of protecting the public health,
- (f) made in the course of a professional consultation between qualified health professionals,

(g) made between solicitor and client, or

(h) made in circumstances set out in the regulations.

(3) Any proceedings relating to information disclosed pursuant to subsection (2)(c) may at the discretion of the Court be held in private, and at the conclusion of the proceedings before the Court the information may be sealed by the clerk of the Court and the Court may direct that the part of the record of the proceedings relating to that information not be made available to the public.

(4) If the Provincial Court makes an order at any time during the proceedings before it and that order is appealed to the Court of Queen's Bench, that part of the hearing before the Court of Queen's Bench that relates to information disclosed pursuant to subsection (2)(c) may, at the discretion of the Court of Queen's Bench, be heard in private.

Protection from liability

17 No action for damages may be commenced against an individual carrying out a power or duty under this Act for anything done or omitted to be done by that individual in good faith.

Regulations

18(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing diseases as communicable diseases for the purposes of this Act;
- (b) prescribing communicable disease databases;
- (c) respecting the additional powers of the Chief Medical Officer of Health and medical officers of health in carrying out a testing order under this Act;
- (d) prescribing the circumstances and the activities that, if performed in relation to a source individual, give rise to grounds for an application for a testing order if the individual performing the activities comes into contact with a bodily substance of the source individual;
- (e) respecting classes of individuals for the purposes of section 3(1)(b);

- (f) governing applications for testing orders and for appeals of testing orders;
- (g) respecting other documents that must be served on a source individual when an application for a testing order is made;
- (h) respecting how a testing order made under this Act may be carried out;
- (i) respecting the qualifications a physician must hold for the purposes of preparing a physician's report;
- (j) prescribing the form and contents of a physician's report;
- (k) respecting other requirements of a physician's report;
- (l) prescribing health professions whose members are qualified health professionals for the purposes of this Act;
- (m) respecting the qualifications that must be met by a person to be a qualified analyst;
- (n) respecting costs;
- (o) respecting circumstances under which information collected under this Act may be disclosed;
- (p) respecting exceptions to the 30-day time period within which an application for a testing order must be made;
- (q) respecting any other matter or thing that the Lieutenant Governor in Council considers appropriate for the purposes of this Act.

(2) The Minister may make regulations

- (a) respecting who may retain samples of bodily substances;
- (b) respecting the manner in which samples of bodily substances must be retained;
- (c) respecting the retention period for samples of bodily substances;
- (d) respecting the destruction of samples of bodily substances.

Offence and penalty

19 A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$2000 for a first offence and not more than \$5000 for a 2nd or subsequent offence.

Amendment to definition

20(1) Section 1(j) is repealed and the following is substituted:

(j) “paramedic” means a regulated member of the Alberta College of Paramedics;

(2) Subsection (1) comes into force on the coming into force of Schedule 18 of the *Health Professions Act*.

Repeal

21 The *Blood Samples Act*, SA 2004 cB-4.5, is repealed.

Coming into force

22 This Act, except section 20(1), comes into force on Proclamation.