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SECTION 22.1 HEALTH PROTECTION AND PROMOTION ACT ORDERS

The Health and Emergency Medical Services Committee recommends the adoption of the recommendation contained in the following report, September 10, 2003, from the Acting Commissioner of Health Services and the Commissioner of Corporate Services:

1. RECOMMENDATION

It is recommended that:

1. Health and Emergency Medical Services Committee and Regional Council receive this report for information.

2. PURPOSE

The purpose of this report is to inform Health and Emergency Medical Services Committee and Regional Council of recent amendments to the *Health Protection and Promotion Act* and the implications of these amendments on the Health Services Department.

3. BACKGROUND

On May 1, 2003, the *Health Protection and Promotion Act* was amended by Bill 105 to include section 22.1. Section 22.1 allows a victim of crime or person providing emergency health care or emergency first aid (“the Applicant”), to make an application to the Medical Officer of Health for an order requiring the taking of a blood sample from the person with whose bodily substance the Applicant came into contact.

The purpose of the blood sample is to determine whether the person, with whose bodily substances the Applicant came into contact, carries a virus that causes Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS), Hepatitis B or Hepatitis C.

On May 1, 2003, Ontario Regulation 166/03 to the *Health Protection and Promotion Act* was enacted. This regulation sets out the procedure an Applicant must follow in making an application to the Medical Officer of Health and the procedure to be followed by the Medical Officer of Health prior to issuing or refusing to issue the order. The Regulation came into force on September 1, 2003.

4. ANALYSIS AND OPTIONS

Medical Officers of Health, upon receiving an application from a victim of crime or person providing emergency health care or emergency first aid, are responsible for

deciding whether or not to issue an order requiring the taking of a blood sample from an individual with whose bodily substance the Applicant came into contact.

The procedure to be followed by Medical Officers of Health from receipt of the application to the disposition of the order is outlined in intricate detail in Ontario Regulation 166/03 to the *Health Protection and Promotion Act*, including documentary and timing requirements. The lengthy and complicated procedure necessitated extensive training of 18 staff of the Sexual Health Team, Infectious Diseases Control Division.

The responsibilities imposed on Medical Officers of Health pursuant to section 22.1 and Regulation 166/03 of the *Health Protection and Promotion Act*, are not in accordance with the traditional functions of Medical Officers of Health, namely to prevent, eliminate and decrease the effects of public health hazards. Instead, as a result of amendments to the *Health Protection and Promotion Act*, Medical Officers of Health are required to act as arbiters between the interests of private individuals.

4.1 The Legal Test

Section 22.1(2) provides that a Medical Officer of Health may make an order requiring the taking of a blood sample if he or she is of the opinion, based on reasonable and probable grounds, that

- (a) the Applicant came into contact with a bodily substance of another as a result of being a victim of crime or providing emergency health care services or emergency first aid
- (b) the Applicant may have been infected with a virus that causes HIV/AIDS, Hepatitis B and Hepatitis C as a result of coming into contact with the bodily substance
- (c) an analysis of the Applicant's blood would not accurately and timely determine whether the Applicant was infected with a virus that causes HIV/AIDS, Hepatitis B and Hepatitis C
- (d) taking the blood sample would not endanger the life or health of the individual from whom the blood sample is required
- (e) the Applicant submits a physician report within seven days after the contact with the bodily substance
- (f) having regard to the physician report, the order is necessary to decrease or eliminate the health risk to the Applicant

In making this determination, the Medical Officer of Health may, but is not required to, hold a hearing at the York Region Administrative Centre pursuant to the requirements of the *Health Protection and Promotion Act*.

4.2 Avenues of Appeal

If the Medical Officer of Health refuses to issue an order requiring the taking of a blood sample, the Applicant may appeal the refusal to the Chief Medical Officer of Health for the Province of Ontario.

If the Medical Officer of Health issues an order requiring the taking of a blood sample, the person from whom the blood sample is required may appeal the order to the Health Services Appeal and Review Board.

5. FINANCIAL IMPLICATIONS

Costs associated with the impact of complying with the amendments to the *Health Protection and Promotion Act* is currently being investigated by the Health Services Department.

6. LOCAL MUNICIPAL IMPACT

The amendments to the *Health Protection and Promotion Act* apply to all persons in the Province of Ontario who come into contact with bodily substances of other individuals as a result of being the victim of crime or providing emergency health care or emergency first aid such as employees of fire, ambulance and police services.

7. CONCLUSION

The amendments to the *Health Protection and Promotion Act* permit a Medical Officer of Health to make an order requiring the taking of a blood sample from an individual, upon the receipt of an application from a person who is a victim of crime or who provides emergency health care or emergency first aid, provided the Medical Officer of Health has reasonable grounds to believe certain statutory requirements have been satisfied.

The Senior Management Group has reviewed this report.