

Re: Regulation to Amend/ Regulation 569 of Revised  
Regulations of Ontario 1990 made under the *Health  
Protection and Promotion Act*

Background:

Simply stated, the need for government intervention in matters of AIDS and HIV has arisen from a perception that a significant number of HIV-infected individuals in Ontario are spreading the virus to others either unknowingly or through a lack of knowledge to prevent transmission or through being unwilling or unable to protect others from infection. Many individuals involved in programmes to stop the epidemic spread of AIDS agree that transmission of HIV is largely preventable. It is generally agreed that the vast majority of HIV infection in Ontario has occurred because individuals have engaged unknowingly in unprotected sexual intercourse and/or the sharing of intravenous drugs with an individual who is infected. Many individuals involved in the fields of government, public health, law, and community activism more or less agree that although there is presently no cure for AIDS, HIV-infection is a chronic condition that can be managed through a range of medical treatments and further infection can be prevented through adequate counselling and public education around issues of 'safe sex' and 'safe drug use.' However, despite the availability of information and counselling about appropriate precautions to prevent HIV transmission, it is widely believed that some individuals will continue to put others at risk of infection. Furthermore, it is believed that there exists (and will continue to exist) a number of individuals who are either unable or unwilling to use precautions. It is generally acknowledged that the topic of HIV-infected individuals who knowingly infect others has attracted considerable public attention and has resulted in widespread fear and stigmatization of HIV-infected individuals.

Disagreement arises with discussion about the practical implementation of legislated measures to ensure that HIV-infected individuals will not pass on infection to others. There is no consensus on how great a problem exists regarding individuals who are "unable or unwilling" to use precautions against transmission. There is considerable speculation about who the individuals are who are not able or willing to use precautions to protect others, under what circumstances such occurrences take place, and why some individuals do not use options for safer sex or safer drug use in spite of the availability of counselling and education materials.

The possibility of resolving the disagreement is made increasingly difficult by the presence of three distinctive categories of persons are affected by existing public health statutes. First, there are those individuals whose behaviours are to be directly regulated and whose public conduct is to be subjected to official orders and possible sanctions: those deemed "unable and unwilling" to protect themselves and others from transmission of HIV. Second, there are those to be indirectly

regulated and requiring of protections of persons aggrieved by administrative decisions: those stigmatised members of so-called 'high-risk groups' who are, in themselves, HIV-negative. Third, there is a subgroup of the indirectly regulated who could be viewed as arguing in their own interests for the protection of their individual freedoms, rather than appearing to argue the public interest: individuals who are HIV-positive and successfully managing the disease. It is evident that in order to establish a legitimate mandate to act on behalf of the welfare of society at large and its individual members, the government and its agents must address each of the above categories of affected persons separately and provide not only a conception of just cause but also principles to go with each major manoeuvre within programs of action. This suggests that in addition to such institutional principles as communal welfare and public health there exists a need for an agreement on principles for such notions as fairness and fidelity, mutual respect and beneficence as these apply to the needs of individuals affected by AIDS and with respect to their ability to manage AIDS.

**AIDS ACTION NOW!** is concerned that all individuals have the knowledge, resources and ability to protect themselves and others and to ensure that no one is infected or infects others unknowingly. We are concerned that the problem of individuals unable to practice safer sexual and needle activity be treated separately from the problem of individuals who are unwilling to do so. Furthermore, we are concerned that these two problems not be allowed to increase the stigmatization already experienced by individuals who are successfully managing their illness. With these concerns in mind, we seek responsive and effective regulatory systems which protect both community and individual rights.

Regulation to Amend  
Regulation 569 of Revised Regulations of Ontario 1990  
made under the  
*Health Protection and Promotion Act*

Re: Section 1 including: 1(1.1), 1(1.2), 1(1.3).

1.- (1) Section 5.1 of Regulation 569 of Revised Regulations of Ontario, 1990, as made by section 1 of Ontario Regulation 749/91 and amended by section 1 of Ontario Regulation 233/92, is further amended by adding the following subsections:

(1.1) A physician who forms an opinion that a patient is or may be infected with an agent of AIDS is exempt from reporting the patient's name and address under section 26 of the Act to a medical officer of health except in the following circumstances:

1. The physician has reasonable cause to believe that the person examined has caused serious bodily harm to another person. No serious bodily harm will be said to have occurred in circumstances where the patient has disclosed his or her infected state to partners and that the partner has knowingly consented to the risk of exposure to the virus.
2. The patient demonstrates to the physician that he or she is conducting himself or herself in a manner that will result in serious bodily harm to another person. No serious bodily harm will be said to have occurred in circumstances where the patient has disclosed his or her infected state to partners and that the partner has knowingly consented to the risk of exposure to the virus.

(1.2) A physician is not exempt under subsection (1.1) if the patient consents to the physician making a report.

(1.3) Physicians are required to fulfil the following duties:

1. The patient must receive counselling about preventing the transmission of HIV infection,
2. The patient must receive counselling about available courses of treatment,
3. The physician must report the patient's initials, sex and date of birth, including year of birth, to the medical officer of health.