

Patient confidentiality and HIV/AIDS

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The Ethics Committee has been asked to comment on the issue of confidentiality of patient information, when a diagnosis of positive HIV status or Aids is made. Specifically, what are the ethical guidelines around advising partners of the patient's HIV status? Much of the discussion on this topic applies to any infective condition that carries significant risk.

There are both legal and ethical considerations that contribute to decisions and processes around this issue.

Our own legal situation is relatively clear. The Health Information Privacy Code (Rule 11 (d) ii), allows the disclosure of information when the disclosure of that information is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another individual. Whilst this may seem uncomplicated, the doctor must determine whether the disclosure is necessary to reduce the potential harm, and whether the threat is serious and imminent. For instance, in someone with HIV, is the threat serious and imminent if a condom is always used, or there is no vaginal or anal sex?

On the broad international legal front, the principle of the 'duty to warn' has become established. That is, not only may the physician disclose, but in some jurisdictions, if the physician knows that there is a serious threat from a patient to another person, they must disclose.

A further consideration is who should any disclosure be made to? Does the physician inform the patient or appropriate authorities such as the local Medical Officer of Health?

Ethically, decisions around this situation demand that the doctor maintains an extremely delicate balance between his or her clear and primary ethical duty to his/her patient to maintain confidentiality and the 'public good' to which a doctor also owes a duty of care.

Our own NZMA Ethical Code states:

"Doctors should keep in confidence information derived from a patient, or from a colleague regarding a patient, and divulge it only with the permission of the patient except when the law requires otherwise, or in those unusual circumstances when it is clearly in the patient's best interests or there is an overriding public good."

Again the issues are around what constitutes an overriding public good. It can also be inferred from our code that each circumstance has to be taken individually and in its context. There can be no complete and rigid guideline.

The law does not require us to notify someone who is HIV positive. AIDS, along with many other infectious and communicable diseases is a notifiable disease under the Health Act, but being HIV positive is not. Considering the above, the Ethics Committee recommends the following when a patient is diagnosed as being HIV positive:

1. The doctor should make a thorough assessment with the patient of the patient's circumstances and their sexual relationships and practices.

2. A part of this discussion with the patient should include either providing information about HIV/AIDS and the risks to sexual partners, or those sharing IV equipment etc., or arranging for information to be provided.
3. The patient should be encouraged to tell sexual partners or others at risk that the patient is HIV positive, and what the risks are. The doctor should offer himself or herself or another appropriate professional as someone that the partner may discuss the facts and issues with - - but not further and unnecessary information about the patient. This might best be done together with the patient.
4. If the patient is unwilling to do so, and the doctor's judgement after the comprehensive assessment is that there is a serious and imminent risk to another's health, then the doctor should consider disclosing this information.
5. In forming this opinion, the doctor should consult with colleagues. This should be not only with a trusted close colleague and co-worker, but also potentially with an expert in the field. The doctor should tell the patient that he/she is doing so.
6. If the consensus is that the risk is both serious and imminent and that the information should be disclosed, the patient must, where possible, be brought into the picture and told the course of action that the doctor intends to take.
7. If the partner is a patient of the practitioner, the doctor may consider relaying the information directly if the final decision is that this should be done. If the partner or person at risk is not an active patient of that practitioner, the appropriate authorities, usually the local Medical Officer of Health should be informed.