Disclosure, Confidentiality, and Decision-Making: Ethics in HIV Care

Maura George, MD
Medical Director of Ethics
Grady Memorial Hospital
Assistant Professor, Emory University

Jason Lesandrini, PhD(c)
Executive Director of Medical and Organizational Ethics
Wellstar Health System

Objectives

1. Identify the ethical concerns with HIV disclosure
2. Understand the ethical foundations of confidentiality
3. Practice using an ethics decision making framework
Case 1

Mr. Davis is a 21 y/o M admitted for shortness of breath, and his CXR is suspicious for PCP. He consents to an HIV test in the Emergency Department. Shortly after, his respiratory status worsens, and he is intubated. The HIV test returns positive with a CD4 count of 11.

Case 1

Over the next few days, his mother and sister are at the bedside demanding to know why he has become so severely ill. The team is using his mother as the surrogate decision maker as he is too ill to bring out of sedation.

• Do you share the HIV diagnosis?
Case 1

On day 4 you meet the patient’s girlfriend who had been out of town visiting her grandmother.

- Should the medical team inform the girlfriend?

She is visibly pregnant.

- Does this change your decision?

Case 2

Mr. Johns is a 66 y/o M with no PMH admitted with abdominal pain and found to have symptomatic gall stones. You are his nurse and Dr. Kelly, the orthopedic surgeon, has asked you to serve as a witness as she consents him for an elective cholecystectomy.
Case 2

The two discuss the risks and benefits, including not moving forward with or postponing the surgery. After a lengthy discussion, Mr. Johns asks Dr. Kelly whether there is anything else he should know.

Unbeknownst to Dr. Kelly, you know that six months ago she suffered a needle stick injury while operating on a young victim of an auto accident. The patient was HIV positive. Dr. Kelly declined post-exposure prophylaxis.

Four weeks ago she seroconverted and is HIV positive.
Case 2

Dr. Kelly reassures Mr. Johns there is nothing to worry about. The patient signs the consent form and the surgery is scheduled for the next day.

• Should the surgeon have to tell Mr. Johns that she is HIV positive?

Case 3

A 45 y/o M is seen in clinic for consultation regarding multiple dental extractions. He is accompanied by his girlfriend. You conduct a history and physical and consent and schedule him for the procedure. You step out of the exam room and the patient follows you into the hallway.
Case 3

“Doc—there’s something about my past medical history I didn’t tell you. I have HIV but I didn’t want to say it in front of my girlfriend.”

• Do you disclose to the girlfriend?

Confidentiality

“A socially publicizable and enforceable pledge to keep secret or hold in confidence any information about the client which is gained by the professional during the normal course of client-professional interactions.”

Importance of Confidentiality

• One of the most important principles of the patient-physician relationship

Fosters:
• Open Communication/Full and complete truthfulness
• Trust
• Balance of power
• Autonomy/Freedom of choice

Cons of Disclosure

• Decreasing HIV testing
• Eroding the patient-physician relationship
Code of Ethics AMA

“A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.”

AMA Code of Ethics, Principle IV, June 2001

Limits of confidentiality

• Continuity of Care
• Mandatory reporting
  – Violent wound reports
  – Suspicion of abuse or neglect
  – Communication of diseases
• Danger to self or others
Tarasoff vs. Regents of the University of California

“The protective privilege ends where the public peril begins.” Justice Matthew O. Tobriner

Duty to warn

• 1983 Bioethics Commission
  – Reasonable attempts to persuade have failed
  – High probability of serious harm to identifiable third party
  – Disclosure would allow prevention/mitigation of harm
  – Disclosure limited to information needed to diagnose, treat
Disclosure Laws by State

- Alabama
- Georgia
- Kentucky
- North Carolina
- South Carolina
- Tennessee

Spouse and Partner Notification Activities: State Level Data

Table 1: State Spousal Notification Efforts - Actions Described in Certifications, continued

<table>
<thead>
<tr>
<th>Action Description</th>
<th>Action Type</th>
<th>State/States</th>
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</thead>
<tbody>
<tr>
<td>DISCUSS SPOUSES AND PARTNERS</td>
<td>Administrative</td>
<td>AL AK AR CO CT DE DC FL HI IL IN IA KS KY LA ME MA MI MN MS MO MT NE NV NH NJ NM ND OH OK OR SD TN TX VA WA WV WI</td>
</tr>
<tr>
<td>AMEND CONTRACTS AND MEMORANDAS OF UNDERSTANDING (MOUs)</td>
<td>Administrative</td>
<td>AL AK AZ AR CA CO CT DE DC FL HI IL IN KS KY LA ME MD MI MN MS MT NE NV NH NM NY ND OH OR PA TX UT WV WI</td>
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<tr>
<td>PUBLICIZE RULES, LAWS, POLICIES</td>
<td>Administrative</td>
<td>AL AK AZ AR CA CO CT DE DC FL HI IL IN KS KY LA ME MD MI MN MS MT NE NV NH NM NY ND OH OR PA TX UT WV WI</td>
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<tr>
<td>REVISE TRAINING AND TRAINING MATERIALS</td>
<td>Administrative</td>
<td>AK AZ CA IN KY MA NV NM NY RI TX WA</td>
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GA Code § 24-12-21.

• Disclosure of AIDS confidential information
  – (g) When the patient of a physician has been determined to be infected with HIV and that patient's physician reasonably believes that the spouse or sexual partner or any child of the patient, spouse, or sexual partner is a person at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient has been determined to be infected with HIV, after first attempting to notify the patient that such disclosure is going to be made.

Alabama and Kentucky Law

Alabama
• Had a notification law that a provider must inform a spouse but it was repealed at the end of last year

Kentucky
• "No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:” (list includes mostly other providers)
South Carolina Law

South Carolina SECTION 44-29-146:
• Physicians and state agencies exempt from liability for disclosure of persons carrying Human Immunodeficiency Virus; "contact" defined.
  – A physician or state agency identifying and notifying a spouse or known contact of a person having Human Immunodeficiency Virus infection [HIV] or Acquired Immunodeficiency Syndrome (AIDS) is not liable for damages resulting from the disclosure.
• Another section states:
  – To the extent resources are available to the [state health dept., DHEC] for this purpose, when a person is identified as being infected with [HIV], the virus which causes [AIDS], his known sexual contacts or intravenous drug use contacts, or both, must be notified but the identity of the person infected must not be revealed. Efforts to notify these contacts may be limited to the extent of information provided by the person infected with HIV.

Tennessee Law

Code 68-10-115: Immunity from liability for informing person of potential HIV infection
• A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. A person making such disclosure is immune from liability for making disclosure of the condition to the potential victim.
Ethics Disclosure Tool

Consider:
1. Information to disclose
2. Intended recipient of information
3. Value promoted by disclosure

Will this value be significantly advanced by this disclosure? 

Does this value more important than the values supporting confidentiality?

Is there a less costly way of promoting this value?

Disclosure may be permitted.

Weighing the risks and benefits of disclosure

Consider
• What information would be disclosed?
• Who is the intended recipient of information?
• What value is there in disclosure?
Weighing the risks and benefits of disclosure

Do Not Disclose

Will this value be significantly advanced by this disclosure?

NO

YES

Is this value more important than the values supporting confidentiality?

NO

YES
Weighing the risks and benefits of disclosure

Is there a less costly way of promoting this value?

NO

Disclosure may be permitted

Consider:
1. Information to disclose
2. Intended recipient of Information
3. Value promoted by disclosure

Will this value be significantly advanced by this disclosure?

NO

Do Not Disclose

YES

Is this value more important than the values supporting confidentiality?

NO

Do Not Disclose

YES

Do Not Disclose

Is there a less costly way of promoting this value?

NO

Disclosure may be permitted
Case 4

Mr. Diaz is a 19-year-old male who suffered a gunshot wound to the abdomen. On admission, he reported he was HIV positive. After a short stay in the hospital it was felt he could safely complete his recovery at home with wound care from a home health nurse.

Case 4

However, he is uninsured and only qualifies for 3 days of home health. Since his mother died years ago, Mr. Diaz has lived with his father and his 25-year-old sister who is willing and able to receive teaching to care for him.

Mr. Diaz has no objections to his sister providing the care but insists she not know his HIV status.
Case 4

Mr. Diaz has always been on good terms with his sister, but she did not know he was actively homosexual. His greatest fear, though, was that his father would learn of his homosexual orientation.

• Should the physician disclose Mr. Diaz’s status to the patient’s sister?
Conclusions

• HIV disclosure is often never straightforward and requires careful consideration
• Consider the values promoted by disclosure and compromised by breaking confidentiality
• Use a systematic approach to comprehensively evaluate the implications of any “disclosure” decision

Questions?

• Jason Lesandrini PhD(c)
  jlesandr@gmail.com

• Maura George MD
  maura.george@emory.edu

• Bibliography available upon request