

Case 23 – Derek

Derek requests results of an HIV test which is positive. He does not want his wife to know his HIV status.

Best Practice Response

Relevant ethical considerations and medico-legal issues

- Protection of patient privacy underscores the therapeutic relationship. It facilitates open discussion between patient and doctor and builds trust. Disclosure of a patient's personal health information is only permitted where:
 - the patient consents to the release of the information;
 - disclosure to another healthcare provider is necessary to ensure appropriate medical care of the patient;
 - disclosure of information is mandated by law- eg. by subpoena or order of the Court;
 - there is an over-riding duty in the 'public interest' to disclose information- eg. where a person is at serious risk of harm.
- The protection of a patient's privacy regarding their HIV status is important, given the stigma, prejudice and discrimination that is often attached to HIV/AIDs. Information arising from a patient having had an HIV test, for example, is given extra protection under the law. Under anti-discrimination legislation, it is illegal to discriminate against an individual on the basis of their HIV status.
- It is generally unlawful for doctors to tell anyone that a patient is HIV positive in the absence of the patient's consent. Doctors sometimes face dilemmas where they must decide whether to disclose information about a patient to a third party, either for the patient's good or to protect the health or life of a third party. Strategies for achieving a balance between the public health interest and patients' rights includes:
 - Counselling the patient about the testing procedure and the potential implications of results. It is preferable that an open discussion about the patient's responsibilities be conducted prior to testing so that appropriate support can be organised in advance for those patients at high-risk of a positive test result.
 - For patients newly diagnosed with HIV, obtaining a thorough and sensitive sexual and risk factor history from the patient in order to identify the likely modes of transmission and inform contact tracing.
 - Providing patients with access to information about the risks of transmission to others and of strategies to mitigate such risks, including the need to practice safe sex and issues of informing sexual partners of their infection. Under Public Health legislation a person with HIV, or another STI, must inform a sexual partner of the fact they have HIV, or any other STI, before sexual intercourse takes place. In addition, laws across Australia can be used to charge an individual who recklessly, negligently or deliberately exposes or transmits HIV to another person.

- Being mindful of your duty of care to a sexual partner of a patient who is HIV positive. In two NSW cases, the Courts found that the doctors had breached the duty of care owed to the sexual partner of a patient by:
 - failing to order testing of a patient who was at high-risk of contracting HIV; failing to inform the patient of the danger he posed to others and to advise the measures he should take to protect others from cross-infection¹
 - failing to provide proper pre-and post-test counselling (required by health department guidelines) to the patient; failing to contact the patient and inform him that, unless he attended an HIV clinic and demonstrated that he had informed his fiancée of his HIV status, that the doctors were legally required to refer him to the Director-General of the Department of Health as a person known to be HIV positive who was not attending for review and putting others at risk; failing to then refer the recalcitrant patient to the Department of Health²
- Ensure that your Practice has robust procedures in place for following up patient test results as well as correct and up-to-date contact details for all patients undergoing investigation for STIs.
- Seek guidance from the Public Health Unit in your State- several States have developed guidelines or protocols for the management of ‘recalcitrant’ patients. Under these guidelines, a management framework is established which allows for the escalation of interventionist strategies to minimise the risk to the public. Coercive measures, including the use of isolation and referral to Police, are a last resort, with education and counselling the preferred means of effecting behaviour change.
- Every person newly diagnosed with HIV infection has the right to support services including:
 - psychosocial support
 - HIV treatment counselling and advice on prevention of transmission
 - Assistance with contacting partners and others at risk.
 - Access to relevant specialist and community services.

Encourage the patient to engage with support services at the time of diagnosis. Care should be exercised when counselling patients with HIV, to ensure that information does not have the effect of discouraging them from accessing testing and engaging with the health system.

MDA’s recommendation

- In the present case study, when exploring Derek’s reason/s for not wanting to inform his wife of his HIV status, it is important to counsel him about the risks of transmission of the disease and strategies to mitigate such risk. Derek should be informed of the legal issues associated with a positive result, and the procedures for maintaining his confidentiality should be explained.
- Derek should be encouraged to engage in the process of contact tracing and to contact support services early.
- Doctors should seek advice from the public health unit in their State, and follow the management framework established for escalating interventions in cases where a patient with HIV places others at risk.

¹ *BT v. Oei* [1999] NSWSC 082

² *PD v Dr Nicholas Harvey & 1 Ors* [2003] NSWSC 487

- **Resources**

- *Human Immunodeficiency Virus (HIV) CDNA National Guidelines for Public Health Units* (taken from NSW Health website- HIV/AIDS Control Guideline)
- *National Guidelines for the Management of People with HIV Who Place Others at Risk* (2008)
- S Bird, HIV testing: Confidentiality; communication and follow up, *Australian Family Physician*, Vol. 32. No. 8, August 2003: 1-3
- R.S Magnusson, Privacy, confidentiality and HIV/AIDS health care, *Australian Journal of Public Health*, Vol. 18, No. 1, 1994: 51-58

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