



## NORTHWEST AIDS EDUCATION AND TRAINING CENTER

# HIV/AIDS: Legal & Ethical Issues

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# Objectives:

- Understand basic biomedical principles of ethics
- Review physicians' ethical principles (AMA)
  - Specifically, when can a provider disclose?
  - Common problems which present ethical dilemmas
- Understand protections to persons with HIV/AIDS
- Review behaviors endangering public health

# Four Bioethical Principles:

- **AUTONOMY**

- respect for the individual and their ability to make decisions about their own health and future.

- **BENEFICENCE**

- actions are intended to benefit the patient or others;

- **NON-MALFEASANCE**

- actions intended not to harm or bring harm to the patient and others; and

- **JUSTICE**

- being fair or just to the wider community in terms of the consequences of an action.

# Case 1: Disclosure

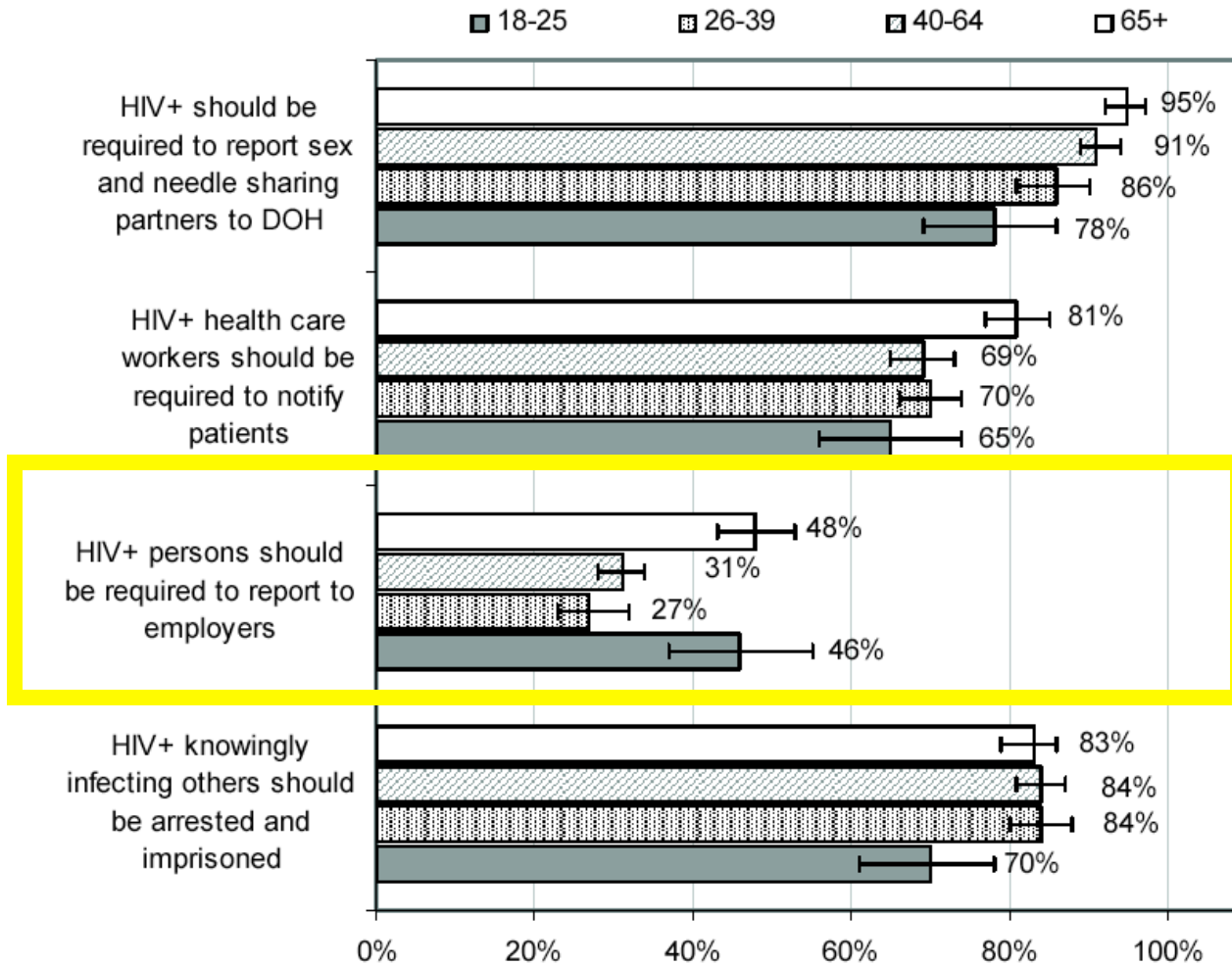
- 40 year old male who discloses HIV status to his pastor who then proceeds to inform potential employer and co-employees of his HIV status. He asks you what can he do about this.

# Case 1

- Tell him there is no legal recourse against employer's actions
- Seek advice from public health officer
- Call local prosecutor
- Do not advise

# Inappropriate Disclosure

**Figure 3: Policy preferences regarding people with HIV/AIDS, by age**



# Example HIV/AIDS “*problems*” that require ethical consideration:

- **Misperception, stigma, & discrimination**
- **AIDS legal issues (Washington State version):**
  - **Behaviors endangering public health (BEPH) often present the most difficult ethical issues**
  - Mandatory testing for persons sentenced for drug and sex-related crimes
  - Management of substantial exposures to health care and public safety workers, rarely requiring mandatory testing of sources
- **Strong Public Health help – to clarify the problem and provide ethical & moral assistance – may be needed to help achieve HIV/STD control in some communities**



# Misperceptions persist & can harm persons with HIV

- Cirque de Soleil fired one of a male couple featured in *The Advocate*, because he was HIV+ -- “a risk to other performers” according to the Cirque (2003)
- JC Penney Store in Illinois fired HIV+ employee (2005)
- Foreign Service applicant denied position as officer based on HIV + status (2001)
- 13 year old HIV+ boy denied admission to private school (2012)

# Stigma Exists

- High percentage of people at high risk who test for HIV in local public health, test *anonymously*.
- Most AIDS community supporters have strongly opposed HIV reporting *by name* despite “significant” public health benefits to HIV+s
- Many people with HIV will not disclose their HIV status to family and friends, let alone employers.
- Some with HIV do not disclose to sex and needle sharing partners at risk (whose status is HIV negative or unknown).

# The 1988 Washington State AIDS Omnibus Law: Protections

- No person may require HIV (or HCV) testing as a condition of hiring, promotion, or continued employment unless the absence of HIV or HCV is a bona fide qualification for the job in question
- It is illegal to discriminate against persons with HIV/AIDS in housing, public accommodations, and credit
- It is illegal to disclose that a person has tested for HIV, or has tested positive for other sexually transmitted diseases, except for their medical care.

# Despite Protections, Discrimination Still Exists

- Protections:
  - 1988 Washington State AIDS Omnibus Law prohibits discrimination on the basis of HIV
  - 1992 Americans with Disabilities Act prohibits discrimination on the basis of disabling conditions, such as HIV
- People with HIV are often unaware of their protections, unwilling to disclose their status, or too disempowered to seek help

## Case 2

- You discover that a 30 year old HIV+ male to female transgender has placed an ad in a local paper to offer escort services. She is also known to have multiple partners and is not disclosing her HIV status.

## Case 2

What are your obligations?

- No obligation
- Notify public health
- Counsel her to disclose HIV status to partners, use condoms
- Notify the police

## Case 2

- Duty to warn - permissive disclosure
  - Does it apply in this case?
- Role of Public Health
- Role of Provider
  - Prevention with Positives

# DUTY TO WARN - When may a provider disclose?

- Duty to protect patient's rights
- Duty to protect both patient and others
- Duty to not bring harm to patient and others
- Duty to be fair and just to the wider community



# When may a provider disclose?

- When **serious harm** may occur to a third party, whether or not a criminal offense, e.g. threat of serious harm to a named person (e.g., Tarasoff decision)
- When a doctor believes a patient to be the **victim of abuse** and the patient is unable to give or withhold consent to disclose
- When, without disclosure, a doctor could not act in the **overall best interests** of a child or young person who is his/her patient and incapable of consenting to disclosure
- When, without disclosure, the task of **preventing or detecting a serious crime** by the police would be prejudiced or delayed

# Role of Public Health

- **Partner Notification**
  - Partner Counseling and Referral Services (PCRS) – current terminology
  - Contact Tracing
- **Behaviors Endangering Public Health**
  - High proportion have co-morbidities (mental illness, substance abuse, e.g.)
  - Due process steps
    - 1<sup>st</sup> – no anonymous reports; certainty of status & counseling messages being delivered
    - Order to cease & desist
    - Potential court action → detention (90 days max)
- **Court actions beyond public health (based on victim's report)**

# Behaviors Endangering Public Health

- People who **knowingly expose others** to HIV *may warrant* some intervention.
  - Should it be a public health intervention?
- When knowing exposure to others is suspected, King County interpretation of state law defines three levels of public health response, under the phrase “behaviors endangering the public health” (BEPH).

# WA State BEPH law requires three levels of response:

- **Signed orders must be applied sequentially:**
  - **1st level** = “Order to Test” for HIV with counseling; this documents the person’s HIV status and the delivery of basic instructions on minimum safety standards
  - **2nd level** = “Order to Cease and Desist” from specified behaviors
  - **3rd level** = “Detention Order” for up to 90 days of “intensive counseling” in a non-jail facility; requires prior judicial review; has never been used in Seattle or King County

# Factors Impairing Ability to Behave Safely:

- Major psychiatric diagnosis
- Developmental disability
- Current abuse of illegal drugs
- Current abuse of alcohol
- Current prostitution
- Current homelessness

# Deficiencies in Current System

- Local public health officials can only contact patient for partner notification purposes and referral to social and health services.
- No mention of timing of contact, who has the primary responsibility, or duration of monitoring of ongoing potential at risk partners.
- Only practical intervention for public health risk is a cease and desist order or detention for 90 days and is only renewable if evidence of ongoing risk exposure.
- Problem arises when public health seeks enforcement of a cease and desist order but prosecutor chooses criminal actions: what public health records can the prosecutor access?

# Careless Transmission More Common

- Transmission by BEPH is probably a relatively rare phenomenon
- Most transmission appears to result from carelessness:
  - People not thinking clearly, maybe from drugs
  - Or taking calculated risks (e.g., partner selection, strategic positioning)
  - Or, by avoiding disclosure

# HIV Decriminalization Effort

- 34 states have criminal laws that punish people for exposing another person to HIV (whether or not HIV transmission occurs or if condoms were used) – includes WWAMI states
- Effort at the congressional level to repeal these laws



# General Public Health Messages to Give Patients:

- Disclose to partners (akin to informed consent)
- Disclosure protects you medically, legally and ethically
- Careless spread of HIV can lead to legal consequences, including court-ordered confinement

# Summary

- Ethical issues in HIV/AIDS complex but important to address
- Established laws to provide protection for those with HIV
- Ongoing debate/dialogue of issues required
- Stay tuned for possible HIV decriminalization