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.

• BENEFICIENCY
  - 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

- HIV+ should be required to report sex and needle sharing partners to DOH:
  - 18-25: 95%
  - 26-39: 91%
  - 40-64: 78%
  - 65+: 86%

- HIV+ health care workers should be required to notify patients:
  - 18-25: 81%
  - 26-39: 69%
  - 40-64: 70%
  - 65+: 65%

- HIV+ persons should be required to report to employers:
  - 18-25: 48%
  - 26-39: 31%
  - 40-64: 27%
  - 65+: 46%

- HIV+ knowingly infecting others should be arrested and imprisoned:
  - 18-25: 83%
  - 26-39: 84%
  - 40-64: 84%
  - 65+: 70%
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).

• 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
    • 1st – 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