

Ethical Dilemmas in HIV: A Case-Based Discussion

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Goals

- Review examples of ethical dilemmas encountered in practice of HIV medicine
- Discuss response, impact, strategies, legal implications
- Learn vocabulary as applies to individual scenarios

- No financial disclosures
- I am not an ethicist.
- I am not a lawyer.

Remember!

- 1) Majority of today's cases are from actual scenarios from the hospital, clinic or institution; be respectful of any personal details that may come out in today's discussion.
- 2) Emotionally charged cases with polarizing opinions; everyone's opinion matters!

Vocabulary Review

- Autonomy
 - The right of individuals to self-determination
 - The ability to make informed decisions about health matters
 - May conflict with beneficence
- Beneficence
 - Actions that promote the well-being of others
 - Serve the best interest of patients
- Non-maleficence
 - *Primum non nocere*– first do no harm
 - Not only don't do things that we know to be harmful, but avoid things that might be harmful

Case #1

- You are conducting a routine follow up visit with a long-term HIV patient. His most recent (4 months prior) CD4 is 800 cells/mL and viral load undetectable for >6 months on a single-tablet regimen. On entrance to care 3 years ago, his viral load was >200,000 copies/mL blood.
- He is married and lives in a small town in eastern KY.
- He plans to go to the laboratory to complete lab work after the visit. When you enquire, if he would like to have his lab results mailed to him, he says: "Oh no! I don't want my wife to find out I have HIV."
- You note that his chart is flagged with the following designation in red from another clinic: "Combative Patient"

Case #1

- Ethical issues?
- Can we disclose to his wife? Should we?
- What are the legal implications, if any, for HIV/STD disclosure?
- How would you counsel this patient?

Disclosure

- Emotionally charged
- Concerns include:
 - Privacy
 - Discrimination
 - Loss
- Agenda
 - Clinician viewpoint—public health, identifying/treating cases
 - Patient viewpoint—maintaining privacy, relationships, fear

Statutory Protection of HIV and AIDS Notification

- Varies by state
- Specific provision for partner/spouse notification
- Spousal/partner notification strategies (state dependent)
 - Person with HIV required to reveal name of partner or spouse
 - Provider or Health Dept. may contact person at risk for exposure (Kentucky)
 - Permission to disclose name of source to spouse/partner
- Permissible/Mandatory Disclosure
 - School official (FL-P)
 - Healthcare provider (KY-P, FL-P)
 - Penal institution (KY-P)
 - Insurance company
 - Blood bank/organ donor
 - Blood or organ recipient
 - HMO/health care or mental health facility (KY-P)
 - Research (KY-P)
 - Court order/subpoena (KY, FL)
- Penalties for impermissible disclosure
 - Criminal/Civil (KY-P)

Adapted from Anderson et al. Ethics in HIV-Related Psychotherapy, 2003; ACLU Lesbian & Gay Rights Project 2006, lesbian.org

Legal Statutes and STIs in FL

- Informed consent required
- STIs in Florida
 - Legally includes: “bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment”(FL§§384.23)

Legal Statutes and STIs in FL

- Unlawful Acts: Transmission (FL§§384.24, §§384.34)
 - “unlawful” for any person who has HIV/STI to have sexual intercourse that:
 - knows he or she is infected with this disease AND
 - knows he or she may communicate this disease to another person through sexual contact UNLESS
 - other person has been informed of the presence of the STI/HIV and has consented to the sexual intercourse
 - Specific rules/procedures for quarantine/isolation as necessary (last resort)

Special Circumstances

- Prostitution
- Blood and Tissue Donation (FL)
 - HIV + persons must not donate or sell blood or any other body parts meant for transfer to another person if aware they have HIV
 - Violation can result in up to 5 years in prison and/or \$5000 fine

Adapted from HIV Center for Law and Policy Ending and Defending Against HIV Criminalization, 2013

Legal Implications-FL

- 1st Degree Misdemeanor
 - Up to one year of jail time
 - Up to \$1000 fine
- 3rd Degree Felony
 - Up to 5 years jail time
 - Up to \$5000 fine

§§775.082, §§775.083

How Do We Approach/Encourage Disclosure?

- Trust
- Practice
 - Resources from AIDS.gov
- Grant-based programs
 - “CLEAR”(Choosing Life: Empowerment! Action! Results!)—CDC intervention
 - Relate experiences around disclosure
 - Pros and cons of disclosure
 - Identify barriers and strategies to address
 - Role play

Case #1 Resolution

- Patient voluntary disclosure prior to next visit
- Briefly separated
- Spouse HIV negative

Case #2

- You have been asked to assist in the care of a newly diagnosed 62 yo female with HIV/AIDS complicated by Burkett's Lymphoma. The Bone Marrow Transplant service is her primary team.
- Her HIV-positive partner is aware of her diagnosis. She asks that no one else be notified of her status.
- A night shift team member accidentally discloses her diagnosis to her mother while in the patient's room.
- What should we do next?

New York Hospital Sued for Disclosing Patient's HIV Status to Employer

HIPAA Journal, September 14, 2017

Aetna violated HIPAA when envelope windows exposed HIV medication use, attorneys say

Healthcare Finance News, August 25, 2017

Impermissible Disclosure of HIV Status to Employer Results in \$387,000 HIPAA Penalty

HIPAA Journal, May 24, 2017

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- “[A] covered health care provider [with a direct treatment relationship] must obtain the individual’s consent prior to using or disclosing protected health information to carry out treatment, payment or health care operations.”

[8] 164,506, 65 Federal Register [F.R.] p. 82810

HIPPA

- Covers:
 - All medical records
 - Other individually identifiable health information used/disclosed by a covered entity
 - Oral, paper or electronic format

U.S. Department of Health and Human Services. 45 CFR Parts 160 and 164. Standards for privacy of individually identifiable health information, final rule. Federal Register 2000,05,82462-82829., cdc.gov

Florida Statute

- Fla. Stat. § 381.004(2)(e)
 - Identity of person tested for HIV is confidential and exempt from disclosure—when disclosed must have written disclosure statement no matter how disclosed (oral or written)
- Fla. Stat. § 381.004(5)
 - Violation of statute include grounds for disciplinary action under the facility or professionals licensing chapter

floridahealth.gov

Treatment, payment, and health care operations (e.g., quality improvement and credentialing) purposes (45 C.F.R. 164.506(e))
To legally-designated authorities for public health activities (45 C.F.R. § 164.512(b)(7)(E))
For specialized government functions (e.g., national security) (45 C.F.R. § 164.512(b))
To law enforcement for limited purposes (e.g., reporting a crime on site) (45 C.F.R. § 164.512(d))
To report child abuse or neglect (45 C.F.R. § 164.512(b)(7)(F))
To a person reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public (45 C.F.R. § 164.512(i))
To notify persons responsible for a patient's care of the patient's location and health status* (45 C.F.R. § 164.512(b)(7)(G))
To family/friends/patient-designated individuals involved with a patient's care* (45 C.F.R. § 164.512(b)(7)(H))
Directory information (location, general health status) to anyone identifying the patient by name* (45 C.F.R. § 164.512(a)(7))
To an employer about an employee's work-related fitness/injury or about findings from workplace medical surveillance when the patient is treated at the employer's request (45 C.F.R. § 164.512(b)(7)(I))
To an organization responsible for providing worker's compensation benefits (45 C.F.R. § 164.512(j))
For research purposes, subject to restrictions (45 C.F.R. § 164.512(l))
Incidental to a permissible use or disclosure (45 C.F.R. § 164.502(a)(1)(ii))
In response to a judicial or administrative order, subpoena, etc. (45 C.F.R. § 164.512(n))
To a health oversight agency for health oversight purposes (45 C.F.R. § 164.512(o))
To coroners, medical examiners, funeral directors, and organ procurement agencies to enable their legally authorized duties (45 C.F.R. § 164.512(p), (q))
To an individual exposed to or at risk of contracting a communicable disease (45 C.F.R. § 164.512(b)(7)(k))
To report suspected abuse, neglect, or domestic violence in limited circumstances (45 C.F.R. § 164.512(j))

*Requires an opportunity for the patient to agree or object to the disclosure

www.medpagetoday.com

Permissive
Disclosures that
Do Not Require
Patient
Authorization

Who to Contact for HIPAA Information

- Compliance personnel
- Organizational polices and procedures
- Organizational internal counsel, risk management
- US Department of Health and Human Services Office for Civil Rights
- Health Information & the Law
 - Summaries/analysis of federal and state laws

www.hhs.gov/ocr; www.healthinfoworld.org; medpagetoday.com, accessed April 2018.

Case #2 Resolution

- Risk management contacted
- Nursing staff reprimanded
- Additional HIPPA training by staff

Case #3

- You are contacted by the School of Dentistry regarding a student accepted into the incoming class for next fall regarding his HIV status.
- Disclosed that recently diagnosed with HIV. Found out after acceptance to school.
- How should they proceed?

Case #3

- Ethical issues?
- How does this impact his matriculation into dental school?
- Who should be notified of his status?

When a Provider has a Communicable Disease...

- Four factors that impact risk (according to federal anti-discrimination case-law)
 - The nature of the risk (how the disease is transmitted)
 - The duration of the risk (how long the carrier is infectious)
 - The severity of the risk (the potential for harm to third parties)
 - The probability that the disease will be transmitted and cause harm

Other Things to Consider...

- Occupation—get specific
- State of disease
- Available treatments

American with Disabilities Act and HIV

- Asymptomatic/symptomatic persons with HIV/AIDS protected
- State licensing/public trade schools (Title II)
- Private trade schools (Title III)
- Cannot exclude persons with HIV/AIDS because of status unless exhibit a “direct threat” that cannot be eliminated or reduced to an acceptable level by reasonable modifications to the entity’s policies, practices or procedures
- Must base on individual and rely on current medical evidence

<http://www.hhs.gov/oc/oeo/2012/resources/specialops/hiv/factsheetdiscrim.pdf>

What Should We Do?

- Remember confidentiality!
- Balance public health vs needs of individual
- Group approach
- Resources:
 - AIDS.gov
 - SHEA guidelines
 - Colleagues

Case #4

- You are reviewing labs from clinic visits over the last week. You note an *inadvertent* order for a urine drug screen on a long-term patient. His only controlled medication per your history and medical records is ketorolac. On your review, you note the presence of amphetamines and narcotics. He is a registered nurse.

Case #4

- Ethical issues?
- What should you do next?

The Impaired Provider

- Impairment
 - Medical
 - Psychiatric
 - Substance
- Also Emotionally Charged
 - Feelings of betrayal/uncertainty
 - Licensure
 - Patient safety

Legal/Licensure Implications—KY Physicians (AKA the Clock is Ticking..)

- Kentucky Physician Health Foundation
 - Assists KY licensed physicians with addictive disease, physical/mental illness
 - Does not satisfy requirements of reporting
- Kentucky Board of Medical Licensure
 - Must receive a report within 10 days of obtaining direct knowledge of impairment

Legal Licensure Implications—TN

- Any person who has knowledge of conduct by a licensed healthcare practitioner that may violate his/her practice act or related state or federal law must report the alleged violation to the state board of nursing where the situation occurred or to TnPAP.
 - Tennessee Department of Health, Office of Investigations
 - Tennessee Professional Assistance Program (TNPAP)

“Alternative to Discipline”

- The Florida Experience
 - FS 464.018 (Nurse Practice Act)
 - (k) Failing to report to the department any person who the licensee knows is in violation of this part of the rules of the department or the Board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant.
 - “Intervention Project for Nurses (IPN)”
 - If only reported to IPN, agrees to participate and successfully completes the program, the file is closed and held in confidence with no disciplinary action.

Floridasnursing.gov

What Happened

- Physician contacted our risk management department for guidance
 - Duty to inform board of nursing
 - Advised likely to have better outcome for employment and sanctions if patient self-reports
- Called patient
 - Informed that would give opportunity to report prior to physician reporting
- Patient informed board (15 minutes prior to provider)
- Unfortunately lost employment
- Entered rehabilitation; now with new job

Ethical Dilemmas

- Not “if” but “when”
- Practice! Practice! Practice!
- Get help!

Questions?
