

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 and viral load undetectable for >6 months on a single-tablet ARV regimen.
- 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 (not in KY)
- 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
 - Health care provider (KY-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-P)
- Penalties for impermissible disclosure
 - Criminal/Civil (KY-P)

Legal Statutes and STIs in KY

- STIs in Kentucky
 - Legally includes: HIV/AIDS, syphilis, gonorrhea, genital herpes, chancroid, granuloma inguinale, non-gonococcal urethritis, mucopurulent cervicitis, chlamydia and “any STD designated by the Kentucky Cabinet of Health and Family Services” (KRS 214.410)
 - Wanton Endangerment
 - 1st degree—conduct that shows an extreme indifference to the value of human life and creates a substantial risk of death or serious physical injury (Class D felony) (KRS 508.060)
 - Has been applied in court in case of HIV/AIDS in KY
 - 2nd degree—conduct that creates a substantial danger of physical injury to another person (Class A misdemeanor) (KRS 508.070)
 - Known infection with an STD (other than HIV/AIDS) and unprotected sex without disclosure
 - Voluntary impairment, such as intoxication, that leaves a person unaware of risk does not mitigate the conduct (KRS 501.020(3))

Special Circumstances

- Blood and Tissue Donation
 - Known HIV-positive AND informed may pass infection via blood, organ, tissue donation and yet proceeds to donate
 - Wanton Endangerment (KRS 311.990(24))
 - Class D felony regardless of intent to transmit
- Prostitution
 - If convicted must undergo screening for HIV (KRS 214.420)
 - Known positive for STD or HIV/AIDS and commits prostitution AND knew that could pass it to others (Class D felony if HIV/AIDS)

Legal Implications

- Class D Felony
 - Post-incarceration supervision
 - 1-5 years incarceration
 - \$1000-\$10,000 or double the gain from the commission of the offense whichever is greater
 - 532.060(2)(d), 534.030(1)

How Do We Approach/Encourage Disclosure?

- Trust
- Practice
 - Resources from [AIDS.gov](https://www.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 #2

- 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 #2

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

Case #3

- 58 yo trauma surgeon recently hired by University as faculty
- Receive call from employee health that he reports a past medical history of Hepatitis C
- An antibody screen is positive; viral load and genotype pending

Case # 3

- Ethical issues?
- Should he be allowed to perform surgeries at your institution?
- Whom, if any, should be informed of his diagnosis?

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

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)
 - HIV: sexual contact, blood, breast milk, vertical
 - HCV: blood, sexual contact, vertical
 - The duration of the risk (how long the carrier is infectious)
 - HIV: potentially lifelong, but varies on treatment
 - HCV: Genotype? Can they be treated?
 - The severity of the risk (the potential for harm to third parties)
 - The probability that the disease will be transmitted and cause harm

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

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

“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.

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?