HIV Testing and Partner Notification: Physicians’ Ethical Responsibilities in a Persistent Epidemic

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Despite tremendous advances in the treatment of human immunodeficiency virus (HIV) infection, the acquired immune deficiency syndrome (AIDS) epidemic continues. An estimated 40,000 new HIV infections continue to occur in the United States each year, and of the approximately 900,000 persons in the United States living with HIV, it is estimated that 25% of them do not know it. These are some of the reasons why the Centers for Disease Control and Prevention (CDC) has announced new plans to intensify HIV prevention efforts. The CDC wants to make sure that HIV testing is a routine part of medical care, especially for persons who have risks for HIV but receive medical care in settings with low HIV prevalence. CDC is also increasing its emphasis on partner notification.

The purpose of partner notification is to inform the sexual and needle-sharing partners of HIV-positive patients about their risk of infection in order to encourage testing, reduce behavioral risks, and control disease transmission. There is good evidence that partner notification procedures identify persons with HIV infection who were previously undiagnosed, and 10% to 35% of contactable partners who are tested turn out to be newly diagnosed with HIV.

Though it is not known empirically whether partner notification actually decreases the frequency of HIV transmission, there is an a priori ethical obligation to take feasible steps to see that persons at risk of HIV infection are notified. Partner notification procedures fulfill the ethical principles of beneficence, nonmaleficence, and respect for autonomy by providing information about ongoing risk, counseling about risk reduction, and referral for testing and treatment. Ignorance about risk deprives uninfected individuals of information that is essential for decision making, and ignorance about serostatus deprives infected persons of treatment and allows the unwitting transmission of HIV to others. HIV infection is one of those areas of medicine that expands the usual scope of physician responsibility by requiring us to consider the health interests of persons who are not under our care.

In contrast to other sexually transmitted diseases, partner notification in HIV infection was initially excluded from public health strategies due to concerns about risks to privacy. Since the second decade of the epidemic, however, attitudes have shifted back to a more traditional public health approach. Advances in antiretroviral therapy and treatments for opportunistic infections were largely responsible for tipping the balance of concern toward the benefits of early detection and treatment. As part of this shift, state legislatures have enacted laws that place limits on confidentiality, require name-based reporting, and mandate newborn testing and partner notification.

Partner notification raises important questions about sexual ethics. Early in the epidemic it was thought that imposing a duty on HIV-positive persons to disclose their serostatus to their sexual partners would appear accusatory and invite interest in criminalizing the failure to disclose. Mutual self-protection, rather than disclosure, was recommended. There now appears to be more consensus that HIV-positive persons should be expected to inform potential intimate partners of their risk of exposure. This expectation acknowledges that persons at risk of exposure should be able to decide for themselves how much risk is acceptable to them. Empirical evidence suggests that not all HIV-positive persons are prepared to be candid: a study of 933 sexually active persons with HIV found that sex without disclosure of HIV serostatus took place in 41% of sexual partnerships. Some states have added legal weight to the expectation of disclosure by adopting statutes that criminalize viral exposure or transmission when HIV-positive persons have not informed their partners of their serostatus.

We have an ethical duty to keep patient information confidential, but in caring for HIV-positive patients we also have an ethical duty to be sure that third parties who are at risk are notified, especially when those individuals are identifiable and the danger is imminent. At times, the ethical duty to warn identifiable third parties may translate into a legal duty, as expressed by the Tarasoff principle, which holds that patient confidentiality must yield when disclosure of protected information is necessary to prevent danger to others. Supporting the duty to warn third parties at risk of exposure, at least some states have crafted partner notification laws that provide immunity to physicians against prosecution if they follow statutory guidelines for partner notification. Somewhat paradoxically, these statutes also typically provide immunity from prosecution if physicians choose not to take steps to have partners notified of their risk. In such states the law is permissive, physicians are permitted to pursue partner notification but not required to do so.

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Some HIV-positive patients will want to notify their partners themselves. Others will prefer to remain anonymous and delegate this role to their physicians or public health officers. Occasionally, patients may wish to avoid partner notification or choose to withhold their partners’ identities. Such reluctance should be an invitation to explore patients’ concerns and fears regarding the consequences of disclosure or partner notification. We should assume (unless shown otherwise) that HIV-positive persons are genuinely concerned about the health interests of their intimate partners. We need to be sensitive to the complexities of human relationships that make discussions about past and present sexual relationships awkward or threatening, especially if there is a risk of partner abuse.

Prior to HIV testing, patients should be fully informed about the benefits and risks of testing so that there are no unnecessary surprises if they test positive. We are also obligated to inform patients that, if they are found to be HIV positive, their serostatus will be communicated to health departments, they may be contacted by public health officers, and their known partners may be contacted about their risk of exposure through anonymous partner notification procedures. The more candid we can be about the benefits, risks, and mandated public health requirements, the more our patients will trust our recommendations for testing and the more confidence they will have in the public health system. We should also be familiar with statutes specific to our own states that describe the legally approved methods of partner notification and define circumstances in which confidentiality can be breached.

The AIDS epidemic imposes on physicians the professional obligation to encourage HIV testing when it is indicated, to adequately inform patients prior to testing, and to encourage patients who test positive to disclose their serostatus to their intimate partners or allow physicians or public health officers to do so. Our opportunity is clear: by ensuring that HIV testing is a routine part of medical care we can diagnose infection in those who need treatment and help prevent the spread of a virus that continues to infect and kill tens of thousands of Americans every year.

References