



UCSF AIDS Health Project

Training Program http://ucsf-ahp.org/HTML2/services_providers_training.html

Online Resources for the Basic I

Legal Information for HIV Counselors: Risk to Sexual and Needle-Sharing Partners

Endangered Third Parties Described

The past or current sex or needle-sharing partners of a person who has tested positive for HIV can be considered high risk “endangered third parties.” It is important that these individuals be notified about their risk for HIV so they can make informed decisions about whether to seek HIV testing, as well as taking to prevent further personal risk and avoid transmission of HIV to others.

Relevance

- a. In Office of AIDS test sites, the preferred manner of notifying at risk sex and needle-sharing partners is for clients who have tested HIV-positive to carry out such notification themselves.
- b. Clients who feel unable to provide such notification personally may be referred to local Partner Counseling and Referral Services (PCRS) programs. Trained staff at these programs can locate and notify a client’s sex or needle sharing partners of their risk for HIV. No identifying information about the client is released during this process.
- c. Some local health officers have interpreted Health & Safety Code 121015 to be applicable to clients seen in local health department-based Office of AIDS funded test sites. Other health officers have interpreted this code differently, and believe that non-consensual notification should not take place through health department test sites.

The Office of AIDS leaves this matter to the discretion of local jurisdictions. Health officers are not implementing this option, and they have no obligation to do so. However, HIV counselors at health department test sites should cooperate with health officers in situations where the officers elect to pursue non-consensual notification. Counselors may also refer questions about specific cases to their health officers. In general, even in jurisdictions that have elected to pursue non-consensual partner notification, this is decided on a case-by-case basis. The provisions of Health and Safety code 121015 must be followed at all times, and no identifying information about the client

may be released in the notification process.

Of course, as a practical matter, non-consensual partner notification is not possible under any circumstances unless identifying information on the partners has been provided by the client.

Conditions of Health and Safety Code 121015:

- a. The individual releasing the information must be an attending physician. Psychiatrists are included.
- b. The third party may reasonably be believed to be the client’s spouse or sexual partner, or a person with whom the client has shared hypodermic needles.
- c. Before the disclosure, the physician must discuss the test results with the client, offer appropriate counseling, attempt to obtain the client’s consent for notification of endangered third parties, and inform the client of the intention to notify third parties.
- d. In notifying the third party, the physician may not disclose any identifying information about the client.
- e. The physician may notify the third party only for purposes of diagnosis, care and treatment, and to arrest transmission of disease.
- f. The physician must refer the third party to appropriate counseling.
- g. The physician may notify a local health officer who may, in the physician’s place, carry out notification of the third party using these same guidelines.
- h. The physician is given discretion to notify an endangered third party, but is not required to do so.

Vignettes regarding at-risk sex or needle-sharing partners

The following vignettes present hypothetical situations and then describe important points and laws to consider in addressing these situations. Remember, as an HIV counselor, you are not expected to intervene in crisis situations



or know every aspect of law or ethics that may arise in your work. It is part of your job, as an HIV counselor, to know the appropriate people and resources to access in crisis situations or situations which may require legal consultation.

1. An HIV-positive client refuses to notify current partner

A client who has tested positive tells you they have no intention of telling their partner(s) they have HIV since they probably got it from the partner in the first place. They also plan to continue having unprotected sexual intercourse. You are in an anonymous setting. What do you do?

Points to consider:

- a. The only recourse for partner notification through anonymous test sites is for a client to elect personally to notify partners of their risks for HIV.
- b. Clients seen in confidential test sites should be referred to PCRS programs for assistance in notifying partners of their risks.
- c. Some local health officers have interpreted Health & Safety Code 121015 to be applicable to clients seen in local health department based test sites.

Answer: In an anonymous or confidential test site, where a client refuses personally to notify a partner of risk, the counselor should discuss the possibility of the client obtaining assistance through a PCRS program.

In some jurisdictions, local health officers may elect to pursue non-consensual notification, following the provisions of Health & Safety Code 121015. The counselor might refer this case to the local health officer for further evaluation and consideration.

Usually, these situations are evaluated on a case-by-case basis. For example, in one case, a client at an STD clinic was diagnosed with syphilis and provided identifying information for five current partners for contact tracing purposes. These individuals were located, contacted, their risk for syphilis described, and testing and treatment offered. The original client then consented to HIV testing. His test result was positive, but he refused either to notify his partners personally or use the services of the local PCRS program to contact them. The health department found itself in a dilemma: it had identifying information on

five people with very genuine risks for HIV and a source client (the original client) who refused to notify them of their risks. The case was referred to the local health officer, who decided in this instance to implement the provisions of 121015 and notify these five individuals. In this notification, of course, no identifying information about the source client was released.

2. A positive client plans to continue having unsafe sex

A client who has tested positive expresses their intention to continue having unsafe sex with many different partners. They particularly enjoy sex with strangers in public parks, with patrons at a local bar, and with young sex workers. What do you do?

Points to consider:

- a. Clients seen in confidential or anonymous test sites may also be referred to PCRS programs for assistance in notifying partners of their risks.
- b. Some local health officers have interpreted Health & Safety Code 121015 to be applicable to clients seen in local health department based test sites.
- c. There is no practical or legal way to notify *future* partners of a client who has tested positive for HIV.
- d. Neither consensual nor non-consensual partner notification is possible without identifying information on the client's sex or needle sharing partners.

Answer: Clinically, a counselor would certainly want to focus counseling on getting this client to change their intentions if at all possible. Referrals would be important in this situation, because this client's issues are complex, probably long-standing, and will not change in a brief encounter like HIV counseling. It might make sense to spend a good portion of the session on the importance of referrals, to build the client's commitment to follow-through on referrals.

There is little more a counselor can do in this situation. There is no practical or legal way to notify potential future partners of the client, or partners who cannot be identified ("strangers").



Further information

- a. *Department of Health Services Policies and Guidelines Manuals*. These should be available at every test site. Check with test site supervisor for location of current manual.
- b. County legal counsel. All counties have legal counsel who can provide recommendations in specific circumstances and may be able to provide training for staff.
- c. Test site supervisors. Supervisors may understand legal ramifications of different circumstances and be able to help out when questions come up. If not, they should have recourse for researching answers as necessary.
- d. The HIV Testing Section of the Office of AIDS can provide technical assistance (not legal advice) on these issues. Counselors or their supervisors or administrators can contact the Office of AIDS through <http://www.dhs.ca.gov/AIDS/>.