

HIV Risk Reduction

A quarterly of The Office of Addictive Disease, for professionals in the fields of HIV & SA/P
Volume 8, Issue 2

Look Out for Consumers by Looking into HIV Disclosure Laws

Let's say you're a case worker treating "Sam," who has just been diagnosed as HIV positive and refuses to tell his spouse. What do you do? Another client, "Linda," a drug user who confesses she shares needles, was recently in the company of another client who shoots up and is under treatment for HIV. Can you caution her or urge her to be tested without breaking confidentiality?

When providing services to HIV-positive consumers, sometimes healthcare professionals walk an ethical tightrope – particularly if a client's behavior puts others at risk. Even if a professional is vividly aware of protocol about disclosing HIV status, simple assumptions and carelessness can lead to devastating consequences for the patient, as well as legal ramifications.

When providing services to HIV-positive consumers, sometimes healthcare professionals walk an ethical tightrope—particularly if a client's behavior puts others at risk.

As a staff attorney with the Atlanta Legal Aid Society's AIDS Legal Project, Marcus Johns is intimately familiar with scenarios that lead to improper disclosure of HIV status, as well as the laws pro-

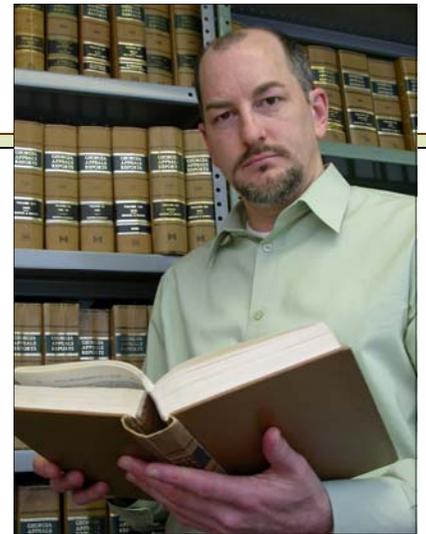
tecting those individuals. Johns serves the broad spectrum of civil legal needs of low-income persons living with HIV; one such area is to defend the clients' right to privacy of their HIV status.

The Many Faces of Disclosure

For example, in one case Johns won, a hospital worker spotted an acquaintance who had been admitted to the facility. Curious, the employee pulled up information on the computer, determined that the patient was HIV-positive and relayed the confidential information to mutual friends. The news spread through the patient's close-knit community, who reacted by shunning the entire family. Personally devastating? You bet. Illegal? Absolutely. The hospital and the employee settled after the patient sued.

Johns is currently pursuing a case where someone presented HIV test results to a patient while others

(Continued on page 2)



*Marcus Johns, Esq.
AIDS Legal Project
Atlanta Legal Aid Society*

(Continued from page 1)

were present. The responsible party failed to clear the room or get written permission before revealing the diagnosis.

One of the biggest dangers healthcare workers face... is that they become desensitized to the stigma HIV patients experience.

Laws Offer Protection

How can you avoid similar dilemmas? It helps to be familiar with the law. First and foremost is Georgia Code 24-9-47, a state statute that prohibits the disclosure of an individual's HIV status unless a statutory exception is met. The statute lists the exceptions, some of which are telling the test result to the person tested, to someone else upon written release by the person whose HIV information is to be disclosed, and telling other treating sources. In the situation described in the opening paragraph, obviously, Sam's spouse is at risk. If he refuses to reveal his status to her, Sam's physician may tell Sam's wife, but only after first attempting to notify Sam that such disclosure is going to be made. Of note: "The statute specifies that after following the required steps, a **physician** may disclose this information to a spouse, sexual partner or child," comments Johns. It doesn't mention any other type of healthcare professional, such as a nurse, social worker or mental health provider. Johns indicates, however, that certain DHR personnel have special authorizations in this regard. Sam's physician or the hospital administrator may also disclose to DHR, who, under certain circumstances, *shall* contact and counsel Sam's wife.

When in doubt, he cautions, make sure a doctor familiar with protocol delivers the news. Similar rules apply to the example of the consumer "Linda" who shares needles.

Besides the HIV-specific statute, federal and Georgia law affords additional protections to mental health and substance abuse records, Johns explains. These records, too, contain a general prohibition on disclosure unless a statutory exception is met. Therefore, if records fall into the wrong hands—or are viewed by another patient or visitor to your office—you could open yourself or your organization up to liability.

A Closer Look at HIPAA

Interestingly, despite the paperwork pandemonium caused by HIPAA (the Health Insurance Portability and Accountability Act), which was enacted by Congress to protect patients' privacy, it offers surprisingly little legal protection. "The Department of Health and Human Services has received close to 34,000 HIPAA complaints," says Johns. "Not one has resulted in a fine against a hospital or healthcare worker." About 420 cases have been referred to the Department of Justice for criminal investigation. However, through February 2007, there have been only four criminal HIPAA violations prosecuted. Those cases have involved the theft of individually identifiable health information for some form of personal gain by an employee of an organization covered by HIPAA. [*Editor's note: identify theft*] When pursuing legal action about HIV disclosure, Johns tends to bypass federal HIPAA statutes and typically sues under state law because a person cannot bring a lawsuit against another person or entity for violating his or her HIPAA rights.



Don't forget your own organization's policies. Violating organizational policies can also get you in trouble, particularly if you're snooping into actor George Clooney's medical records. As reported in the October 10, 2007, edition of *The New York Times*, Palisades Medical Center in North Bergen, N.Y., suspended 27 employees for a month without

(Continued from page 2)

pay for peeking into the celebrity's files following his treatment for injuries from a motorcycle accident.

The Need to Protect Privacy

One of the biggest dangers healthcare workers face, Johns warns, is that they become desensitized to the stigma HIV patients experience.

"When you work with HIV every day," he says, "you forget that it's still a big deal to the layperson. We used to whisper about cancer. That same phenomenon still takes place with HIV."

The implications of improper disclosure can be enormous – from harassment to job loss. Even so, sometimes the personal issues present even larger obstacles. In some cultures, ethnic groups or families, individuals with HIV are shamed and ostracized. "In at least one African country," says Johns, "HIV is generally not named. It is referred to derogatorily as 'that thing'."

So while laws have been passed to protect patient's privacy, healthcare personnel also have an ethical obligation to keep an individual's HIV status confidential. "A person should be able to pick and choose not only who they tell but how they are told," says Johns. "If you disclose their HIV status without their permission, you are robbing that person of their rights."

About Atlanta Legal Aid Society



Established in 1924, the Atlanta Legal Aid Society, Inc. provides non-criminal legal representation to low income clients who are at or below 125 percent of federal poverty guidelines. The organization also represents those who are elderly, disabled, mentally ill, as well as those with AIDS, cancer or Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig's Disease. Priority cases include housing, consumer fraud, public benefits, employment, education, health, spouse abuse and child custody cases. Clients must have a viable case that falls within one of the priority areas, and reside in the service area, which encompasses Fulton, DeKalb, Clayton, Cobb and Gwinnett Counties.

The AIDS Legal Project was started by the Atlanta Legal Aid Society in 1989. Initially created to help people dying of AIDS who needed wills and advance directives, the focus began to change during the 1990s as legal issues related to financial challenges and credit, as well as work and insurance discrimination emerged. Marcus Johns, whose position is funded by Fulton County through the Ryan White CARE Act, focuses exclusively on HIV cases. Three other attorneys and a paralegal also handle cases. For more information, visit www.atlantalegalaid.org.



Tips to Protect Privacy

- Turn computers off when not in use.
- Require passwords to access consumer's electronic files.
- Use a system that traces who accesses confidential files.
- Become familiar with the law. Teach employees how to protect confidentiality and train them in proper disclosure protocol.
- Practice discretion when discussing a consumer's HIV status.

Evolution of a Man

Marcus Johns, Esq., followed a circuitous route to Atlanta Legal Aid, which provides legal services for certain types of civil cases to people who can't afford to hire attorneys. After graduating from the University of South Carolina School of Law in 1992, he worked as an associate for a law practice located on Hilton Head Island, S.C. Driving to work each day, he passed through a residential area where many of the Island's poor resided. While working in glamorous hotels, upscale restaurants and other places spawned by the location's thriving tourist industry, many of the employees had no health insurance and returned to homes without plumbing. The irony gnawed at Johns, who began "awakening to the abject poverty and the disconnect between poverty and wealth." In 1992 one-third of Hilton Head's permanent residents had no access to health care.

While working in glamorous hotels, upscale restaurants and other places spawned by Hilton Head's thriving tourist industry, many of the employees had no health insurance and returned to homes without plumbing.

He became involved in the renowned Volunteers in Medicine Clinic, which utilizes retired healthcare professionals to provide free medical service to the area's impoverished residents. Serving as secretary and general counsel, he was inspired and influenced by the remarkable founder Dr. Jack McConnell. The physician is credited with the development of Tylenol, as well as directing the first broad scale research program that led to the first commercially available Magnetic Resonance Imaging (MRI) equipment in the United States. When he retired to Hilton Head, McConnell turned his considerable prowess to finding a way to care for the large population of uninsured residents. The clinic opened in

1993 and serves as a model to other communities across the nation.

For Johns, the experience was so profound, he found himself disillusioned with the type of law he was practicing. He sought a different perspective and enrolled in seminary. It offered familiar ground. His father's career was in university administration and Johns grew up around college campuses. In 1998 he graduated cum laude from Emory University Candler School of Theology with a master's degree in theological studies. After some other professional engagements, he heard about the opening for his present position as staff attorney for the organization's AIDS Legal Project. He was further inspired to take the position in memory of a former college roommate who had died of AIDS.

Links to Resources: HIV & The Law

- The Body—The Complete HIV/AIDS Resource
Legal Issues and HIV in the US
<http://www.thebody.com/index/legal.html>
- CDC—Business/Labor Respond to AIDS
Frequently Asked Questions
<http://www.hivatwork.org/faqs/faqs.htm>
- CDC—Business/Labor Respond to AIDS
HIV and the Law
<http://www.hivatwork.org/law/law.htm>

HIV Risk Reduction

a newsletter of
HIV Early Intervention Services (EIS)
Georgia Department of Human Resources
Office of Addictive Disease

Produced by
Imagine Hope, Inc.



Marie Sutton, President
404.874.4040

Winona Holloway, Senior Program Specialist
678.752.9571

For more information, visit www.hiveis.com