

HIV Confidentiality Case Studies

Revised 6-15-11

Scenario #1 – What information is protected?:

One night, Maggie calls her friend, Jane, at home, to tell her that she had just tested positive for HIV. Jane is an HIV case manager at a local community health center and works with Maggie's sister. The next day, Jane sees Maggie's sister and, assuming she knows about Jane's test results, says, "Wow, that's such bad news about Maggie's HIV test." She does not have a written release from Maggie for this disclosure.

Q. 1. Did Jane violate the confidentiality law?

Q. 2. What if instead of calling Jane at home, Maggie called her at work to ask for help in getting HIV-related services?

Ans. 1. No. Jane did not get the HIV-related information in the course of providing a health or social service to Maggie, but rather, in her capacity as Maggie's friend.

Ans. 2. The disclosure would have been protected by Article 27-F because Jane would have received the HIV-related information in the course of providing a "health or social service." Jane could not have informed Maggie's sister without a written release from Maggie. Maggie's sister's prior knowledge of Maggie's status is irrelevant to the need for a release.

Scenario #2 – Release:

Peaches is a public assistance case worker. One of her clients is Herb, who she found out has HIV when she helped him with a Medicaid problem. Herb, who has no phone of his own, has given Peaches his sister's name and phone number to use if she needs to contact him. One day, Peaches needs to get in touch with Herb about yet another Medicaid problem. She calls Herb's sister and leaves the message. Peaches then asks his sister how Herb is doing and says she hasn't seen him since he was hospitalized with PCP pneumonia; she hopes he's feeling better.

Q. Did Peaches blow it?

Ans. Yes. PCP pneumonia is "HIV-related information" protected by the confidentiality law. Peaches was not authorized to give that information to Herb's sister without a release from Herb. The fact that his sister may already know his diagnosis does not justify the disclosure.

Scenario #3 – In the waiting room:

Don is sitting in the waiting room of a doctor's office, along with several other patients, waiting for a scheduled HIV counseling and testing appointment. The counselor comes into the waiting room and says, "Don, follow me for your HIV test results."

Q. Did the counselor violate the confidentiality law?

Ans. Yes. The fact that someone has taken an HIV test – even without the result – is confidential HIV-related information.

Scenario #4 – Releases:

Joe is a social worker at an outpatient substance abuse program. He is helping his client, Mary, open a case with the City's Division of AIDS Services and needs to provide some HIV-related information to the City worker. He doesn't have a written release from Mary, and she isn't coming in for several days. Joe calls Mary to ask if it is OK to disclose her HIV status to the City agency that day. He says she can sign a release form when she next comes in.

Q. 1. Is Joe right?

Q. 2. Would it have been permissible for Joe to fax to Mary an unsigned release form and ask her to sign it and fax it back?

Ans. 1. No. Oral authorization to disclose HIV-related information is *not* sufficient under Article 27-F. Mary had to sign a special HIV release form *before* the disclosure was made. Moreover, because Mary was a patient of a substance abuse program, Joe also needed a release that complied with the federal confidentiality regulations for alcohol and substance abuse programs.

Ans. 2. Yes. A xeroxed or faxed release form would have authorized Joe to make the disclosure. To avoid sending the HIV information to the wrong person, Joe would have needed to take precautions that he was sending it to the correct fax number (e.g., by double-checking the fax number and dialing carefully) and that Mary was at the fax machine to receive the fax.

Scenario #5 – Charting HIV information:

Paddy is a social worker who does intake interviews for a counseling program which is part of an agency that provides health care, mental health and other services. Paddy does an intake interview with Finn, who tells Paddy that he is HIV positive and thinks he is starting to experience HIV-related symptoms.

Q. 1. Does the HIV confidentiality law apply in this situation?

Q. 2. May Paddy document Finn’s HIV status in the intake interview form or in any other part of the agency’s case records? Should he? Must he? If so, where in the records?

Q. 3. May Paddy tell other employees of the counseling unit about Finn’s diagnosis? Who else in the counseling unit will have access to this information?

Ans. 1. Yes. Paddy learned about Finn’s HIV status in the course of providing Finn covered “health or social services.”

Ans. 2. Article 27-F requires HIV-related information to be recorded in an individual’s “medical records,” but does not require it to be recorded in any other client record. Each provider should have a policy stating whether and how to record the information. Some State agencies’ regulations implementing Article 27-F provide guidance about charting HIV-related information.

Ans. 3. Without Finn’s release, Paddy may only tell employees in the agency’s “need-to-know” circle. Under most State agencies’ Article 27-F regulations, providers must have a written protocol listing the job titles or duties justifying particular employees’ access to HIV-related information. These regulations also provide guidance about what job duties or activities constitute a “reasonable need to know.”

With Paddy’s written release, Finn may disclose it to *any* other employees.

Scenario #6 – Health care:

Finn (in scenario #5) does not want to continue getting care from the doctor who diagnosed him with AIDS. He asks Paddy to arrange for services from a new physician who can monitor and treat his condition. Paddy calls an AIDS clinic and in arranging for Finn’s appointment, informs the receptionist that Finn has AIDS. He does not have a written release from Finn.

Q. 1. Was that OK?

Q. 2. On the way out of Paddy’s office, Finn slips, hits his head, becomes unconscious and bleeds heavily. Paddy calls an ambulance. The emergency medical technician (E.M.T.) asks Paddy what medications Finn is taking. May Paddy disclose Finn’s AIDS medications?

Ans. 1. Yes. It is good practice to get a release from Finn, but it is not required by law if Finn’s HIV status is being disclosed to a health care provider or facility that needs the information to provide Finn with appropriate care or treatment.

Ans. 2. Yes. The E.M.T. needs to know Finn’s medications and HIV status in order to ensure that Finn receives appropriate care and treatment. If Finn has been conscious, Paddy could have permitted Finn to self-disclose his HIV status and medications. Note that Paddy could not have given HIV-related information to the E.M.T. merely as a warning to take extra precautions against transmission.

Scenario #7 – Contact notification:

Maria is a case manager with a program that provides a variety of health and social services to individuals with HIV. An HIV-positive client, John, tells Maria that he is having unprotected sex with several people, and he has not told them his HIV status. Nor does he intend to. Maria has tried to persuade him that he should use protection and disclose his status to his sexual partners, but he will not do so. John is married. Maria does not know the identities of the other partners.

Q. 1. Can Maria warn John’s wife that she is at risk of contracting HIV from John?

Q. 2. What can Maria do to warn the other contacts?

Ans. 1. Maria can take a number of steps to facilitate notifying John’s wife that she might have been exposed to HIV. First, she should educate John about special confidential programs that help with partner services – the New York State Department of Health’s Partner Services program and New York City Department of Health’s Contact Notification Assistance Program (C-NAP) – including anonymous and on-line notifications. She can ask Jon to sign a release so she can make a referral to these services.

If there is a physician on staff, she also may be authorized through the agency’s need-to-know circle to give her agency’s physician the relevant information and ask the physician to initiate notification or make the referral to Partner Services.

If there is no physician on staff, she could ask John for a release to notify his physician. If John will not sign a release, but Maria knows who John’s physician is, she may contact that physician (under the health care provider rule) and ask him/her to do notification or forward the information to the Department of Health’s Partner Services Program. This is because a provider does not need the patient’s release to disclose HIV-related information to physicians when necessary for appropriate care and treatment of the patient, his child, or “contact.” Information about John’s HIV status and his unprotected sexual relations with his wife is arguably necessary for appropriate care and treatment of his wife (so she can be counseled to get HIV testing and take precautions to avoid transmission from John).

Maria’s final option of last resort is to apply for a court order under Article 27-F that will authorize the disclosures needed for contact notification. The court could issue the order to prevent “a clear and imminent danger to someone whose life or health may unknowingly be at significant risk as a result of contact” with John.

Ans. 2. Since she does not know their identities, she cannot do anything directly. She can, however, take the steps outlined in Answer 1 in order to forward the information to a physician or the Department of Health so that they can counsel John and encourage him to name his contacts for notification purposes.

Scenario #8 – Breach of HIV Confidentiality by Home Health Aide in your Agency:

Anna complains about her home health aide

You are a supervisor at a home care agency, Home Care NYC. Anna has AIDS and has been receiving your agency's services. She has a home health aide, Mary. You are Mary's supervisor. One day, Anna calls you and complains that Mary disclosed Anna's HIV status to a mutual friend, Carlos. Anna is very upset and wants Mary fired. You thank her for the information, but tell her you are rushing to a meeting so don't have time to discuss it any further.

The next week, you call Mary. Over the phone, you ask her if she has disclosed Anna's HIV status to any of Anna's friends. Mary says "no". The next day, Anna leaves you a voicemail asking if you have done anything about her complaint. You are busy, so you don't call her back until three weeks have passed and she has left two more messages. Finally, you call Anna and tell her that you investigated the matter and cannot substantiate her claim. You tell her that she is free to ask for a different home health aide, but that Home Care NYC will not take any disciplinary action against Mary. You tell her she can take or leave the offer. Anna says that she's going to stop getting services from Home Care NYC altogether and call a lawyer.

Q. 1. Did you do an adequate investigation of Anna's complaint? Why or why not?

Ans. 1. No. Different agencies have different complaint processes, and it is not clear from the scenario what is the complaint process for Home Care NYC. At a minimum, however, you should have done obtained more information from Anna about the basis for her charge against Mary. Perhaps Carlos told Anna about Mary's disclosure. Maybe there were witnesses. That information would have been useful when Mary denied making the disclosure. You also should have asked Mary to meet with you in person so you could discuss the matter with her in greater detail.

Q. 2. Did you treat Anna with respect? Is there anything you should have done differently?

Ans. 3. You should have spent more time on the initial call discussing her complaint. While Article 27-F does not spell out the procedures for processing client complaints, a good practice is to get all relevant details about the complaint, conduct a thorough investigation, and deliver the conclusion to the client promptly and respectfully. You should not have waited a full week to call Mary and then three more weeks to get back to Anna. You also should have been more respectful when providing Anna with the conclusion of your investigation.

Q. 3. Are you required to document Anna's complaint?

Ans. 3. Yes. HIPAA requires covered entities to document complaints and the dispositions. Your agency's Article 27-F policies also might require you to document the process.

Q. 4. Was Anna entitled to appeal your decision?

Ans. 4. Neither Article 27-F nor HIPAA specify the requirement for an appeal, but it is good practice to provide an appeal as part of a grievance process.

Scenario #9 – Breach of HIV Confidentiality by Outside Physician:

Michael’s employer learns his HIV status through pre-employment medical exam

You are a social worker at a drug treatment program. Michael, one of your clients, walks into your office and tells you that he is extremely upset because he went for a pre-employment medical exam, and that medical office disclosed his HIV status to his new employer without his signed release. He found out when his new boss said “Michael, I’m so sorry to hear you have the virus. Let me know if there is anything I can do.” She told him that she learned about his HIV status from Human Resources, who got the information in a report from the medical office who did the pre-employment exam.

Michael is terrified that other people in the office will find out his status. He says he is so worried and depressed that he can barely work. He feels like everyone in the office is looking at him differently. He wants to “do something about it,” but doesn’t know what. “Maybe I should sue them,” he says to you.

Q. 1. Did the medical office violate Article 27-F?

Ans. 1. Yes. The medical office could not legally give Michael’s HIV-related information to his employer without his signed release.

Q. 2. What should you suggest that Michael do?

Ans. 2.

Here are some of the things you could do to help Michael:

1. First, try to find out what his main concerns are. Does he want to stop the word from spreading around his workplace? Is he afraid of workplace discrimination? Does he want the medical office to learn not to do this to others? Does he want money from the medical office?
2. Refer him to an attorney like the Legal Action Center.
3. Offer to contact his supervisor and/or the Human Resources Department so you can educate them about the need to keep the HIV information confidential. The Americans with Disabilities Act generally requires employers to maintain the confidentiality of health information about employees.
4. Tell him he can file a complaint with the State Department of Health, AIDS Institute. Ask if he wants your help in filing the complaint. He cannot get money for himself

through this process, but it likely would serve as a wake-up call to the medical office and could ensure that the office adopt proper confidentiality procedures as well as train its staff about confidentiality.

5. Tell him he can also file a HIPAA complaint with the Office of Civil Rights or a complaint with the New York State Office of Professional Medical Conduct, which is in the Department of Health.
6. Do NOT tell him he can make easy money by suing the medical office. Lawsuits are almost never “easy” and often do not result in large sums of money.