

APA RESOLUTION on U.S.-Based Legal Liability Related to Confidentiality and the Prevention of HIV Transmission

AUGUST 2019

WHEREAS the status of privileged communication between psychologists and client is legally protected;

WHEREAS information regarding an individual's HIV status may be particularly sensitive given the personal nature of such information and the potential for discrimination involved (Association of Nurses in AIDS Care, 2014);

WHEREAS criminalization of potential HIV exposure and high risk behavior among people living with HIV has public health implications for HIV prevention and care (Lehman, 2014);

WHEREAS providers of psychological services are also concerned about the prevention of HIV transmission and the promotion of public health (Conserve et al., 2015);

WHEREAS respect for personal dignity, protection of clients/patients from harm, and promotion of access to mental health services demand protection of confidentiality in all but the most extraordinary circumstances;

WHEREAS psychological services to individuals living with HIV make an important contribution to the reduction of high risk behaviors that spread HIV infection;

WHEREAS legislatures considering exceptions to privileged communications in cases involving HIV infection may benefit from the APA position on this issue;

THEREFORE be it resolved that APA's position regarding confidentiality and the prevention of HIV transmission is as follows:

- Legislation should not impose a legal duty to protect third parties from HIV infection.
- If, however, specific state legislation is proposed, then it should permit disclosure only when (a) the provider knows of an identifiable third party who the provider has compelling reason to believe is at significant risk for infection; (b) the provider has a reasonable belief that the third party is unaware the client/patient is living with HIV; and (c) the client/patient has been urged to inform the third party and has either refused or is considered unreliable in the individual's willingness to notify the third party.

- If such legislation is adopted, it should include immunity from civil and criminal liability for providers who, in good faith, make decisions to disclose or not to disclose information about HIV infection to third parties.

If such legislation allows, disclosure to a public health official (e.g., local health department) responsible for partner notification is preferable.

- In the case of disclosure to a third party by a psychologist, the psychologist should notify the patient and take steps to repair any harm to the psychologist-client relationship.
- All psychologists should be familiar with the applicable HIV laws in their jurisdiction as they relate to HIV status disclosure.

REFERENCES

- Association of Nurses in AIDS Care (2014). Position statement: HIV criminalization laws and policies promote discrimination and must be reformed, *Journal of the Association for Nurses in AIDS Care*, 26(2), 215-217.
- Conserve, D.F., Groves, A.K., Maman, S. (2015). Effectiveness of interventions promoting HIV serostatus disclosure to sexual partners: a systematic review, *AIDS and Behavior*, 19(10), 1763-1772.
- Lehman, J.S., Carr, M.H., Nichol, A.J., Ruisanchez, A., Knight, D.W., Langford, A.E., Gray, S.C., Mermin, J.H., (2014). Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States, *AIDS and Behavior*, 18, 997-1006.

Copyright © 2019 by the American Psychological Association.
Approved by the APA Council of Representatives, August 2019.