
HIV Confidentiality Case Studies

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 Maggie's written consent for this disclosure.

Q. 1. Did Jane violate the confidentiality law?

A. 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.

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

A. 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 Maggie's written consent. Maggie's sister's prior knowledge of Maggie's status is irrelevant to the need for consent.

Scenario #2 – Consent

Peaches is a public assistance case worker. One of her clients is Herb, who she found out is ill with 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. 1. Did Peaches blow it?

A. 1. 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 Herb's written consent. 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."

Q. 1. Did the counselor violate the confidentiality law?

A. 1. Yes. The fact that someone is taking an HIV test – even without the result – is confidential HIV-related information.

Scenario #4 – Releases

Jose is a social worker at an outpatient substance abuse program. He is helping his client, Maria, 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 Maria, and she isn't coming in for several days. Jose calls Maria to ask if it is OK to disclose her HIV status to the City agency that day. He says she can sign a consent form when she next comes in.

Q. 1. Is Jose right?

A. 1. No. Oral consent is *not* sufficient under Article 27-F. Maria's consent had to be in writing – on a special HIV release form, *before* the disclosure was made. Moreover, because Maria was a patient of a substance abuse program, Jose also needed a release that complied with the federal confidentiality regulations for alcohol and substance abuse programs.

Q. 2. Would it have been permissible for Jose to fax to Maria an unsigned consent form and ask her to sign it and fax it back?

A. 2. Yes. A xeroxed or faxed consent form would have authorized Jose to make the disclosure. To avoid sending the HIV information to the wrong person, Jose 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 Maria was at the fax machine to receive the fax.

Scenario #5 – Charting HIV information

Paddy is a social worker who does the 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?

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

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?

A. 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 type of client record. Each provider should have a policy stating whether and how to record the information. Some State agencies’ regulations implementing Article 27-F also provide guidance regarding how to chart HIV-related information.

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?

A. 3. Without Finn’s written consent, Paddy may only tell employees in the agency’s “need-to-know” circle. Under most State agencies’ regulations implementing Article 27-F, 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 consent, 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 Finn’s written consent.

Q. 1. Was that OK?

A. 1. Yes. It is advisable to obtain Finn’s written consent, but it is not required by law if Finn’s HIV status is being disclosed to a health care provider or facility that Paddy believes needs the information to provide Finn with appropriate care or treatment.

Q. 2. On the way out of Paddy’s office, Finn slips and breaks his leg. Paddy takes him to the emergency room (E.R.) and tells the E.R. personnel that Finn has AIDS. Is that OK?

A. 2. No. Since treatment for a broken bone does not differ depending on an individual’s HIV status, knowledge of Finn’s status was irrelevant to his treatment. In addition, Finn was capable of telling the E.R. himself.

Q. 3. Instead of taking Finn to the E.R., Paddy calls an ambulance. The emergency medical technician (E.M.T.) asks Paddy what medications Finn is taking. Can Paddy tell the E.M.T. about Finn’s AIDS medications?

A. 3. No, for the same reasons as in question 2: Finn’s HIV status is not relevant to the treatment of a broken leg.

Q. 4. If Finn had fallen and cracked his head open, instead of breaking his leg, could Paddy have told the E.M.T. which AIDS medication Finn was taking?

A. 4. Yes, if Paddy thought the information was necessary for appropriate care or treatment of Finn. If Finn was conscious, Paddy also should have taken into consideration whether Finn could have disclosed the information himself. 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, and his wife is pregnant. 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?

A. 1. She can ask John for his written consent to notify his wife or help him do so. Because it is unlikely that Maria has training regarding how to conduct contact notification, it is preferable that she ask John for consent to forward his name and contact information to the Department of Health’s contact notification program. If John will not sign such a consent, she cannot make the disclosure. Nevertheless, she has these three alternatives:

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

- If there is no physician on staff, but Maria knows who John’s physician is, she may contact that physician (under the health care provider rule) and ask that doctor to help with notification. This is because the patient’s consent is not required for disclosure of HIV-related information to physicians when the information is necessary for appropriate care and treatment of the patient, his or her 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 (i.e., so that she can be alerted that she may

have been exposed to HIV, counseled to undergo testing to learn her HIV status, take precautions to avoid being infected, or if she is infected, avoid transmitting HIV to her baby).

- 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.

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

A. 2. Since Maria does not know the identities of John’s other contacts, 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

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?

A. 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?

A. 2. 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?

A. 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?

A. 4. Neither Article 27-F nor HIPAA specify the requirement for an appeal, but it is good practice to provide an appeal (review of your initial conclusion) as part of your agency’s internal complaint/grievance process.

Scenario # 9: Breach of HIV Confidentiality by Outside Physician

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 consent. 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 Michael’s pre-employment exam.

Michael is terrified that his co-workers at his new job 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 that conducted Michael’s pre-employment medical exam violate Article 27-F?

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

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

A. 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 at his job 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; New York State and City's anti-discrimination laws do, too.
- (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 of the U.S. Department of Health and Human Services, which is responsible for taking and investigating complaints about violations of HIPPA's privacy requirements. You can also tell him he can file a complaint against the doctor 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.