

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION IN MEDICINE

GUIDELINE

(Adopted June 1988)

AIDS GUIDELINES

Introduction

Early in 1988, the Board of Registration in Medicine participated in Secretary of Consumer Affairs and Business Regulation Paula W. Gold's *Inter-Agency Task Force on AIDS Issues*, which included members from 18 licensing boards.

The Task Force developed guidelines to help licensing boards anticipate some of the complex issues surrounding this disease. The guidelines address the professional's duty to care, anti-discrimination and confidentiality standards, AIDS education for professionals and the public, infection control and expectations of licensed professionals who are HIV positive. The Board formally adopted the Task Force's Recommended Guidelines as an advisory policy in June 1988.

A summary and the full text of the Guidelines follow:

Summary of AIDS Guidelines

1. Licensed professionals have a duty to care, treat or provide services to persons with AIDS, ARC or HIV-infection. Exceptions to this obligation may occur in clearly defined, unusual instances but as a general rule, all licensed professionals should be aware of their affirmative duty to treat, care for or deliver services to persons with AIDS, ARC or HIV-infection.
2. Licensed professionals should understand that civil rights laws protect persons with AIDS, ARC or HIV infection against discrimination and that discriminatory conduct and behavior can subject licensees to discipline and legal action.
3. Licensed professionals should be aware of state law that prohibits health care providers from testing patients for exposure to the HIV virus without obtaining informed written consent, and from disclosing HIV test results without informed written consent.

4. Licensed professionals have an obligation to obtain appropriate education as to the nature of the AIDS virus, its transmission and safeguards against exposure. Minimal education requirements may be necessary in order for licensees to be considered fully competent, as may be recommended by each licensing board.
5. Licensed professionals should take every opportunity to educate the general public in understanding the nature of the AIDS virus, its transmission and safeguards against exposure.
6. Licensed professionals should routinely and not discriminatorily take all precautions against exposure and transmission as recommended by the Centers for Disease Control, the Department of Public Health, their licensing board and their profession.
7. Licensed professionals with HIV infection should especially observe recommended infection control precautions and refrain from practices or procedures where a risk of transmission to patients can occur as identified by the CDC or other public health authorities. HIV infection should not be grounds for licensing board action provided the infected licensee observes suitable infection control precautions.

Duty to Care

AIDS has created anxiety for all types of licensed professionals. This fear can be especially acute for health care and personal service professionals who come into close physical contact with infected individuals.

The best evidence to date, however, indicates that the risk of contracting the HIV virus, even among health care providers, is small and can be minimized by using infection control procedures. Professionals who do not come into personal contact with blood or bodily fluids of other individuals are at virtually no risk of contracting the virus. Consequently, fear of the disease should not be a barrier to caring for or delivering services to persons with AIDS, ARC or HIV infection.

A professional's license carries with it a duty to provide needed services to the public. Licensed professionals should accord persons with AIDS, ARC or HIV infection the same respect and quality of service delivered to non-infected individuals and should not deny care or services based on the individual's known or suspected HIV status.

This legal principle should be observed despite the contrary or possibly misleading advice of certain professional associations concerning the duty to care.

Exceptions to the duty to care can occur, but only in unusual cases and only in certain activities involving close physical contact with the public. For example, some public

health experts have questioned whether professionals who are pregnant should treat patients with cytomegalovirus and possibly other opportunistic infections associated with AIDS that could infect the fetus.

Another explanation may occur for licensees who are not equipped to manage certain clinical manifestations of AIDS, in which case professionals should still offer non-specialized services.

These exceptions to the duty to care do not apply to most professionals in most situations where the duty to care remains paramount, nor do they affect the delivery of care to HIV-infected patients who are not suffering from such opportunistic infections.

Caring for routine problems associated with AIDS or ARC is a skill all professionals need to muster. If care for specialized AIDS manifestations is a skill which an up-to-date professional needs to master, then continuing professional competence would require mastering and offering those skills as well. Therefore, when a person with AIDS develops problems that would normally be in the area of expertise of and be routinely handled by a skilled professional, referral to another professional would be generally not in conformity with the intent of these guidelines. [Please note: This paragraph was modified by the Board before they adopted it.]

Alleged violations of this duty to care will most likely come in the form of complaints raised by the public and other professionals. Such complaints should be promptly investigated by a licensing board. Care should be taken to protect the confidentiality of a complainant with AIDS or HIV infection.

In the case of health care professionals employed by a health care facility or another professional, a Board should consider cooperating with the employer to ensure resolution of the duty to care complaint. For verifiable, genuine violations, a Board might recommend remedial AIDS education as a minimal response but more stringent sanctions might be imposed as appropriate.

Anti-Discrimination Standards

Licensed professionals should understand that their professional practice is viewed as a “public accommodation” under state and federal civil rights laws. As such, professionals are prohibited from discriminating against handicapped individuals.

The Massachusetts Commission Against Discrimination (MCAD) and the Office of the Attorney General enforce these laws. The MCAD has ruled that individuals known or suspected to have AIDS, ARC or HIV-infection are considered to be handicapped individuals and are protected by civil rights laws. The intent of these laws is to protect individuals against the blatant discrimination and stigmatization experienced by persons with known or suspected AIDS, ARC or HIV infection.

The MCAD will assist individual Boards that receive complaints of alleged discrimination. The Boards are in a good position to communicate the substance of these civil rights laws to licensees. A Board should also be aware of the potential for disciplinary action against a licensee found to have violated the civil rights of known or suspected persons with AIDS, ARC or HIV infection.

Privacy and Confidentiality

State law strictly controls the confidentiality of HIV test results. The law (M.G.L. c. 111, §70F) prohibits health care facilities, physicians and health care providers from testing for HIV infection without the test subject's written informed consent. Written informed consent is also required to disclose test results and the fact an individual was tested to anyone other than the test subject. Each release of this information, including medical records that contain HIV test information, must be authorized by a separate written release and must be distinguished from other general releases for medical information. Violations of this law are subject to triple damages under the Consumer Protection Act.

The law attempts to prevent the discrimination and personal harm that can result from the injudicious or even inadvertent disclosure of an individual's HIV status. The law's prohibition against unauthorized disclosure may pose problems within health care facilities and office settings where co-workers might need to know about a patient's HIV status to render proper care.

This law does not prevent professionals from asking patients whether they have AIDS or ARC. Co-workers can share this information just as any necessary diagnostic information would be shared. However, this information is subject to the same laws that protect the privacy of all personal medical information. It is also recommended that only co-treating professionals with a need to know about a person's AIDS or ARC diagnosis should be informed of the diagnosis in order to prevent unwarranted disclosures that might harm the person with AIDS or ARC.

Alleged violations of the test confidentiality laws can be referred to the Department of Public Health and the Attorney General which enforce the law. A Board should consider the possibility of disciplinary action against a licensee found to have violated this law on the grounds that the unlawful breach of confidentiality constituted unacceptable professional practice.

Education

Education is the best defense against the spread of the HIV virus and the best way to alleviate irrational fears, stereotypes and behaviors that should not be associated with professional conduct. In addition to educating themselves, licensed professionals are in a unique position to educate the public about the nature of AIDS, risk-prone behavior and precautions against exposure.

AIDS education for the professional should minimally include an understanding of what the HIV virus is and how it is transmitted, infection control methods and the psychological and sociological impacts of AIDS on individuals and society. In addition to considering whether this minimal education should be a matter for continuing education, licensing boards should consider what additional education its licensees should possess to care for, treat or deliver services to persons with AIDS, ARC and HIV infection.

Licensing boards should become familiar with AIDS educational resources that are available to their licensees. They should also consider whether board-approved teaching and training programs should include AIDS education and infection control procedures in curricula and training programs. Boards might consider including a section on AIDS and infection control in the licensure examinations which they administer.

Infection Control Procedures

Licensed professionals should routinely use infection control procedures recommended by the Centers for Disease Control (CDC), the Public Health Service, Department of Public Health and other agencies whenever they are likely to come into physical contact with any individuals where bodily fluids, particularly blood, might be exchanged.

These procedures not only protect against HIV transmission, but also more virulent and contagious viruses like Hepatitis B. Several licensing boards, like Acupuncture and Electrology, have adopted mandatory equipment sterilization procedures for their licensees. Other Boards might consider infection control standards appropriate for their licensees.

In the absence of adopting infection control regulations, all licensing boards should strongly advocate their use and expect licensees to seek infection control education.

HIV-Infected Licensees

The Centers for Disease Control (CDC) have found no evidence that HIV-infected health care professionals have transmitted infection to patients. The CDC has stated that a risk of transmission would exist in situations where there is both (1) a high degree of trauma to the patient that would provide a portal of entry for the virus (e.g., during invasive procedures) and (2) blood or serous fluid from the infected health care professional might gain access to the open tissues of a patient as could occur if the professional sustains a needle stick or scalpel injury during an invasive procedure.

HIV-infected professionals must observe the infection control precautions that apply to all health care professionals, regardless of whether they perform invasive procedures: (1) all professionals should wear gloves for direct contact with mucous membranes or nonintact skin of all patients and; (2) professionals who have exudative lesions or weeping dermatitis should refrain from all direct patient care and from handling patient-care equipment until the condition resolves.

Licensed professionals with HIV infection have an obligation to take preventive steps that protect the public from any risk of infection. Infection control precautions should be strictly observed by HIV-infected licensees. A Board should consider taking stringent disciplinary action against licensees who fail to meet this expectation.

An HIV infected licensee should also refrain from practices and procedures where a risk of transmission exists as identified by the Centers for Disease Control and other public health authorities. Licensees should not, however, be disqualified from practices, procedures and activities that do not pose a genuine risk of transmission.

It is still open to further consideration under what circumstances infected licensees might have to disclose their HIV status. However, infected licensees should be aware that boards will carefully scrutinize any conduct or behavior which even potentially jeopardizes public health and safety.