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Speaker Name	Statement
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Date	22 September 2012

# HIV Transmission, the Law and the Work of the Clinical Team

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BHIVA Autumn Conference 2012

# Introduction

- Law related to HIV transmission
  - CPS (England and Wales)
  - Crown Office (Scotland)
- Duties of Health Care Workers
  - Confidentiality
  - Preventing harm
  - Advice to patient
  - Police requests

# Question 1

- In England and Wales it is possible to be prosecuted for exposing a partner to HIV even if transmission does not occur.
- Answer: False

# Law Related to HIV transmission

- England and Wales
  - Grievous Bodily Harm under the Offences Against the Person Act 1861
  - Section 18 = intentional
  - Section 20 = reckless
  - Cannot be prosecuted for being reckless if no harm occurs as a result
  - So no HIV transmission = no crime

# Law Related to HIV transmission

- Scotland
  - Assault (where there is intent to cause harm)
  - common law of ‘culpable and reckless conduct’
  - Includes ‘culpable and reckless conduct’ to the danger of injury
  - So could be prosecuted for putting someone at risk of HIV infection even if no transmission
    - This has recently happened but in the context of 1 partner being infected and 3 others being put at risk

# Law Related to HIV transmission

- Need to prove that:
  - The claimant was infected by the defendant
  - The defendant had knowledge that they were infected
  - The defendant acted with the requisite degree of recklessness
  - (The defendant did not disclose their HIV status)
    - Scotland
    - PEPSE

## Question 2

- HIV positive individuals who are taking antiretroviral treatment will be considered reckless if they do not use a condom during sexual intercourse and have not disclosed their HIV status to their partner.
- Answer: Not necessarily (false)



# Recklessness

- Where someone could foresee that their action may cause harm to another person but still continued in that action
- In the context of HIV this would be where no reasonable precautions to prevent transmission were taken
- Expert evidence important
  - Use of effective ART recognised (E&W and Scotland)

# Transmission Risk

- Growing evidence of extremely low transmission rates with effective ART
- Comparable to or lower than risk with reliable condom use in untreated individuals
- Less evidence for MSM/AI
- Absence of STIs important

Cohen et al 2011 NEJM 365(6): 493-505

Donnell et al 2010 Lancet 375(9731): 2092-2098

Garnett and Gazzard 2008 Lancet 372: 270-271

# Advice to HIV Positive Individuals

- The best way to avoid transmission is to:
  - Use a condom
  - Ensure good adherence to ART
  - Have regular STI screens

## Question 3

- Phylogenetic analysis of HIV in the defendant and complainant can provide sufficient evidence to show that the infection was transmitted between these individuals.
- Answer: False

# Evidence of Infection Source

- Scientific/medical and factual evidence required
- Phylogenetic analysis
  - Can show that the defendant is not the source
  - May mean defendant and claimant infected from same network or that the claimant infected the defendant
- STARHS/avidity tests
  - Performance affected by several factors e.g. Advanced HIV, non-B subtypes
  - Should not be relied upon as evidence

## Question 4

- In order to prevent harm when a patient refuses to disclose their HIV status to sexual partners you have a duty to report them to the police.
- Answer: False

# Police Requests

- This request for personal data is made under the powers invested in me ..... by the Police Act 1996, section 30(1)..... These powers include the investigation and detection of crime, apprehension and prosecution of offenders, protection of life and property and maintenance of law and order.



# Police Requests

- Police power to request information does not mean there is a legal duty to give this information
- Except in certain circumstances .....
- Patient consent important
- Always make every attempt to verify consent directly with the patient
- Legal duty to comply with court order
  - Good practice to inform patient
  - Remove third party information



## Question 5

- There is a legal duty for health care workers to inform sexual partners of a patient's HIV status when they refuse to do so themselves.
- Answer: False

# Duty to Sexual Partners

- Duty of care primarily to patient
- But (ethical) duty to prevent harm to others
- Three distinct scenarios
- Balancing harms and benefits
- Past risk vs. on-going risk

# Duties to your patient

- Maintain confidentiality
  - Within legal and ethical limits
- Advise about HIV infection
  - Implications for them and others
- Appropriate support
  - Psychological
  - Physical
  - PN support

# Possible Scenarios

- Partner is also a patient of yours
  - More common in General Practice
  - Duty of care to both
- Partner is not your patient but there is a known regular partner
  - Name and contact details may not be known to HCWs
- Multiple casual partners

# Balancing Harms and Benefits

- Essential part of ethical decision making
- May mean
  - Agreeing not to disclose to a violent partner
- Document all decisions clearly

# Past Risk vs. On-Going Risk

- If on-going risk to regular partner may be able to justify disclosure
- If no on-going risk but previous risk (UPSI prior to diagnosis) anonymous PN may be an option
- If no previous or on-going risk no justification for disclosure
  - E.g. individual has new partner and is on effective ART and/or reports consistent condom use

# Acknowledgements

- Jane Anderson
- Yusef Azad
- James Chalmers
- Anna Maria Geretti
- Mark Nelson
- Chloe Orkin
- Matthew Phillips
- Lisa Power
- Anton Pozniak
- Karen Rogstad