

Module 3

## Case 3.2: Duty to Report—An HIV Diagnosis

### Case Presentation

After Mr. Daar left Exam 2, Dr. Macklin began a physical examination. Upon discovering localized symmetric mucocutaneous lesions, generalized nontender lymphadenopathy and red papular lesions 4-5 mm in diameter, Dr. Macklin confirmed Mr. Jonsen's complaints of sore throat, fever, and headache.

"Have you had any unprotected sex or used any intravenous drugs in the last year?"

"No drugs, but I've had unprotected sex, why?"

"Well, I'd like to run a few tests because I'd guess that you have secondary syphilis, but I want to confirm that diagnosis before we go any further."

"Is syphilis treatable?"

"Yes, but first I need to confirm the diagnosis. Just in case, I'd also like to test you for other common STDs, including HIV, that may be latent in your system."

After a pause, Mr. Jonsen mutters, "Alright, go ahead."

Mr. Jonsen does test positive for syphilis, and he also tests positive for HIV. Dr. Macklin returns to Exam 2 to deliver the news.

"As we expected, you've got secondary syphilis. The good news is that penicillin is a highly effective treatment and so we should be able to clear this up pretty quickly. Unfortunately, Mr. Jonsen, you've also tested positive for HIV." Dr. Macklin hands Mr. Jonsen a couple of slips of paper. "Here's the name of a nearby HIV clinic and a prescription for penicillin." Dr. Macklin pauses for a moment while Mr. Jonsen stares at the floor. "Obviously you shouldn't have unprotected sex because you put any partner at risk for infection as well."

Mr. Jonsen looks up, "I think I'm entitled to make my own decisions, but thanks for the input." As he starts putting his clothes back on he says, "I expect you to keep this information confidential."

"I'm afraid I can't do that Mr. Jonsen. State law requires me to report all cases of sexually transmitted diseases. I also need your assurance that you won't have unprotected sex."

"I guess you don't always get what you need." Mr. Jonsen retorts as he gathers his things.

### What should Dr. Macklin do? (select an option)

- A. [Inform the appropriate authorities about the STDs and that Mr. Jonsen is likely to put others at risk for infection.](#)
- B. [Ask Mr. Jonsen to stay so they can plan therapy, counseling, and referral for Mr. Jonsen's follow-up care.](#)
- C. [Record the diagnosis in Mr. Jonsen's medical chart and take no other action.](#)

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### Option Assessment

- A. Informing the appropriate authorities of Mr. Jonsen's STDs and of the possibility that he may put others at risk is **acceptable**; state law requires the former. Regarding the latter, endangerment to third parties, reporting Mr. Jonsen may be supported by the *Code* if Dr. Macklin is convinced that Mr. Jonsen plans to continue endangering others. According to Opinion 2.23, "HIV Testing," if the physician is unable to persuade the patient to discontinue putting others at risk, the physician should notify authorities of the endangerment. If Dr. Macklin does not know for certain that Mr. Jonsen is endangering others, or if he is successful in persuading his patient not to continue to do so, Dr. Macklin need not notify the authorities that Mr. Jonsen is a danger to others.
- B. Asking Mr. Jonsen to stay so they can plan therapy, counseling, and referral for follow-up care is the **preferred** action. Requesting that Mr. Jonsen stay will provide some time for him to reflect on his medical condition and will give Dr. Macklin an opportunity to talk about necessary treatment and counseling services. It will also give Dr. Macklin more time to persuade Mr. Jonsen against endangering others by his conduct.
- C. Making a note in Mr. Jonsen's chart and doing nothing else should be **avoided** because it violates the *Code* in Opinion 2.23, "HIV Testing": "the physician should, within the constraints of the law: (1) attempt to persuade the infected patient to cease endangering the third party; and (2) if persuasion fails, notify authorities..." Moreover, in the state where Dr. Macklin is practicing, state law requires a report on all sexual transmitted diseases.

#### [Compare these options](#)

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### Option Comparison

Extending the ER visit so that Dr. Macklin can discuss follow-up care and convince Mr. Jonsen to avoid unprotected sex and other at-risk activities (option B) is the preferable option. Mr. Jonsen's disease must be reported, regardless, to the appropriate authorities and, if Dr. Macklin fails to convince Mr. Jonsen that he should avoid putting others at risk, it may also be necessary to inform public health authorities that Mr. Jonsen's behavior is endangering others (option A).

Option C—noting the diagnosis and taking no other action—should be avoided for the 2 reasons mentioned above: physicians must report certain types of diseases and diagnoses to the health authorities, and HIV seropositive status is one such diagnosis; the risk of harm that Mr. Jonsen places others in by continued unprotected sex argues that Dr. Macklin cannot just record the diagnosis in Mr. Jonsen's chart and take no further action.

Preferable: B

Acceptable: A

Avoid: C

#### [Additional discussion and information](#)

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### Additional Information

The obligation to maintain patient confidentiality dates back to the Hippocratic Oath and remains essential to the practice of medicine. Maintaining confidentiality produces the conditions necessary for optimal medical practice. Specifically, patients who trust their physician to maintain confidentiality will be more likely to share important personal information (eg, whether or not they use drugs) that can help attain a more accurate diagnosis and effective treatment plans.

#### Opinion 5.05, "Confidentiality"

The information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services...

The obligation to safeguard patient confidences is subject to certain exceptions which are ethically and legally justified because of overriding social considerations...

When patients pose threats of harm to specific third-parties or to the public health, physicians may have a duty to breach confidentiality. These threats can take a variety of forms, including intended violent acts as well as irresponsible or malicious actions arising from the patient's medical condition. Specifically, patients who are HIV positive may put third parties at risk through a variety of behaviors including needle sharing and unprotected sexual intercourse.

#### Opinion 2.23, "HIV Testing"

The confidentiality of the results of HIV testing must be maintained as much as possible and the limits of a patient's confidentiality should be known to the patient before consent is given.

Exceptions to confidentiality are appropriate when necessary to protect the public health or when necessary to protect individuals, including health care workers, who are endangered by persons infected with HIV. If a physician knows that a seropositive individual is endangering a third party, the physician should, within the constraints of the law: (1) attempt to persuade the infected patient to cease endangering the third party; (2) if persuasion fails, notify authorities; and (3) if the authorities take no action, notify the endangered third party...

A patient's HIV status should remain confidential, except under the clearly defined circumstances where disclosure is necessary for safeguarding public health or identifiable third parties. The reporting requirements differ from state to state, and physicians should be aware (and should make patients aware) of what information will be reported.

Opinion 2.23, "HIV Testing" clearly states that "the limits of a patient's confidentiality should be known before consent [to testing] is given." Dr. Macklin failed to inform Mr. Jonsen of the limits of the obligation of confidentiality in this kind of case. It is not clear whether doing so would have made a difference in Mr. Jonsen's decisions or reaction, but Dr. Macklin slipped up on this obligation just the same.

The physician's duty to report is not limited to communicable diseases (like STDs). When physicians have reason to believe that individuals may be a threat to the welfare of others or have been the victims of violence, they should inform appropriate authorities. Physicians have this duty to report because of their responsibility to the public good. The following Opinions articulate the features of this responsibility.

### **Opinion 2.02, "Abuse of Spouses, Children, Elderly Persons and Others at Risk"**

The physician should comply with the laws requiring reporting of suspected cases of abuse of spouses, children, elderly persons, and others....Absent such legal requirement, for mentally competent, adult victims of abuse, physicians should not report to state authorities without the consent of the patient.

### **Opinion 2.24, "Impaired Drivers and Their Physicians"**

Physicians should assess patients' physical or mental impairments that might adversely affect driving abilities...The physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive; [and] the driver must pose a clear risk to public safety...[However], the determination of the inability to drive safely should be made by the state's Department of Motor Vehicles...Physicians should disclose and explain to their patients this responsibility to report...Physicians should protect patient confidentiality by ensuring that only the minimal amount of information is reported and that reasonable security measures are used in handling that information.

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