

## MEMORANDUM

From: Sidney R. Barrett, Jr., General Counsel *SRB*  
Date: 25 November 2015

Re: **Notification to Persons Exposed to Venereal Disease or HIV**

This memorandum will address when you may notify someone that they have been exposed to a venereal disease, what you should and should not say, and what efforts should be made to provide notice.

Please note that there are heightened legal restrictions on disclosing health information pertaining to HIV. For that reason, this memo has a separate section devoted to the special rules for handling HIV notification.

### **What is the authority of Public Health to notify third parties of possible exposure to venereal disease?**

Public Health has broad legal powers to track and fight communicable diseases, including the general power to quarantine persons with such diseases.<sup>1</sup> Public Health has the authority to require that health care providers and others notify Public Health when someone is or may be infected with a venereal disease, including HIV,<sup>2</sup> and to examine, test, and treat persons who are “infected or suspected of being infected with venereal disease,” including HIV.<sup>3</sup>

One of Public Health’s traditional tactics in fighting communicable disease is to contact persons who are or may have been infected, and encourage them to seek testing and treatment. This often can be done only by disclosing personal health information of the person who may have passed the infection on to them. HIPAA expressly permits the disclosure of personal health information, without the patient’s consent, if disclosure is necessary “to prevent or lessen a serious and imminent threat to the health or safety of a person or the public,” and if the disclosure is made to someone who is “reasonably able to prevent or lessen the threat.”<sup>4</sup> Other statutes in the Georgia code contemplate that Public Health will disclose personal health information in order to notify someone that they may have been infected.<sup>5</sup>

<sup>1</sup> Code Sections 31-2A-4(2, 4), 31-12-4.

<sup>2</sup> Code Sections 31-12-2, 31-17-3, 31-22-7.

<sup>3</sup> Code Sections 31-17-3, 31-17-4.2, 31-17-4.2.

<sup>4</sup> 45 C.F.R. 164.512(j)(1)(i).

<sup>5</sup> Code Section 24-12-21(h)(3)(HIV).



### **Is there a duty to notify? What does “best efforts” mean?**

Public Health is authorized to share health information with persons who might be exposed to a venereal disease, but the law does not generally say that we *must* do so. Notification is a matter within the discretion of Public Health. How and when to notify is a judgment call, based on all the circumstances and what is best for the patients and the community. Of course, since it is our mission to prevent the spread of disease, it is expected that we will always make a good faith attempt to notify persons who have been exposed to disease and encourage them to seek testing and treatment.

There is no specific legal definition of what constitutes “good faith efforts” – that is, there is no specific list of actions you must take, or a particular number of letters you must send or phone calls you must make. “Good faith efforts” will vary from one situation to the next, depending on the circumstances. Most judges will candidly tell you “I know it when I see it.” At the end of the day, the question is whether you took reasonable action in light of the information available to you, and in light of the serious consequences of untreated venereal disease.

### **Who may be notified of a possible exposure?**

HIPAA permits Public Health to protect against a threat to the health of a person or the public by disclosing personal health information to anyone who is “reasonably able to prevent or lessen the threat.”<sup>6</sup> In most cases, that will be any person who was exposed to the infectious agent (*e.g.*, someone who had sex with the index patient.) In other cases, the person who may be “reasonably able to prevent or lessen the threat” may be a parent or legal guardian, the manager of a jail or nursing home, or a law enforcement officer.

In general, it is left to the discretion of Public Health to decide which persons should be notified. However, if the infectious agent is HIV, then Georgia law limits the choice of persons that can be notified of the infection. (See next section.)

### **Who may provide the notice?**

The law does not dictate who may provide notice. Any properly trained member of the Public Health workforce may notify a person who may have been exposed to a venereal disease. It does not have to be a licensed medical professional, *i.e.*, a physician or registered nurse.

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<sup>6</sup> 45 C.F.R. 164.512(j)(1)(i).

## What information should be provided?

In general, when disclosing someone's personal health information, HIPAA requires that you disclose only the "minimum necessary" to accomplish your objective.<sup>7</sup> How much information should be disclosed, and what type, will depend on the individual circumstances of the case. For example, it may or may not be necessary to disclose the name of the contact who may have exposed the person to disease.

What information to disclose in a particular situation is a judgment call. If it is not necessary to disclose the name of the index patient (*e.g.*, "we have information that you may have been exposed to a very serious infectious disease"), then don't. If you believe the possibly infected person will not take the threat of disease seriously unless they are confronted with names and details of the pathogen (*e.g.*, "we understand that you had sex with John Doe and John has syphilis"), then you may disclose that information.

## Handling HIV Information

Georgia law provides heightened legal protection to personal health information that pertains to HIV.<sup>8</sup> Protected "HIV information" means not only positive test results, but also information such as prescriptions for drugs that would identify the person as an HIV or AIDS patient. Even the fact that a person was tested for HIV and the results came back negative is considered confidential HIV information.

Code Section 24-12-21 dictates when HIV information *may* be disclosed without the patient's consent, and also when it *must* be disclosed without the patient's consent. Unless disclosure is permitted by that statute, HIV information must be kept strictly confidential.

Public Health is *required* to share HIV information to the following persons or entities:

- A person designated in writing by the patient to receive HIV information;<sup>9</sup>
- A state or federal government agency authorized or required by law to receive personal health information;<sup>10</sup>
- In response to a court order issued pursuant to certain specified Code Sections;<sup>11</sup> and
- Public Health is required to contact and counsel an HIV patient's spouse when a diagnosis is reported.<sup>12</sup>

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<sup>7</sup> 45 C.F.R. 164.514(d).

<sup>8</sup> Code Section 24-12-21.

<sup>9</sup> Code Section 24-12-21(d).

<sup>10</sup> Code Section 24-12-21(e).

<sup>11</sup> Code Section 24-12-21(r), (s) and (t).

<sup>12</sup> Code Section 24-12-21(h)(3)(C) provides that DPH or the county health department "shall contact and provide counseling to the spouse of any HIV infected person ... if both persons are reasonably likely to have engaged in sexual intercourse or any other act ... likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty."

Public Health is *permitted* to share HIV information to the following persons or entities:

- The parents or legal guardians of a minor or incompetent patient;<sup>13</sup>
- The County Board of Health of the patient's county of residence, if reasonably necessary to protect the health and safety of the patient or other persons who have come in contact with the patient's body fluids;<sup>14</sup>
- A person reasonably believed to be at risk of being infected by the patient;<sup>15</sup>
- A licensed health care provider whom the patient has consulted for medical treatment or advice;<sup>16</sup>
- HIV test results may be disclosed to a prosecutor or public safety agency which obtained a court order for HIV testing;<sup>17</sup>
- HIV test results may be disclosed to the person who ordered the test, or to their designated representative;<sup>18</sup> and
- If the person with HIV is a patient of a public health physician, then that physician may, upon first telling the patient, disclose HIV information to the spouse, sex partner, or child reasonably believed to be at risk of becoming infected.<sup>19</sup>

The federal Ryan White Program requires health departments to "show good faith efforts to notify the marriage partners of a patient with HIV/AIDS."<sup>20</sup> As noted above, there is no legal definition of what constitutes "good faith efforts," and the specific actions that should be taken will be determined by the circumstances of the individual case.

If you are considering sharing HIV information without a patient's consent, please contact your DPH or County Privacy Officer for guidance before taking action.

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<sup>13</sup> Code Sections 31-17-7(b), 24-12-21(c).

<sup>14</sup> Code Section 24-12-21(h)(3).

<sup>15</sup> Code Section 24-12-21(h)(3)(B).

<sup>16</sup> Code Section 24-12-21(h.1).

<sup>17</sup> Code Section 24-12-21(q).

<sup>18</sup> Code Section 24-12-21(f). Note that other statutes place restrictions on who may order an HIV test. See Code Sections 31-22-9.1 and -9.2.

<sup>19</sup> Code Section 24-12-21(g).

<sup>20</sup> <https://www.aids.gov/hiv-aids-basics/just-diagnosed-with-hiv-aids/your-legal-rights/legal-disclosure/>