South African code of ethics in HIV and AIDS

PREAMBLE

These HIV/AIDS guidelines are changing as new evidence and experience evolves. While the ethical principles themselves are fairly static, the interpretation of these principles changes as new information adjusts the balance between often conflicting principles.

These guidelines must be viewed together with the MASA (Medical Association of South Africa) HIV/AIDS Clinical Guidelines booklet.

RECOMMENDATIONS

The Medical Association of South Africa recommends that:

The doctor's duty towards patients:

- Ethically, no doctor may refuse to treat any patient whose condition is within the doctor's current realm of competence solely on the grounds that the patient is or may be HIV seropositive.
- A doctor is not ethically or legally obliged to put his/her life at risk by undertaking interventional treatment of a patient in circumstances where facilities for the application of universal precautions do not exist.
- No doctor may withhold normal clinical standards of treatment from any patient solely on the grounds that the patient is HIV seropositive, unless such variation of treatment is determined by the patient's interest (rather than by perceived potential risk to the doctor) (Medical Association Guidelines 1992:4).

Testing for HIV

- The only effective way to increase the protection of Health Care Workers (HCWs) against the risk of occupationally acquired HIV infection lies in the adoption of internationally recognised and approved universal precautions in all institutions and in all clinical situations.
- The HIV serostatus of any patient should not be determined as a routine prior to surgery or other interventions. In those procedures which are perceived by the surgical team to pose an exceptionally high risk of percutaneous inoculation injury, or of skin/mucous membrane contamination despite the application of standard universal precautions, appropriate additional special precautions must be universally applied.
- However, where pre-treatment HIV testing is clearly necessary for determining which treatment may be in the patient's best interest (ie, operations in which a state of immunocompromise would effect the outcome), HIV testing with the patient's free and informed consent is obviously acceptable.
- Where any risk of virus transmission exists, universal precautions must be applied. These should be applied with sufficient uniformity as to render the pre-treatment knowledge of a patient's HIV status irrelevant.
- In regard to the prevention of HIV transmission in the health care setting, doctors (and other HCWs) have an ethical obligation to apply universal precautions in every clinical encounter and to act as if every patient whom s(he) treats is HIV positive. The doctor has a responsibility not only to him/herself and his/her family but also to all other HCWs who could become infected as a result of the doctor's neglect of universal precautions. It must be noted that, to date, the majority of HCWs sustaining occupationally acquired HIV infection have been non-professional workers infected as a result of the carelessness of professionals in disposing of contaminated sharps. Failure to apply universal precautions also poses a significant risk of patient to patient transmission of infection resulting from the doctor's or nurse's activities.

***Consent to** HIV testing*

- As a general rule, a doctor should investigate or treat a patient for HIV infection only with the informed consent of the patient. Every effort should be made to adhere to this principle, including provision for skilled pretest counselling by the doctor or an appropriate counsellor.
- The patient should, whenever possible, clearly understand what advantages or disadvantages testing may hold for him/her, why the doctor wants this information, and what influence the result of such a test may have on his/her treatment. The counselling procedure should be one that is appropriate to the setting and is the least burdensome to the person being tested, as well as to those responsible for testing. Guidelines on appropriate counselling may be found in the MASA HIV/AIDS Clinical guidelines booklet.
- When the patient is unable to give consent (i.e. in emergency settings), vicarious consent must be sought where possible (i.e. the consent of another person legally competent to give consent on behalf of the patient). If this is not possible under the circumstances, the doctor may decide what is in the best interest of the patient. .
- If the patient is unwilling to consent to an investigation necessary for accurate diagnosis, the doctor is free to discontinue treatment of the patient. However, the doctor

must be able to prove that he cannot proceed with appropriate treatment without knowledge of the HIV status. In this situation, however, it remains the doctor's duty to ensure that the patient continues to receive all necessary symptomatic or palliative care, provided either by himself or by other sources. Where it is appropriate and practicable, the doctor should treat a patient who refuses necessary HIV testing as if the patient were HIV seropositive.

- The MASA urges all doctors to respect the patient's right to decide whether (s)he will undergo HIV testing or not. Nonetheless, when a doctor or other HCW has sustained an injury which carries the risk of transmission of HIV, (s)he has a right to information about the HIV serostatus of the patient whose body fluid may have contaminated him/her. If, in this situation, the patient refuses consent to HIV testing, or is not in a fit state to give consent (e.g. unconscious or confused) the doctor is advised to have the test performed on blood obtained for other purposes, and to inform the patient that the test has been performed. If such blood specimen does not exist, the doctor is advised to approach the Medical Officer of Health for help in terms of the Communicable Diseases section of the Health Act, and thereby acquire the necessary blood specimen. All requests for consent to testing must be accompanied by full counselling concerning the possible consequences to the patient of a positive result.

- When a doctor has gained knowledge of a patient's HIV serostatus against that patient's wishes (e.g. where a risk bearing "exposure" of a HCW has occurred), or without the patient's consent (e.g. in an emergency situation involving an unconscious patient), (s)he should inform the patient that the test has had to be performed, but must convey the result of the test to the patient only with the patient's informed consent, and after counselling. In other words, the patient must be told that (s)he has the right to refuse to be informed about the result of the test, and that the result will then be known only to the at risk HCW. In this way, the conflicting rights of the patient (not to be tested) and of the HCW (to information crucial to his/her welfare) are reconciled.

Confidentiality between Health Care Workers

- Doctors should use their discretion whether or not to confidentially discuss a patient's serostatus with any other HCW who is at risk of infection from the patient. It is essential to attempt to obtain the patient's free and informed consent to this disclosure, but exceptional circumstances may necessitate the transmission of this information to other HCWs without the patient's consent.

- Doctors may divulge information on the serostatus of a patient to other HCWs without the patient's consent only when all of the following circumstances exist:

1. An identifiable HCW or team is at risk.
2. The doctor is not certain that universal precautions are being applied.
3. The doctor has informed the patient that under the circumstances s(he) is obliged to inform the other HCW's involved.

- The HCW or team thus informed is duty bound to maintain confidentiality.

- Where such information may affect the treatment of the patient in that patient's own best interest, the doctor should be duty bound confidentially to discuss the patient's serostatus with all members of the health care team administering such treatment, but only with the patient's consent.

Confidentiality and Sexual Partner(s)

- Doctors should use their discretion whether or not to ensure that third parties who are at risk of infection, particularly known sex partners of an HIV positive patient, are made aware of the situation. This should preferably be done by the patient, or with the consent and participation of the patient. If the patient withholds co-operation, this may be done directly and without the patient's consent. However, the risk to a third party would have to be grave and clearly defined before such a breach of the doctor's duty of confidentiality could be justified.

- Doctors may divulge information on the serostatus of a patient to a third party(s) without the patient's consent only when all of the following circumstances exist:

1. An identifiable third party is at risk.
2. The patient, after appropriate counselling, does not personally inform the third party (s).
3. The doctor has informed the patient that (s)he intends breaking confidentiality under the circumstances.

- Where the patient has a known sexual partner, every effort should be made to encourage shared counselling, at both the pre- and post-test phase.

- In general, no doctor may transmit confidential information on his/her patient to any third party without the consent of the patient, or in the case of a deceased patient, without the written consent of his next of kin or the executor of his/her estate.

Duties of Doctors infected with HIV

- Any doctor who has reason to believe that (s)he is likely to have been exposed to infection by HIV, has a responsibility to have his/her HIV status ascertained, and/or to act as if their serostatus were positive.

- Any doctor who finds or suspects him/herself to be HIV positive must seek regular counselling from an appropriate professional source, preferably one designated for this purpose by a medical academic [illegible]. [illegible] ere is no risk to the

patients, and no compromise in the physical or mental ability of the doctor to perform his or her professional duties competently or safely. Counsellors must of course be familiar with current recommendations so that unnecessary, onerous, and scientifically unjustifiable restrictions are not placed on the professional activities of an HIV positive doctor.

- Infected doctors may continue to practice, after they have sought and implemented the counsellors' advice on the extent to which they should limit or adjust their professional practice in order to protect their patients. Any doctor who has counselled a colleague who is infected with HIV and is aware that advice is not being followed, has a responsibility to inform an appropriate body that the doctor's fitness to practice may be seriously impaired.

- The HIV positive doctor (or other HCW) has the same right to confidentiality as does any other patient. Knowledge of his/her serostatus may only be shared with others under the circumstances defined above in the section dealing with confidentiality. It is important to bear in mind that in the case of the HCW it is particularly difficult in an institution to maintain full confidentiality and great care must be taken in this respect.

- HCWs who are exposed to possible virus transmission should record the injury and undergo serial blood tests to ascertain their serostatus at the time of the injury, and thereby to rule out/confirm sero-conversion with subsequent blood tests at 3 and 6 months after the injury.

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