

HIV INFECTION AND AIDS: THE ETHICAL CONSIDERATIONS

INTRODUCTION

1. This paper brings together the Council's guidance to the medical profession on some of the ethical considerations which arise in relation to HIV infection and AIDS. It deals first with general principles and then discusses specific matters in relation to the duties of doctors towards infected persons, the duties of doctors who may themselves be infected, the need to obtain patients' consent to investigation or treatment and the need to observe the rules of professional confidence.

THE DOCTOR/PATIENT RELATIONSHIP

2. The doctor/patient relationship is founded on mutual trust, which can be fostered only when information is freely exchanged between doctor and patient on the basis of honesty, openness and understanding. Acceptance of that principle is, in the view of the Council, fundamental to the resolution of the questions which have been identified in relation to AIDS.

3. The Council has been impressed by the significant increase in the understanding of AIDS and AIDS-related conditions, both within the profession and by the general public, which appears to have occurred within the past 18 months. It seems that most doctors are now prepared to regard these conditions as similar in principle to other infections and life-threatening conditions, and are willing to apply established principles in approaching their diagnosis and management, rather than treating them as medical conditions quite distinct from all others. The Council believes that an approach of this kind will help doctors to resolve many of the difficulties which have arisen hitherto.

4. In all areas of medical practice doctors need to make judgements which they may later have to justify. This is true both of clinical matters and of the complex ethical problems which arise regularly in the course of providing patient care, because it is not possible to set out a code of practice which provides solutions to every such problem which may arise. The Council would remind the profession of the statements of general principle which are set out for the guidance of doctors in its booklet, "Professional Conduct and Discipline: Fitness to Practise". In the light of that general guidance the Council has formed the following views on questions of particular significance in relation to HIV infection and the conditions related to it.

THE DOCTOR'S DUTY TOWARDS PATIENTS

5. The Council expects that doctors will extend to patients who are HIV positive or are suffering from AIDS the same high standard of medical care and support which they would offer to any other patient. It has however expressed its serious concern at reports that, in a small number of cases, doctors have refused to provide such patients with necessary care and treatment.

6. It is entirely proper for a doctor who has a conscientious objection to undertaking a particular course of treatment, or who lacks the necessary knowledge, skill or facilities to provide appropriate investigation or treatment for a patient, to refer that patient to a professional colleague.

7. However, it is unethical for a registered medical practitioner to refuse treatment, or investigation for which there are appropriate facilities, on the ground that the patient suffers, or may suffer, from a condition which could expose the doctor to personal risk. It is equally

unethical for a doctor to withhold treatment from any patient on the basis of a moral judgement that the patient's activities or lifestyle might have contributed to the condition for which treatment was being sought. Unethical behaviour of this kind may raise a question of serious professional misconduct.

DUTIES OF DOCTORS INFECTED WITH THE VIRUS

8. Considerable public anxiety has been aroused by suggestions that doctors who are themselves suffering from AIDS or who are HIV positive might endanger their patients. There is no known case anywhere in the world of HIV having been transmitted by an infected doctor to a patient in the course of medical treatment.

9. Nevertheless it is imperative, both in the public interest and on ethical grounds, that any doctors who think there is a possibility that they may have been infected with HIV should seek appropriate diagnostic testing and counselling and, if found to be infected, should have regular medical supervision. They should also seek specialist advice on the extent to which they should limit their professional practice in order to protect their patients. They must act upon that advice, which in some circumstances would include a requirement not to practise or to limit their practice in certain ways. No doctors should continue in clinical practice merely on the basis of their own assessment of the risk to patients.

10. It is unethical for doctors who know or believe themselves to be infected with HIV to put patients at risk by failing to seek appropriate counselling, or to act upon it when given. The doctor who has counselled a colleague who is infected with HIV to modify his or her professional practice in order to safeguard patients, and is aware that this advice is not being followed, has a duty to inform an appropriate body that the doctor's fitness to practise may be seriously impaired. There are well-trying arrangements for dealing with such cases. They are designed to protect patients as well as to assist the sick doctor. If the circumstances so warrant the Council is empowered to take action to limit the practice of such doctors or to suspend their registration.

11. These arrangements also safeguard the confidentiality and support which doctors when ill, like other patients, are entitled to expect. The principles underlying this advice are already familiar to the profession, which has well-established policies and procedures designed to prevent the transmission of infection from doctors to patients.

CONSENT TO INVESTIGATION OR TREATMENT

12. It has long been accepted, and is well understood within the profession, that a doctor should treat a patient only on the basis of the patient's informed consent. Doctors are expected in all normal circumstances to be sure that their patients consent to the carrying out of investigative procedures involving the removal of samples or invasive techniques, whether those investigations are performed for the purposes of routine screening, for example in pregnancy or prior to surgery, or for the more specific purpose of differential diagnosis. A patient's consent may in certain circumstances be given implicitly, for example by agreement to provide a specimen of blood for multiple analysis. In other circumstances it needs to be given explicitly, for example before undergoing a specified operative procedure or providing a specimen of blood to be tested specifically for a named condition. As the expectations of patients, and consequently the demands made upon doctors, increase and develop, it is essential that both doctor and patient feel free to exchange information before investigation or treatment is undertaken.

Testing for HIV infection: the need to obtain consent

13. The Council believes that the above principle should apply generally, but that it is particularly important in the case of testing for HIV infection, not because the condition is different in kind from other infections but because of the possible serious social and financial consequences which may ensue for the patient from the mere fact of having been tested for the condition. These are problems which would be better resolved by a developing spirit of social tolerance than by medical action, but they do raise a particular ethical dilemma for the doctor in connection with the diagnosis of HIV infection or AIDS. They provide a strong argument for each patient to be given the opportunity, in advance, to consider the implications of submitting to such a test and deciding whether to accept or decline it. In the case of a patient presenting with certain symptoms which the doctor is expected to diagnose, this process should form part of the consultation. Where blood samples are taken for screening purposes, as in ante-natal clinics, there will usually be no reason to suspect HIV infection but even so the test should be carried out only where the patient has given explicit consent. Similarly, those handling blood samples in laboratories, either for specific investigation or for the purposes of research, should test for the presence of HIV only where they know the patient has given explicit consent. Only in the most exceptional circumstances, where a test is imperative in order to secure the safety of persons other than the patient, and where it is not possible for the prior consent of the patient to be obtained, can testing without explicit consent be justified.

14. A particular difficulty arises in cases where it may be desirable to test a child for HIV infection and where, consequently, the consent of a parent, or a person in loco parentis, would normally be sought. However, the possibility that the child may have been infected by a parent may, in certain circumstances, distort the parent's judgement so that consent is withheld in order to protect the parent's own position. The doctor faced with this situation must first judge whether the child is competent to consent to the test on his or her own behalf. If the child is judged competent in this context, then consent can be sought from the child. If however the child is judged unable to give consent the doctor must decide whether the interests of the child should override the wishes of the parent. It is the view of the Council that it would not be unethical for a doctor to perform such a test without parental consent, provided always that the doctor is able to justify that action as being in the best interests of the patient.

CONFIDENTIALITY

15. Doctors are familiar with the need to make judgements about whether to disclose confidential information in particular circumstances, and the need to justify their action where such a disclosure is made. The Council believes that, where HIV infection or AIDS has been diagnosed, any difficulties concerning confidentiality which arise will usually be overcome if doctors are prepared to discuss openly and honestly with patients the implications of their condition, the need to secure the safety of others, and the importance for continuing medical care of ensuring that those who will be involved in their care know the nature of their condition and the particular needs which they will have. The Council takes the view that any doctor who discovers that a patient is HIV positive or suffering from AIDS has a duty to discuss these matters fully with the patient.

Informing other health care professionals

16. When a patient is seen by a specialist who diagnoses HIV infection or AIDS, and a general practitioner is or may become involved in that patient's care, then the specialist should explain to the patient that the general practitioner cannot be expected to provide adequate clinical management and care without full knowledge of the patient's condition. The Council believes that the majority of such patients will readily be persuaded of the need for their general practitioners to be informed of the diagnosis.

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17. If the patient refuses consent for the general practitioner to be told, then the doctor has two sets of obligations to consider: obligations to the patient to maintain confidence, and obligations to other carers whose own health may be put unnecessarily at risk. In such circumstances the patient should be counselled about the difficulties which his or her condition is likely to pose for the team responsible for providing continuing health care and about the likely consequences for the standard of care which can be provided in the future. If, having considered the matter carefully in the light of such counselling, the patient still refuses to allow the general practitioner to be informed then the patient's request for privacy should be respected. The only exception to that general principle arises where the doctor judges that the failure to disclose would put the health of any of the health care team at serious risk. The Council believes that, in such a situation, it would not be improper to disclose such information as that person needs to know. The need for such a decision is, in present circumstances, likely to arise only rarely, but if it is made the doctor must be able to justify his or her action.

18. Similar principles apply to the sharing of confidential information between specialists or with other health care professionals such as nurses, laboratory technicians and dentists. All persons receiving such information must of course consider themselves under the same general obligation of confidentiality as the doctor principally responsible for the patient's care.

Informing the patient's spouse or other sexual partner

19. Questions of conflicting obligations also arise when a doctor is faced with the decision whether the fact that a patient is HIV positive or suffering from AIDS should be disclosed to a third party, other than another health care professional, without the consent of the patient. The Council has reached the view that there are grounds for such a disclosure only where there is a serious and identifiable risk to a specific individual who, if not so informed, would be exposed to infection. Therefore, when a person is found to be infected in this way, the doctor must discuss with the patient the question of informing a spouse or other sexual partner. The Council believes that most such patients will agree to disclosure in these circumstances, but where such consent is withheld the doctor may consider it a duty to seek to ensure that any sexual partner is informed, in order to safeguard such persons from a possibly fatal infection.

CONCLUSION

20. It is emphasised that the advice set out above is intended to guide doctors in approaching the complex questions which may arise in the context of this infection. It is not in any sense a code, and individual doctors must always be prepared, as a matter of good medical practice, to make their own judgements of the appropriate course of action to be followed in specific circumstances, and able to justify the decisions they make. The Council believes that the generality of doctors have acted compassionately, responsibly and in a well-informed manner in tackling the especially sensitive problems with which the spread of this group of conditions has confronted society. It is confident that they will continue to do so.