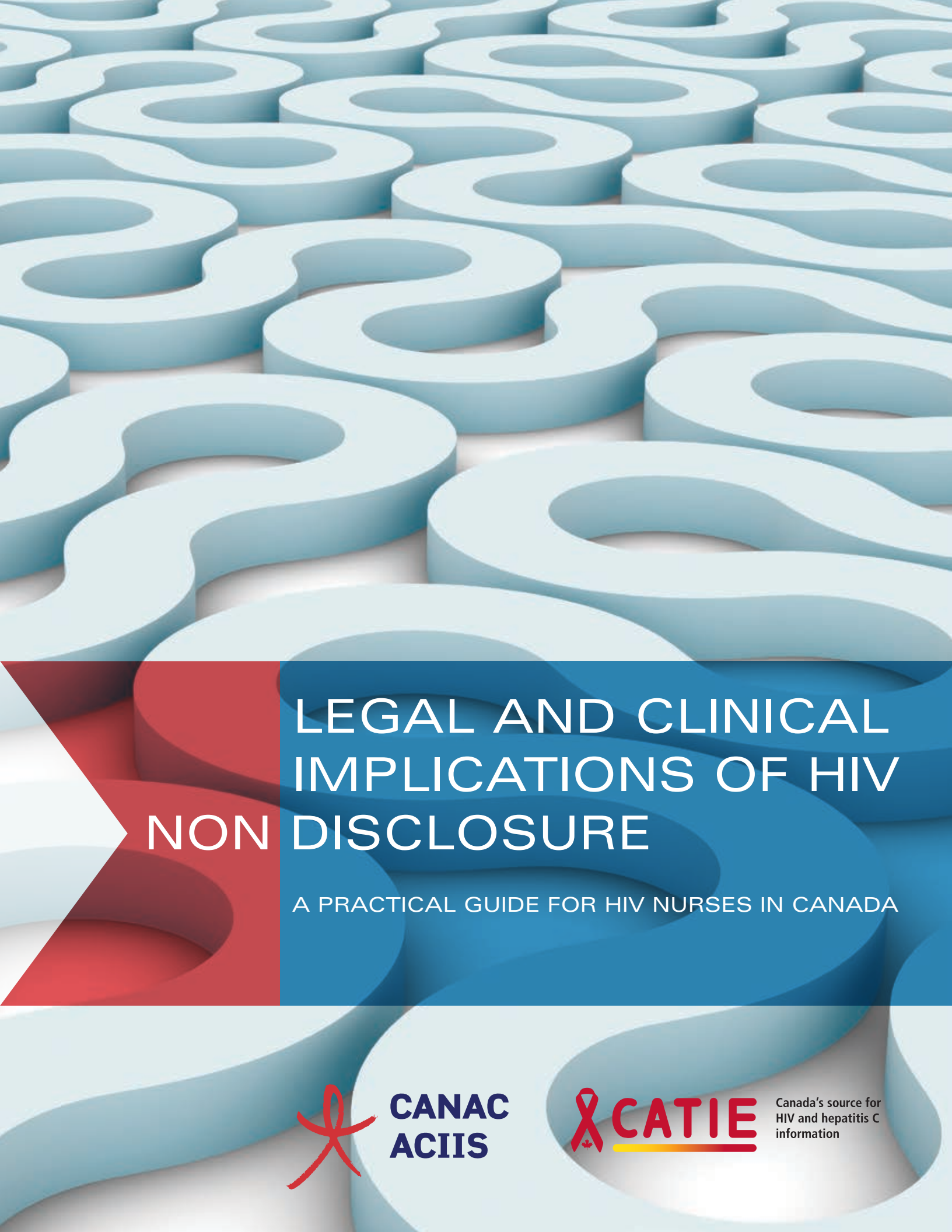

LEGAL AND CLINICAL IMPLICATIONS OF HIV NON DISCLOSURE

A PRACTICAL GUIDE FOR HIV NURSES IN CANADA

CANAC
ACIIS

CATIE
Canada's source for HIV and hepatitis C information

The content of this guide was developed by the Canadian Association of Nurses in AIDS Care in partnership with CATIE.

The Canadian Association of Nurses in AIDS Care (CANAC) is a professional association of nurses working in the field of HIV/AIDS. The mission of CANAC is to recognize and foster excellence in HIV/AIDS nursing through education, mentorship and support. CANAC strives to achieve its mission by: promoting education and continuous learning opportunities in HIV/AIDS care; creating a dynamic network of regional and national support for members; providing regular forums to share innovative nursing practices; encouraging research and evidence-based HIV/AIDS nursing practices; serving as a national voice for HIV/AIDS nursing issues; and advocating for the rights and dignity of people who are living with HIV/AIDS or who are vulnerable to HIV infection.

Thanks to the CANAC members and the CANAC Board members for providing suggestions and ideas in the planning phase of this guide. Special thanks to our reviewers for their contribution to this guide. We also want to acknowledge the contribution of Glenn Betteridge, who provided valuable comments and feedback in preparation for this guide, and Luc Cormier for his assistance with the initial literature review.

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Disclaimer: The information contained in this guide cannot be used as a substitute for legal or professional advice. The guide was written in February 2013. Laws, professional standards and policies can change at any time. Nurses can contact a lawyer to get up-to-date legal information and legal advice. Nurses can contact their provincial nursing regulatory body and their health agency for more information on professional obligations and practice standards.

For more information and resources on HIV or hepatitis C, contact CATIE :

CATIE Canada's source for HIV and hepatitis C information

www.catie.ca • 1-800-263-1638 • info@catie.ca

CATIE Ordering Centre No: ATI-26450 (*aussi disponible en français, ATI-26451*)

TABLE OF CONTENTS

INTRODUCTION

This guide was developed by the Canadian Association of Nurses in AIDS Care (CANAC) in partnership with CATIE (Canadian AIDS Treatment Information Exchange) to complement the existing legal, ethical and professional frameworks that inform nursing practice in Canada. It is designed to address some of the realities and complexities faced by nurses who provide care to people living with HIV. The aim of this guide is to offer practical advice to HIV nurses and clarify professional obligations regarding HIV non/disclosure and the criminal law.

This guide was written in February 2013 – four months after the release of the Supreme Court of Canada decisions in the cases of R. v. Mabior and R. v. D.C. The content of the guide is based on a comprehensive review of scientific and grey literature. It incorporates a wide range of documents (articles, reports, guidelines, guides, practice standards, policies, etc.) and published resources. The guide was developed for use by HIV nurses, but it can also be used by other providers involved in the care of people living with HIV.

This guide does not replace or supersede existing laws, professional and ethical standards, practice standards or institutional policies. It should be used as a complement to address issues for which there are accepted (general) professional standards. Its content is applicable to nurses who provide care to people living with HIV in Canada in in-patient and outpatient settings (including clinics, community health centres and outreach). It specifically seeks to address the needs of HIV nurses and may not be applicable to nurses who work in public health.

A note on language:

The term "*non/disclosure*": In this guide, the term 'non/disclosure' will be used instead of 'non-disclosure' to be more inclusive of issues that relate to both disclosure and non-disclosure.

The term "*client*" versus "*patient*": Within the context of this guide, the term "client" will be used to designate the individual who requires nursing care. The term will not be used in an inclusive way to reflect the range of individuals (e.g., family members), groups and communities with whom nurses may work in the context of their practice. The term "client" will be used instead of the term "patient" to reflect the current state of the nursing literature.

BACKGROUND

The Supreme Court of Canada (SCC) addressed the criminal law in relation to HIV non/disclosure four times in the past 15 years: in 1998 in the case of R. v. Cuerrier, in 2003 in R.v. Williams, and in 2012 in the cases of R. v. Mabior and R. v. D.C.*

In Cuerrier (1998), the SCC decided that people living with HIV had the legal duty to disclose their HIV status to their sexual partners before having sex that would result in a "significant risk" of serious bodily harm, and found that infection with HIV counted as such harm. The SCC ruled that not disclosing in such circumstances would make consent to sex legally invalid and turn what would otherwise be consensual sex into a sexual assault, even if HIV transmission did not occur.

In Williams (2003), the SCC applied the law from Cuerrier to the case of a man who did not disclose his HIV status to a woman with whom he had unprotected sexual intercourse both before and after he found out he was HIV-positive. This case has not fundamentally altered the enforcement of the criminal law about HIV non/disclosure. However, the decision *may* be relevant in future cases regarding disclosure that involves the risk of and harm associated with HIV re-infection. Also, the decision may be relevant in cases where someone has not tested positive, but may have a legal duty to disclosure before having sex based on their awareness of risk that they may have contracted HIV.

In Mabior and D.C (2012), the SCC decided that people living with HIV/AIDS have the legal duty to disclose their status to sexual partners before having sex that poses a "realistic possibility" of HIV transmission. The SCC ruled that vaginal intercourse does not pose a "realistic possibility" of HIV transmission in circumstances where (1) a condom is used *AND* (2) the person living with HIV has a low (below 1,500 copies/ml) viral load. Note that the "low" HIV viral load category established by the SCC would include an "undetectable" viral load – 40 or 50 or fewer copies/ml, depending on the particular test used.

In the current Canadian legal context, it is important for nurses to maintain trust and therapeutic relationships with clients, to preserve a safe space for clients to talk about HIV disclosure issues, and to recognize that real-life experiences of HIV disclosure are far more complex than the idealized representation of disclosure expressed in the criminal law.† Furthermore, it is important for nurses to continue providing excellent nursing care across the HIV healthcare continuum from prevention through diagnosis and treatment to care and support.

* The legal information summarized in this section is taken from "HIV non-disclosure and the criminal law: An analysis of two recent decisions of the Supreme Court of Canada" (Canadian HIV/AIDS Legal Network, 2012).

† As stated in Mykhalovskiy, E. (2011). The problem of "significant risk": Exploring the public health impact of criminalizing HIV non-disclosure. Social Science & Medicine, 73 (5), 668-675.

BACKGROUND

Research papers, reports and grey literature all point to the challenges of providing nursing care given the current legal context. In these circumstances, it seems particularly prudent for nurses to clarify their role and responsibilities as members of the healthcare team and to have a clear understanding of their own obligations with respect to HIV non/disclosure. It would certainly be helpful for nurses to use this guide as a tool to engage other members of the healthcare team and identify their respective roles and responsibilities.

This guide was primarily developed to support nurses who provide care to people living with HIV in Canada and offer some guidance on how to meet professional standards when dealing with non/disclosure in nursing practice. Guidance may not provide a definitive answer or indicate a correct course of action in a given circumstance. However, nurses should be aware that existing legal, ethical and professional frameworks can be relied upon to respond in a professionally sound manner to key questions and concerns.

There are areas of nursing practice that will remain uncertain, so it is important for nurses to work on a case-by-case basis in collaboration with the other members of the healthcare team, seek guidance when necessary, initiate referrals to legal services when required, engage in reflective practice, and be mindful of their professional obligations. Laws, professional standards and policies can change at any time. It is important for nurses to remain aware of any new developments because these will inform their own professional obligations.

A person living with HIV has a legal duty to disclose to a sexual partner:

- before having vaginal or anal sex *without* a condom (regardless of viral load); or
- before having vaginal or anal sex if viral load is higher than 1,500 copies/ml, even if you use a condom.

A person living with HIV does *not* have the legal duty to disclose to a sexual partner:

- before having *vaginal sex* if a condom is used *AND* if viral load is low or undetectable.

It is not clear how the test of "realistic possibility" will be applied to anal or oral sex.

This section of the guide was developed to answer questions frequently asked by nurses who provide care to people living with HIV. Each question has been prepared to look at a particular aspect of the current legal context. The answers provided are not definitive, but they certainly respond to questions voiced by nurses regarding documentation, legal proceedings and the implications of the current state of the criminal law for clinical practice.

1. What should a nurse document regarding non/disclosure?

Each provincial regulatory nursing body is mandated to develop practice standards that outline regulatory, legislative and professional requirements for nursing documentation.* The information documented and the intent of putting this information in the client records should be consistent with these requirements. Nurses who provide care to people living with HIV should review their practice standards along with their provincial laws and regulations and with the policies and procedures of their healthcare agency to determine what information to document. Policies and procedures should address the following: who documents, what to include and what to exclude, when to document, where to document, why to document, and how to document.

Why should nurses document? Documentation is a communication tool in a number of areas including to support continuity of care, a mechanism to demonstrate quality of care and professional accountability, a source of information for quality improvement and risk management.

Nurses may want to consider the following key points when deciding what to document:

- Documentation should reflect all aspects of the nursing process (assessment, planning, implementation and evaluation) and the clinical judgment of the nurse.
  Rationale: Documentation supports accountability by attesting that the nurse has fulfilled his or her duty to care and has applied the nursing knowledge, skills and judgement required.
- Documentation should include any information that is clinically significant and relevant to the plan of care. Information that does not meet these criteria should not be documented.
  Rationale: Documentation should demonstrate the objective clinical judgement of the nurse in deciding what information is clinically significant and relevant to the plan of care.
- Documentation should focus on the actual work of nurses (including education, counselling and psychosocial support) rather than detailing the client issues with disclosure.
  Rationale: A detailed description of the client issues with disclosure may not be relevant or necessary to support nursing decisions, actions and outcomes of these actions for clients.

* Practices standards across provinces and territories were reviewed in preparation for this section of the guide.

- Documentation format should allow nurses to document accurately and concisely routine interventions and frequently needed information in the context of HIV nursing care.
  Rationale: Format should be adapted to the needs of HIV nurses who provide safe sex and disclosure counselling on a routine basis (flow sheets/checklists are preferable to narrative notes).

A good test to know if your documentation is satisfactory is to answer the following question:

"If another nurse has to step in and take over my assignment, does the record provide sufficient information for the seamless delivery of safe, competent, and ethical care?" (CARNA, 2006).

2. How should a nurse counsel clients about the legal and clinical significance of viral load and antiretroviral treatment?

The most recent Supreme Court of Canada (SCC) decisions confirmed that viral load, and by extension antiretroviral treatment, has a role to play in HIV non/disclosure investigations and prosecutions. The SCC set an important legal threshold of 1,500 or fewer copies/ml for vaginal intercourse. Where a person's viral load is below 1,500 copies/ml *and* a condom is used for vaginal intercourse, there is no legal duty to disclose. For many people a viral load below the 1,500 copies/ml threshold will only be possible to attain by virtue of antiretroviral treatment. The SCC did not establish a viral load threshold for anal sex or oral sex, so it is not possible to provide precise, accurate information to clients about the duty to disclose dependant on viral load, for anal or oral sex.

It is suggested that nurses should not counsel clients on starting antiretroviral treatment (as a means to lower viral load) based solely on the most recent SCC decisions. Neither should nurses attempt to interpret the current state of the law regarding viral load and non/disclosure. Instead, it is suggested that nurses should educate and support clients by doing the following:

- Assess the baseline understanding of the client regarding viral load (including health numeracy*).
- Provide accessible and comprehensive information on viral load testing and viral load test results using material that is adapted to the needs of the client.
- Use the best teaching and learning strategies to ensure that the client understands how to interpret and how to process viral load data to make informed decisions.
- Provide current and factual information on the link between viral load (plasma viral load and viral loads in fluids other than blood) and the risk of HIV transmission.
- Use the best teaching and learning strategies to ensure that the client understands viral load dynamics and the effect of antiretroviral treatment on viral load.
- Collaborate with the healthcare team to make sure that viral load testing is performed routinely. Testing frequency should be consistent with clinical guidelines for the management of HIV.

* Defined as "the degree to which individuals have the capacity to access, process, interpret, communicate, and act on numerical quantitative, graphical, biostatistical, and probabilistic health information needed to make effective health decisions" Golbeck et al. (2004). A Definition and Operational Framework for Health Numeracy. American Journal of Prevention Medicine, 29 (4), 375-376.

- Support the informed choice of the client about antiretroviral treatment (e.g., refusing, beginning, delaying or stopping treatment).
- Consider resources and referrals for legal questions about the legal significance of viral load or any other questions that fall outside the scope of practice of registered nurses.

3. How should a nurse respond to a search warrant?

If a nurse's client is under criminal investigation for alleged HIV non/disclosure, the police may obtain a search warrant (or a production order) permitting them to seize paper and electronic health records. All healthcare agencies should have their own updated policies and procedures on how to respond to search warrants. These should be reviewed by nurses who provide ongoing care to people living with HIV and should be readily accessible in the clinical setting.

KEY POINTS

- Do not make statements to the officer regarding the client or the health records.
- Do not release health records without proper support and guidance.
- Do not volunteer material that is not included in the search warrant.
- Do not hide, destroy or alter material in any way.
- Do not sign any documents without legal advice.

The following information should be considered when responding to a search warrant:

- Upon arrival, the police officer (or other peace officer) should identify him or herself, provide identification upon request, explain the purpose of his or her presence, and provide a valid search warrant. In order to be valid, a search warrant must be signed by a justice of the peace or provincial court judge and dated (see Appendix B).
- The nurse should immediately consult the appropriate resource persons (e.g., health record administrator, hospital lawyer, privacy officer, senior leader, unit manager) and wait for instructions on how to proceed.
- The person responsible for coordinating a response in the event of a search warrant should:
  - Review the search warrant and make a copy of the document;
  - Verify the scope of the search warrant (what material is covered by the warrant);
  - Make copies of the original records (or portions of the records) under warrant; and
  - Ensure that the officer does not review the client records before seizing them.
- The person responsible for coordinating the response should seal the records and assert privilege. These legal actions* signal an opposition to the search warrant and to the use of (privileged) information contained in the records being used as evidence in court.
- The person responsible for coordinating the response or another appointed person should contact the client immediately and suggest that he or she seek legal advice.

* For more information on these legal actions, please contact the Canadian HIV/AIDS Legal Network or consult the document entitled "HIV Disclosure and the Law: A Resource Kit for Service Providers" (see Appendix A).

4. How should a nurse respond to a subpoena?

If a nurse's client is under criminal investigation for HIV non/disclosure, the nurse may be served with a subpoena to appear as a witness before the court. A subpoena may also involve requests for health records (see Question 3 above). All healthcare agencies should have their own updated policies and procedures on how to respond to subpoenas. These should be reviewed by nurses who provide ongoing care to people living with HIV and should be readily accessible in the clinical setting.

KEY POINTS

- A subpoena may be served without advance warning and within a short period of time.
- A subpoena is a court order requiring a person to attend court to give evidence.
- A subpoena cannot be ignored or dismissed. *This has important legal consequences.*
- A subpoena may direct the witness to bring materials relevant to the case.
- A subpoena can lead to severe legal consequences if records are destroyed.

The following information should be considered when responding to a subpoena:

- Upon arrival, the uniformed officer should identify him or herself, explain the purpose of his or her presence, and provide a valid subpoena. A valid subpoena should be signed by a judge, and dated and delivered by a law enforcement officer (see Appendix C).
- The nurse should immediately consult the appropriate resource persons (e.g., health record administrator, hospital lawyer, privacy officer, senior leader, unit manager) and wait for general instructions on how to proceed.
- The person responsible for coordinating a response in the event of a subpoena should:
  - Review the subpoena and make a copy of the document;
  - Verify if the subpoena involves requests for health records (see Question 3 above); and
  - Advise the nurse on the proper course of action.
- The person responsible for coordinating the response should assist the nurse if there is a need to contact the person who sent the subpoena.
- The person responsible for coordinating the response or another appointed person should contact the client immediately and suggest that he or she seek legal advice.

5. How should a nurse prepare to testify in court?

Most nurses have minimal preparation for testifying in court. Here are three steps for a nurse to consider when served with a subpoena and required to attend court.*

Step 1: Preparation

- Seek legal advice from an experienced lawyer.
- Seek support from the unit manager and employer.
- Seek support from professional organizations (e.g., CNPS).
- Review all relevant documentation (e.g., standards, policies, procedures, memos, notes).
- Review the client records and the nurse's own entries.
- Consult with other nurses who have testified in court.
- Prepare and rehearse prior to the testimony.
- Arrange for childcare and replacement at work.
- Arrange for related expenses to be covered (if possible).

Step 2: Court Appearance

- Arrive at the court well rested and well nourished.
- Dress professionally and comfortably.
- Come prepared both mentally and emotionally.
- Remain calm and attentive throughout the day.
- Answer questions honestly, calmly and confidently.
- Answer questions with simple and clear statements.
- Speak from personal knowledge and stick to the facts.
- Do not volunteer information that is not requested.

Step 3: Debriefing

- The nurse should reflect on the overall experience and personal feelings.
- Talk to a friend, a trusted colleague or a counsellor while maintaining client confidentiality.
- Seek additional support if needed.

* The description of this three-step process was developed based on Beckmann Murray, R. (2005). The Subpoena and Day in Court. Journal of Psychosocial Nursing, 43 (3), 38-44.

This section of the guide addresses specific nursing practice issues regarding HIV disclosure and non/disclosure. The scenarios found in this section outline some of the realities and complexities faced by nurses who provide care to people living with HIV. Each scenario has been prepared to support nurses by outlining professional obligations and providing practical advice on how to meet practice standards in the current legal context.

Scenario 1

A 42-year-old female client was recently transferred to an immunodeficiency clinic in Toronto. At her first visit to the clinic, she mentions that moving to a bigger city has allowed her to start a new life. She started dating again and met a man on a dating website two weeks ago. She wants to know if she has an obligation to tell him about her HIV status.

The following approaches should be considered when thinking about this scenario:

- The nurse should assess what the client already knows about the legal duty to disclose and identify sources of information used by the client (e.g., media, internet, resources, etc.).
- The nurse should provide *general information* about the legal duty to disclose and inform the client that she may be legally required to disclose under certain circumstances.
- The nurse should provide up-to-date information about the legal duty to disclose and provide the client with written materials from reliable sources of information.
- The nurse **should refrain** from interpreting the law, attempting to offer legal advice, or analyzing the client's specific situation from a legal standpoint.
- The nurse should practice within the limits of her competence and refer the client who needs legal advice to a lawyer who is familiar with this particular issue (see Appendix A).
- The nurse should ensure that the information provided is consistent with the information provided by other members of the healthcare team.
- The nurse should use terms appropriate to the client's level of understanding (e.g., taking into account language, literacy, culture, education and so forth).
- The nurse should provide opportunities for the client to ask questions and ask the client to use her own words to reflect back her understanding of the information provided.
- The nurse should **not ask** the client to sign a contract or other forms of written agreements, in which the client agrees to disclose or confirms that legal information has been provided.

Scenario 2

A 28-year-old female client was admitted to an in-patient unit with a diagnosis of community-acquired pneumonia. She was diagnosed with HIV two years ago and she has never been on antiretroviral treatment. During the initial assessment, she asks the nurse not to tell her partner about her status and says that she has not disclosed her status to anyone since her diagnosis.

The following approaches should be considered when thinking about this scenario:

- The nurse should maintain confidentiality and respect the right of the client to have control over the disclosure of her status within the obligations of the law* and practice standards.
- The nurse should explain that this information will be shared with the members of the healthcare team and should inform the client about the limits of confidentiality (see Scenario 4).
- The nurse should **not assume** that disclosure is inherently positive or that disclosure has a protective effect, reducing the risk of criminal prosecutions.
- The nurse should understand that disclosure is a process rather than an event. This may not reflect the approach taken by the courts, but it is consistent with current research.
- The nurse should use active listening skills to help the client explore and discuss the reasons for not disclosing, as well as discuss what supports the client might think helpful.
- The nurse should assist the client in identifying the pros and cons of the process of disclosure as it relates to various types of social relationships.
- The nurse should discuss various factors that affect the disclosure process such as timing, context, social support, personal goals, past experiences, risks and so forth.
- The nurse should collaborate with the client with the intent of promoting overall health and well-being, and minimizing the adverse or negative consequences of disclosure.
- The nurse should provide *general information* about the legal duty to disclose and inform the client that she may be legally required to disclose under certain circumstances.

* The obligations of the law may vary considerably between provincial jurisdictions.

Scenario 3

A 32-year-old male client began a single-pill antiretroviral regimen 12 months ago. At his third follow-up appointment, his lab results indicate that his viral load is undetectable (40 to 50 or fewer copies/ml). He tells the nurse that "being undetectable" is reassuring because it finally makes it "okay" for him to "hook up" with casual sex partners without having to disclose his HIV status up front.

The following approaches should be considered when thinking about this scenario:

- The nurse should use a non-judgmental and non-moralizing approach to explore the reasons the client may not wish to disclose his status to casual sex partners.
- The nurse should recognize that the legal context has been shown to negatively impact the disclosure process and make it more difficult for people living with HIV to disclose.
- The nurse should provide information on the degree of risk associated with various sexual activities and encourage the client to engage in lower risk activities with casual sex partners.
- The nurse should **not assume** that disclosure leads to safer sex or that disclosure decreases the risk of transmission to informed sex partners.
- The nurse should provide current and factual information on the link between VL (plasma viral load and viral loads in fluids other than blood) and the risk of HIV transmission.
- The nurse should provide *general information* about the legal duty to disclose and inform the client that he may be legally required to disclose under certain circumstances.
- The nurse should refer the client to appropriate resources to determine which conditions may be enough to preclude criminal liability with respect to HIV non/disclosure.
- The nurse should inform the client about the availability and utility of post-exposure prophylaxis (PEP) and explore the pros and cons of disclosing if the condom breaks.*
- The nurse should maintain confidentiality and determine the most appropriate course of action (e.g., education, counselling, support, follow-up, etc.).

* This issue is not specifically addressed by the Supreme Court of Canada, but the client may have a duty to disclose if the condom breaks.

Scenario 4

A 25-year-old male client is seen regularly by the HIV clinical team at a community centre in Montreal. He has been diagnosed with a sexually transmitted infection twice in six months. He says that he parties a lot and has anonymous sex with women he meets at bars. He is not willing to disclose his status because of negative experiences in the past. The team is considering reporting him to public health.

The following approaches* should be considered when thinking about this scenario:

- The team should refer to current policies and guidelines on how to intervene when a client expresses refusal to disclose *and* poses a risk to others. If such policies or guidelines do not exist, the team should refer to existing legal, ethical and professional frameworks.
- The team should plan a meeting, review the client records and assess the overall situation (information and counselling provided so far, clinical evidence, management of HIV infection, presence of mental health or psychological issues, substance use, social support, etc.)
- The team should conduct a risk assessment including the risk associated with the behaviours, the risk associated with the client's condition (treatment, viral load, stage of infection), the setting in which the risk occurs, and the likelihood that the risk will persist.
- The team should determine if there is a clear risk to an identifiable person (or group of persons), if there is a risk of what has been defined in law as "serious bodily harm or death" and if the danger is imminent. If these criteria are met, the team is permitted (or required) to breach confidentiality.†
- The team should explore the potential harm of either breaching or not breaching confidentiality in this particular situation. The possible consequences of breaching confidentiality include lack of trust between provider and client and disengagement from care.
- If the team decides to breach confidentiality, the client should be informed and given reasonable notice before action is taken. The client should also be informed of the procedure and the steps that will be taken.
- The team should determine the most appropriate course of action and the least intrusive measures to address the situation. If needed, the team should ask for guidance from key resource persons (e.g., senior leader, hospital lawyer, privacy officer, ethics officer).
- The team should contact the medical health officer and limit the information disclosed to what is necessary in the circumstances. The team should provide ongoing care and support to the client unless the client has disengaged from care.

* The recommended approaches in this scenario may vary considerably between provincial jurisdictions.

† These criteria are based on the Supreme Court of Canada decision in Smith v. Jones. Provincial information protection laws have incorporated these criteria to some extent but may vary across the country.

Scenario 5

A 37-year-old male client presents to an immunodeficiency clinic with his new boyfriend. He asks that the nurse meet with both of them together, in private, to provide information on safe sex practices. At the beginning of the session, the client states that he officially disclosed to his boyfriend last night and requests that this information be documented in the nursing notes for legal protection.

The following approaches should be considered when thinking about this scenario:

- The nurse should acknowledge that the client is making this request as a way to protect himself against criminal prosecutions. However, the nurse is not in a position to comment on whether this is a valid legal strategy in the circumstances.
- The nurse should provide information on the overall goal of nursing documentation and the broad principles that guide nursing documentation (see FAQ 1).
- The nurse should be honest with the client and describe how his statement will be documented in the nursing notes.
- The nurse should explain that his statement will be documented as subjective data and identified using quotes. For example, client states "I disclosed to my partner last night."
- The nurse should clarify that information included in the nursing notes is solely based on objective clinical judgment, meaning the nurse cannot document his or her perceptions or interpretations of the one-time disclosure conversation (e.g., wanting to help the client by including information based on personal perception of the clients' trustworthiness).
- The nurse should consider asking the boyfriend for photo identification to confirm his identity and explain how his identity (full name) will be recorded in the nursing notes.
- The nurse should provide information on safer sex practices tailored to the needs of the couple and other prevention methods to reduce the risk of HIV transmission.
- When in doubt, the nurse should seek guidance from a resource person (e.g., team leader, unit manager, senior leader). The nurse should also ensure that nursing documentation practices are consistent with regulatory, legislative and professional requirements and comply with policies and procedures of the healthcare agency.

In light of the current legal context, it may be prudent to develop guidelines to help HIV nurses cope with this kind of request. Being asked to witness disclosure is a relatively new phenomenon in HIV nursing care and it remains uncertain what impact this will have on nurses in a criminal investigation context or in a criminal trial context.

APPENDIX A

Resources

Canadian Association of Nurses in AIDS Care (CANAC)

Website: www.canac.org

Canadian Nurses Association (CNA)

Website: www.cna-aiic.ca

Canadian Nurses Protective Society (CNPS)

Website: www.cnps.ca

CATIE: Canada's source for HIV and hepatitis C information

Website: www.catie.ca
1-800-263-1638

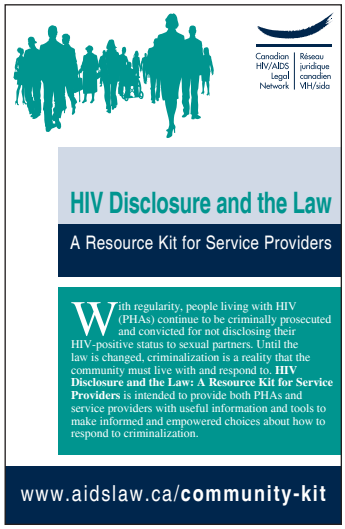
Canadian HIV/AIDS Legal Network

Website: www.aidslaw.ca

If your client has been charged for HIV non-disclosure, we recommend that you contact the Canadian HIV/AIDS Legal Network for referral at:

+1 416 595-1666
+1 416 595-0094 (fax)
E-mail: info@aidslaw.ca

If you would like to refer a client to legal aid services or to a lawyer who is familiar with this particular issue in your province or territory, please consult the list provided by the Canadian HIV/AIDS Legal Network (see link above).



HIV Disclosure and the Law: A Resource Kit for Service Providers

In 2012, the Canadian HIV/AIDS Legal Network and its partners released a resource kit for people living with HIV and service providers. This resource contains useful information for nurses who provide ongoing care to people living with HIV. To access this resource, please visit the Canadian HIV/AIDS Legal Network website: www.aidslaw.ca/EN/community-kit/index.htm.

This resource kit was used to develop the framework for this guide.

APPENDIX B

Search warrant

Criminal Code — March 18, 2013

FORM 5
(Section 487)

WARRANT TO SEARCH

Canada,

Province of .....,

(*territorial division*).

To the peace officers in the said (*territorial division*) or to the (*named public officers*):

Whereas it appears on the oath of A.B., of ..... that there are reasonable grounds for believing that (*describe things to be searched for and offence in respect of which search is to be made*) are in ..... at ....., hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of (*as the justice may direct*) to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this ..... day of ..... A.D. ....., at ..... .

.....
A Justice of the Peace in
and for .....

R.S., 1985, c. C-46, Form 5; 1999, c. 5, s. 45.

FORMULE 5
(article 487)

MANDAT DE PERQUISITION

Canada,

Province de .....,

(*circonscription territoriale*).

Aux agents de la paix de (*circonscription territoriale*) et à (*noms des fonctionnaires publics*) :

Attendu qu'il appert de la déposition sous serment de A.B., de ....., qu'il existe des motifs raisonnables de croire que (*décrire les choses à rechercher et l'infraction au sujet de laquelle la perquisition doit être faite*) se trouvent dans ....., à ....., ci-après appelé les lieux;

À ces causes, les présentes ont pour objet de vous autoriser et obliger à entrer, entre les heures de (*selon que le juge de paix l'indique*), dans les lieux et de rechercher ces choses et de les apporter devant moi ou devant tout autre juge de paix.

Fait le ..... jour de ..... en l'an de grâce ....., à ..... .

.....
Juge de paix dans et pour.....

L.R. (1985), ch. C-46, formule 5; 1999, ch. 5, art. 45.

This is what a Search Warrant looks like. This document can be downloaded from the Department of Justice of Canada website* and the Canadian HIV/AIDS Legal Network website.

* This form was retrieved on April 9, 2013, from http://laws-lois.justice.gc.ca/eng/acts/C-46/page-467.html#h-305

APPENDIX C

Subpoena

Criminal Code — March 18, 2013

FORM 16
(Section 699)

SUBPOENA TO A WITNESS

Canada,

Province of .....,

(*territorial division*).

To E.F., of ....., (*occupation*);

Whereas A.B. has been charged that (*state offence as in the information*), and it has been made to appear that you are likely to give material evidence for (the prosecution *or* the defence);

This is therefore to command you to attend before (*set out court or justice*), on ..... the ..... day of ..... A.D. ....., at ..... o'clock in the ..... noon at ..... to give evidence concerning the said charge.*

**Where a witness is required to produce anything, add the following*:

and to bring with you anything in your possession or under your control that relates to the said charge, and more particularly the following: (*specify any documents, objects or other things required*).

Dated this ..... day of ..... A.D. ....., at ..... .

.....
A Judge, Justice *or* Clerk of the court

(*Seal, if required*)

R.S., 1985, c. C-46, Form 16; R.S., 1985, c. 27 (1st Supp.), s. 184; 1999, c. 5, s. 47.

FORMULE 16
(article 699)

ASSIGNATION À UN TÉMOIN

Canada,

Province de .....,

(*circonscription territoriale*).

À E.F., de ....., (*profession ou occupation*) :

Attendu que A.B. a été inculpé d'avoir (*indiquer l'infraction comme dans la dénonciation*), et qu'on a donné à entendre que vous êtes probablement en état de rendre un témoignage essentiel pour (la poursuite *ou* la défense);

À ces causes, les présentes ont pour objet de vous enjoindre de comparaître devant (*indiquer le tribunal ou le juge de paix*), le ..... jour de ..... en l'an de grâce ....., à ..... heures, à ....., pour témoigner au sujet de l'inculpation.*

**Lorsqu'un témoin est requis de produire quelque chose, ajouter ce qui suit* :

et d'apporter avec vous toutes choses en votre possession ou sous votre contrôle qui se rattachent à l'inculpation, et en particulier les suivantes : (*indiquer les documents, objets ou autres choses requises*).

Fait le ..... jour de ..... en l'an de grâce ....., à ..... .

.....
Juge, Juge de paix *ou* Greffier du tribunal

(*Sceau, s'il est requis*)

L.R. (1985), ch. C-46, formule 16; L.R. (1985), ch. 27 (1er suppl.), art. 184; 1999, ch. 5, art. 47.

This is what a Subpoena looks like. This document can be downloaded from the Department of Justice of Canada website* and the Canadian HIV/AIDS Legal Network website.

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