Continuous Medical Education article

Partner disclosure in HIV positive patients

S Benaragama[1]

Question:

A patient of your's who has been tested as HIV positive refuses to disclose his diagnosis to his partner. Would you be morally justified in informing the partner yourself?

Introduction

AIDS is a deadly disease which is considered to be a most devastating condition among the infectious diseases.. It carries not only health implications to those who are affected by the disease, but also tremendous ethical, cultural, legal, social and economic impacts as well. Since there is no promising treatment or a vaccine available to prevent the disease as yet and the predominant mode of transmission is sexual contact, there is stigma and discrimination towards those infected.

The causative organism for AIDS, the HIV virus induces an immune response in those who get infected. Now there are highly sensitive and specific tests available which are an essential step forward in diagnosing and managing patients with HIV infection. Even though voluntary counselling and testing (VCT) facilities are widely available it is understood that this facility is underutilised by the target groups. It is known that learning one's own HIV status can radically alter one's view of oneself and may cast one into despair and panic[1]. The reason for this includes the fear of discrimination, guilt, denial or fear of losing the care and support of those he or she loves, rather than simply a disregard for the welfare of others. Knowing the HIV sero-positive status is very traumatic to an individual. Persons may show different responses ranging from severe depression leading to suicide due to tremendous upsurge of guilt often associated with feeling of unclean, while some may cope with the situation very well. Other psychological responses include shock, guilt, denial, fear anger, sadness, acceptance and resignation[2].

HIV/AIDS and Public Health approach

The traditional public health approach in sexually transmitted infections control relies on tracing the contacts of an "index case". Every attempt is made to trace those contacts if indicated; thereby the chain of disease transmission is interrupted. Therefore, the intensified contact tracing was viewed as a corner stone of the control strategy. Being a sexually transmitted infection, AIDS is not an exception to those public health control strategies but implementing this strategy has created huge controversy over the years.

The fact that there is not adequate therapy available to asymptomatic infected individuals, compromises the role of contact tracing. Public health officials consider this as an opportunity to target efforts to foster behavioural changes among individuals still engaged in high risk behaviours, which could place both the individual contacted and future partners at risk. Opponents of contact tracing argue that it involves profound intrusion on privacy of the individuals has little or no compensating benefits. They further stress that the task of behaviour change could be achieved more effectively and efficiently through general education[1].

Confidentiality and Partner notification

"Confidentiality requires that information which persons wish to keep to themselves or to a person whom they trust (such as a doctor or a counsellor) is kept secret and not disclosed to anyone outside this relationship of mutual trust, which is at the same time protected by special obligation"[3]. Ben & Boyd (1996), further state that confidentiality of personal health information is a requirement to respect for autonomy of the patient and to fulfil traditional medical ethics[3]. Lack of privacy inhibits responsible decision making. This is particularly important in relation to sensitive information such as a person's HIV serostatus. By maintaining confidentiality and trust, doctors and counsellors are in a unique position to influence behaviour, thereby reducing the risk of transmission of HIV infection to others. If these skills in communication and mutual trust building are well developed, the doctor-patient relationship can become an opportunity for positive behaviour change by the patients. On the other hand, disrespect for the principle of confidentiality might drive people infected with HIV underground, if they have a reason to fear that their status may be disclosed to others. This impairs positive opportunities of the doctor- patient relationship[3].

1.Consultant Epidemiologist, National STD/AIDS Control Programme, Ministry of Health

Privacy and HIV/AIDS

Privacy issues are involved with HIV testing. They are considered as a fundamental value in a free society. Some argue that privacy is of value only to people with something shameful, immoral or illegal to conceal. Others say most of the wrong doing in the world such as, burglary, infidelity, spying and even war would be difficult or impossible without privacy and that bringing wrong doers to justice would be greatly facilitated if they had less privacy. "An individual deprived of privacy merges with the mass. His opinions, being public, tend never to be different: his aspirations being known tend always to be conventionally accepted ones; his feelings, being openly exhibited tend to lose their quality of unique personal warmth and to become the feelings of every man. Such a being, although sentiment is fungible; he is not an individual"[4].

Finally all these arguments emphasise that individuals who are deprived of privacy suffer a loss of individuality and sense of self. In other words privacy is a vital component towards the uniqueness of the individual[5]. It is claimed further that we need a certain amount of insulation from social pressures to develop and maintain ourselves as autonomous individuals .Selective sharing of "private" information is one of the building blocks of intimacy and we modulate the degree of intimacy of a relationship by the degree of privacy we choose to maintain[1].

It is also highlighted that the rationale for protecting privacy is specially relevant regarding information concerning a person's HIV test results[1]. If more people learn of their HIV serostatus, HIV infected persons may find it increasingly difficult to maintain control over their personal relationships and sometimes the consequences would be devastating. Thus privacy is a very important concept as it protects us from the ignorance, prejudice, intolerance and malice of others. There are cultural differences which surround what is considered as private. In addition, with stigma attached to HIV infection, it is hardly possible for someone to predict what harms may result if someone's HIV status becomes known.

Further, in countries where there are limited social security systems, HIV positive people dependent heavily on their families and communities for support and care. It is very important during the terminal phase of the illness to receive terminal care by loved ones, without being rejected. In December 1998, a female AIDS activist, Guru Dhalamini, was killed by members of her community, because they believed that her open disclosure of her positive HIV status brought dishonour to the community in which she lived[6].

Advocates of HIV testing argue that the privacy of a person is not invaded as long as the results remain truly anonymous. It can yield important data about an important public health indicator, which is, the magnitude of HIV infected people in the population. Opponents of HIV testing point out that only modest behaviour changes inspired by knowledge of test results have been documented. They also argue that until effective therapies have been established for asymptomatic HIV infection, there are no tangible medical benefits, but very substantial privacy risks exists for persons who are found to be HIV positive. Herbst (1999) states that as a positive diagnosis tends to be made after the initial infection, the sexual partner is usually already infected and disclosure does not contribute to prevention[7].

On the other hand, persons who test HIV negative are obviously benefited by the relief from fear and peace of mind. It has been documented that persons found to be test negative are benefited by getting motivated for modifying unsafe activities and hence remain uninfected[1].

HIV Positive Patient and the issue of Partner Disclosure

"As a general rule we have a moral reason to warn those we know are in danger. Warning of danger serves as a means of preventing harm. Since as a general rule we have a moral reason to prevent harm, we also have a moral reason to warn. Warnings of danger also serve to alert those warned of dangers of which they might not be aware. Those warned are then in a position to act with more complete knowledge of the consequences of their actions. In this way warnings serve to enhance the individual autonomy of those warned"[1]. The relationship between the warner and the person warned also makes a difference. Those who are in some way responsible, for potential harm to another, have a stronger reason to warn than a mere bystander has. It seems obvious that an HIV infected person, for example, who infects another without warning, does something which is worse than a mere bystander who fails to warn[1].

Generally a physician of an HIV infected patient will not warn others of the patient's infection if it is going to affect the person adversely. We need to consider when, if ever, the trust and the bond between the patient will be overridden[1]. When consid-

ering to whom to warn in a HIV positive patient, nature of the relationship is of utmost important such as whether it is a monogamous, long term or casual relationship. The following conditions need to be satisfied before a physician is morally obliged to warn a sexual partner of an HIV infected patient.

1. The infected patient will have unsafe sexual relations with the partner.
2. The patient will not warn the partner
3. The potential partner is unaware of the risk which he or she faces.
4. Warning the partner will not so destroy the trust of other patients that more harm than good will result[1].

Ronald Bayer argues that HIV is primarily transmitted via sexual contact. So that no harm is done to one, who consents to a sexual relationship. Further, people who do not protect themselves have no claim against those who infect them[8]. A study to determine factors associated with disclosure of the HIV positive status to sexual partners, found that the HIV patient him/her self suffers due to non- disclosure as well. Concealment of HIV status was found to be stressful with pain of deception and putting others at risk. The researchers concluded that interventions that assist disclosure, targeted at people with HIV who do not disclose their serostatus to sexual partners are needed. They further stated that not only past partners but also potential partners need to be informed. Even though this disclosure is a challenge to all relationships, it will remain central to limiting the spread of the AIDS[9]. Some argue that the principles of autonomy and of beneficence have to be balanced and each particular case has to be treated with extreme carefulness of ethical judgement[3]. Each case needs to be treated with extreme sensitivity. Every attempt has to be made to help the client to disclose information to his/her partner voluntarily. Only when this utterly fails may the doctor consider overriding the principle of confidentiality, on a strict "need to know" basis and in view of the possible harm caused by not doing so[3].

In the Tarasoff case, in 1976 in California, USA, a student informed his psychotherapist that he intended to kill a young woman. This was not communicated to the woman who was subsequently murdered by the student. The court ruled that the psychotherapist had a positive duty to protect. The Tarasoff case sheds light on the issue of disclosure of HIV positive status of patients to third parties by health professionals. The fact that HIV is a fatal disease and is not reversible once it is contracted, necessitates doctors to inform the sexual partners. On the other hand opponents to this view argue that to be eligible to be warned, the sexual partner of someone with HIV should be shown to be unable to take reasonable precautions to protect against possible infection, in the absence of warning. Or else, he or she must be shown to be a potential victim[10].

"There is agreement that partners of HIV infected patients should be aware that their sexual or injection equipment sharing behaviour may be exposing them to HIV infection and therefore, when they might otherwise be unaware of this risk, that they need to be warned. This "duty to warn" can be ethically justified, and the breach of confidentiality which it necessitates can be legally excused under a doctrine of necessity. This doctrine applies when there is no less harmful way reasonably available to avoid a serious harm than breaching the law, and the harm done in breaching confidentiality is much less serious than would be avoided by the disclosure, in this case HIV transmission"[11]. Disclosure may be ethically required, whenever there is a risk of definite or significant harm to an innocent third party. So informing the regular sexual partner of a patient with HIV, of the risk of HIV infection, when the patient himself/herself refuses to do so, demands the doctor to breach confidentiality.

Moral theories and HIV disclosure

Two main traditional moral theories explain HIV disclosure in different ways. The deontological view, being a duty based theory, reinforces the duty of the doctor in relation to disclosure of information to the sexual partner of an HIV positive patient, stands on in violation of rules, i.e. confidentiality. The sexual partner is going to be harmed if he or she is not informed about the HIV positive person. The utilitarian view in this respect is very clear. According to this theory, consequences to the majority is the priority concern. So the consequent of confidentiality by the doctors would lead to more people suffering and dying as a result of lack of patient turn up due to fear of disclosure of their HIV status. So the utilitarian theory demands not to breach confidentiality in this issue[12].

Law and HIV disclosure

Hildesheimer (2002), in his article "AIDS, partner notification and gender issues" claimed that "people practicing casual sex are expected to protect themselves rather than engage in risky behaviour, and society is not expected to intervene where individuals decide to put them in danger. On the other hand, in monogamous relationships based on presumed

fidelity, one is usually not expected to take precautions and society's protection against an endangering partner is called for"[13].

In the case of traditional societies, women may be expected to adhere to monogamy and mutual fidelity. In this scenario, if the uninfected partner is a woman, non-consensual partner notification is justified[11].

The American Academy of Family Physicians declared in 1990 that if a physician failed to convince a patient to inform a partner at risk about his or her HIV infection, the imperative that these persons be informed "supersedes the patient's right to confidentiality". Under such circumstances the academy said, the physician is ethically obliged to warn partners at risk.

The President of the American Medical Association has declared: "This is a landmark in the history of medical ethics We are saying for the first time, that because of the danger to the public health and the danger to unknown partners who may be contaminated with the lethal disease, the physician may be required to violate patient confidentiality. The physician has a responsibility to inform the spouse. This is more than an opinion. This is a professional responsibility[14].

The General Medical Council of the United Kingdom also carries a view towards limited breaches of confidentiality in the extreme example where a known person is at significant risk of death or serious harm.

There are arguments against the disclosure of HIV status by doctors. To summarise those from the perspective of ethics of the clinical relationship, those who may have been placed at risk unknowingly have a moral right to such information. They are entitled to such information, so that they can seek HIV testing and clinical evaluation. It will enable them to initiate treatment if necessary, so that they have a chance to avoid the inadvertent transmission of HIV. The moral claim of those who have unknowingly been placed at risk entails the correlative moral duty of the clinician to ensure that the unsuspecting party is informed. Neither the principle of confidentiality nor the value attached to professional autonomy is an absolute deterrent[14].
The College of Veneriologists of Sri Lanka, also holds a similar view that limited breach of confidentiality is justified , in disclosing the HIV positive status of the spouse to the marital partner.

Conclusion

It is stated that a person with HIV infection commits social death long before he or she reaches death by the infection itself. After considering conflicting moral and ethical principles namely, privacy, justice, doctor-patient relationships, I conclude that doctors are morally justified in informing the partner of a HIV positive patient, who refuses to inform the partner voluntarily of his HIV status. Before doing so, the doctor should ensure that

1. a monogamous long term relationship exists between the patient and the partner
2. he informs the patient about the disclosure.
3. he has failed in all the attempts to get the patient to inform the partner voluntarily.

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A satisfactory answer should contain

- some discussion on ethical issues involved in this matter (disclosure of the HIV status to the partner) i.e. confidentiality and privacy
- some discussion about key moral theories
- some discussion on Law and HIV disclosure