

The field of HIV law covers many different issues. In this file, we will suggest the types of questions for which there is at least some guidance, and suggest statutes, cases and other materials which may provide guidance. First a short general lecture, then on to a list of the questions with suggested reading.

One old joke goes, that when a first week law student is asked a question about the law, they can answer, " I don't know." After 3 years of education upon graduation, the new lawyer can answer with total assurance "It depends." Those who are not trained in the law are rightfully puzzled or angered by the fact that lawyers and Judges insist that there are few issues for which there are definite answers. This program is no exception. It is a curse or boon of modern American society that we have become the most legalistic state in the history of the world. Call a lawyer and ask a question and in many cases he or she will have to spend hours looking up an answer. Although our democracy permits each state to pass some laws that vary from those of other states, and states permit counties and cities to pass local laws, many HIV/AIDS issues have a maximum limit or bottom line answer due to federal laws. Other than these limited areas, the answer to all legal questions depends on the jurisdiction and the facts. Even small variations in facts can change answers. When persons ask what they think to be simple questions, they have often not had the benefit of a lawyer explaining to them all of the different facts that need to be considered before the question can be answered.

Most historians will agree that the founding fathers never could have contemplated the degree of influence that the present federal government has. One explanation for this is the power of the purse. Why do all highways have maximum speed limits of 65 and 55 in populated areas? A federal law provides that no highway funds will be paid to a state unless it follows these rules. Some of the issues with the clearest answers are due to the fact that the federal government conditions receipt of federal funds on states following certain standards. This leaves states free to legislate higher speed limits, but then costs them federal funds. If the state needs federal road building money then they must follow the laws.

Here is an examples of why the answer so often is, "it depends."

Can a state authorize a needle exchange program so that drug

addicts will supposedly not transmit HIV by sharing infected needles? The answer generally is that a state can do so. However, if the state wants certain types of federal grants, no part of these grants can be used for needle exchange programs, due to a "no federal funding unless" clause. On the other hand, the state of Washington does have a needle exchange program despite this fact. (See the City of Spokane case, in the cases/public policy menu for a discussion of needle exchange programs).

Here are some of the most common questions and answers in the field of HIV/AIDS law--

1. Can a child with HIV be barred from school? Can a child who is asymptotic be barred from school? Can a child with serious behavioral problems who is HIV positive be barred from school?

Each state's laws should be reviewed. The federal statutes/regulations contain laws and regulations such as the Education of the Handicapped Act, ADA and the Rehabilitation Act. The CFR manual contains guidelines for school admission. Case law: Martinez is the leading case; see the "school" subcategory in the case law statutes menu; also see CFR menu for policy guidance from the Office of Civil Rights

2. Can an insurance company require an HIV antibody test as a condition of the sale of health, life or other insurance?

Each state's laws must be reviewed. Many states have comprehensive limitations on such requests.

3. Can a prisoner who is HIV positive be housed with those who are not? Can a prisoner who is HIV positive be isolated from the rest of the prison population?

Case law indicates that the answer to both questions is yes, with a contrary view expressed in the Nolley case.

See: CFR- contains regulations of the Federal Bureau of Prisons for HIV positive inmates; see "prison" sub-category in the statutes menu

4. Can an EMT, doctor or other health care worker obtain information on the HIV status of a person with whom they have been involuntarily subject to contact with blood or other bodily fluids?

Check individual state laws. Most states have laws requiring such disclosures. This is prompted by a federal law providing that receipt of several different kinds aid contingent on these laws; there is also case law to this effect

5. What are the legal rights of a physician or other health care worker to continue to work if they are HIV positive?

The Behr case contained on the cases/employment sub-category is the leading case in the area; this law is very unsettled at this time

6. Can an airline bar a person with HIV from traveling, or require medical assurance of non-contagiousness? What if the person has open sores or lesions?

Specific regulations are provided in the CFR menu. Generally persons may travel without restriction, and an attendant must be accommodated at no extra charge. In some circumstances persons who are a bona fide risk to other travelers may be required to abstain from traveling.

7. Can a person sue blood product providers for supplying them with blood products contaminated with HIV, before tests were available? After tests were available? Can the claimant obtain the names of the blood donors to assist in proving the negligence of the supplier?

The "Liability of blood banks" sub-category contains numerous cases. The case law is dependent on state law, and thus the answer varies from state to state. There are numerous cases as to discovery as well, with a present majority of cases favoring limited discovery.

8. Can a physician or hospital refuse to provide services to a person with HIV?

Probably not. This is based on the ADA (if the hospital is owned by the state) or the Rehabilitation Act (if the hospital receives federal funds) or state laws. The news subcategory on the statutes menu contains a report of a recent settlement of such a claim.

9. Can a person be terminated from his job because he or she is HIV positive? Must an employer offer to accommodate an employee with HIV?

Under most circumstances, if this is the sole or major reason, no. The employment sub-category in the statutes/cases menu contains several cases in this area.

10. Can child custody be terminated, or visitation limited or terminated if a parent is HIV positive?

Unless a parent is known to sexually abuse the children the cases deny a change for this reason alone; see the cases/family law sub-category on the cases category of statutes

11. Can an employer alter its health insurance plan to limit benefits for HIV to a small amount, and retain coverage for other illnesses?

Under ERISA, such changes are allowed (see McGann, on the employment subcategory); recent guidelines under the Rehabilitation Act forbids such discrimination; a news item

regarding a recent lawsuit indicates that the Courts are willing to enforce these guidelines

12. Does health insurance have to cover benefits for "experimental" treatments?

This depends on the insurance contract; one opinion, the Bradley case, contained on the public policy sub-category in the statutes/cases menu required an insurer to cover a treatment which was claimed to be experimental

13. Can a person obtain an anonymous test for HIV antibodies? Are anonymous tests prohibited? If a person is tested, must health departments, past sexual partners or spouses be notified? Can the health department notify them on its own?

The answer to all of these questions depends on state law. In some states anonymous testing is encouraged. Other states make it a crime for a doctor or laboratory to perform a test for HIV antibodies unless the results are reported to the state.

Many states require that spouses be informed, and that a person testing positive for HIV antibodies inform past sexual partners. Some of these states permit doctors or public health officials to inform former sexual partners if they believe that the person will not.

14. Can a person who is HIV positive and refuses to agree to "safe sex" practices be quarantined? Can a person who is insane and HIV positive who is a risk to transmit the disease be quarantine?

Virtually all states have laws permitting quarantine of persons who are willfully spreading HIV. The Stilinovich opinion on the Public Policy/Cases sub-menu discusses this question

15. Can a spouse of a person, or past sexual partners obtain HIV test information?

This is dependent on each state's law; in the proposed federal regulations for Veterans confidentiality (see proposed federal statutes sub-category) spouses are permitted to obtain such information

16. Can the press publish the names of those charged with HIV crimes (such as engaging in prostitution when known to be infected with HIV)?

Although most states have strict laws forbidding disclosure of HIV test results, several opinions have permitted disclosure of the names of those charged with HIV crimes in the court system; see the cases/privacy sub-category privacy, In Re KDSK, Tri-State, Van Stratten cases

17. What are the constitutional rights of the homeless who

are HIV positive to shelter?

See *Mixon v. Grinker* in the cases/public policy sub-menu 18. Can a person who is HIV positive, or suffering from ARC, obtain social security disability payments? How ill must they be? Can the social security administration require an appeal which will take years be taken when a person's life expectancy is low and the need for benefits high?

The Social Security administration recently totally revised their handicap guidelines to provide specific guidance as to disability caused by ARC; see these guidelines in the CFR sub-menu; These guidelines provide that any combination of diseases or ARC itself can qualify as a disability; The *Anderson v. Sullivan* case, contained on the cases/public policy sub-menu provides precedent that if the life expectancy of a claimant is short that direct access to the Courts is possible if the internal appeal will probably not be decided until after the person's death

19. Does a person who is HIV positive have any legal right to privacy?

The cases/public policy sub-menu provides many cases concerning this issue, such as *Doe v. Town of Plymouth*, which finds a constitutional right of privacy; the cases/privacy sub-menu contains many cases in this regard; finally, each state's statute is an important source of rights

20. What are the rights of employees who may be exposed to blood or other bodily fluids?

The CFR menu contains detailed regulations for those who may be exposed to blood borne pathogens in general; the cases/public policy sub-menu contains several cases such as *Ordway* which discuss this question

21. What are the rights of military members who are HIV positive?

The CFR menu contains detailed regulations concerning military personnel as well as some civilian employees; The cases/military category contains several HIV exposure cases and considers the validity of orders controlling member's sexual contents

22. What must an employer do to accommodate employees who are HIV positive?

The ADA, the Rehabilitation act and related regulations address these issues, as do state laws. These laws require "reasonable accommodations" be made for employees with disabilities. On the cases/employment menu, virtually every case considers these issues. In particular see *Cain v. Hyatt* and *Buckingham v. United States*

## RECOMMENDED GENERAL USE OF THE PROGRAM

This program contains a huge amount of information. To obtain the most benefit, we suggest the following sequence of use of the program. Please take a few minutes and review the manual and the define.txt, intro.txt files which are on the root directory of the CD-ROM.

A. Read the state law for states that you are concerned about in full. State laws widely vary. Some states have comprehensive laws prohibiting discrimination against those with HIV, permitting anonymous testing and providing special state benefits to those with HIV.

Several states have NO HIV laws, such as Wyoming. (The state according to CDC information has less than 10 cases of HIV.) Other states have numerous scattered laws, in other words, a line here or a line there mentions HIV.

B. Consider applicable federal statutes and regulations. Review the laws listed on the statutes/CFR sub-menus and the statutes/federal sub-menu. The statutes/CFR names are descriptive of their contents.

C. Then, move to the statutes/cases menu. The cases are separated into self-explanatory sub-categories. Since the field of HIV law is relatively new, reading all of the cases in an area is worth the time.