

Editorial

Prison for practicing?

The United States Senate recently voted 81-18 to institute a 10-year jail term and a \$10,000 fine for health care workers infected with the human immunodeficiency virus (HIV) who fail to disclose their positive HIV status to patients before beginning "invasive procedures." While this proposal is not yet law, and it may never be, it does illustrate a typical knee-jerk political response to the growing public fear of transmission of acquired immunodeficiency syndrome (AIDS) to patients from health care workers.

The Senate reacted to public fear, not scientific reason. Recent disclosures underline the background to the senators' action. Kimberley Bergalis, the first of five patients of Florida dentist David Acer who were found to have been infected by him, is half her normal body weight and near death. She presents a poignant and very visible reminder that, although the risk of getting AIDS from dental treatment is small, it is a risk few would want to take.

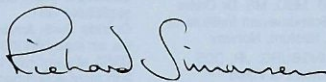
Additionally, two physicians in Minnesota, one of whom appeared on the cover of *Newsweek*, recently announced that they were retiring from practice because of HIV infection. Admirably, and acting ethically, one of the physicians stopped doing invasive procedures after he knew he was infected. But the other, Dr Philip Benson, apparently continued to perform invasive medical procedures, such as prenatal examinations, vaginal and rectal examinations, and deliveries of babies, with "open sores on his hands."

The basic facts have not changed since the AIDS-disclosure issue was first addressed in a *Quintessence International* editorial more than 3 years ago. Neither has the overriding responsibility of the health care system to "do no harm" to patients. New Jersey Superior Court Judge Philip S. Carchman expressed himself extremely well in a recent judicial ruling: "The ultimate risk to the patient is so absolute, so devastating, that it is untenable to argue against informed consent, combined with a restriction on procedures which present risk to the patient."

So how do we ensure that the patient is informed? By threatening mandatory 10-year jail terms? No — the threat of prison is moot for someone already looking death in the face. By mandatory testing of all health care workers for HIV? No — even though it may come to this, mandatory testing is unworkable, ineffective, and too costly for the expected outcome. It certainly would not eliminate the risk of transmission in a medical or dental setting.

Empathy, education, and peer pressure are needed. Empathy is required of us all for those afflicted. Members of the health care professions must be educated as to their individual ethical responsibilities, and the public must be educated as to the size of the risk they are likely to face. Peer pressure is perhaps the most difficult obligation to achieve. For here two ethical values, privacy and informed consent, come head to head. But privacy *must* be subordinate to the patient's right to know, and if we observe a colleague with symptoms of immunodeficiency we cannot stand idly by.

In the end it comes down to the individual ethical standards of the HIV-infected and their coworkers. Health care workers with HIV should never expose a patient to the risk of infection without informed consent. But if the individual's own ethical obtuseness will not stop him or her from doing invasive procedures when HIV-infected, then coworkers and local and national professional societies must step in with strong and effective action. The alternative political consequences are tragic in their misguided barbarity, as the US Senate recently demonstrated.



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