

Resolution 108-11

TITLE: LEGAL REQUIREMENTS FOR HIV PARTNER NOTIFICATION

Author: Ronald P. Hattis, MD, MPH
PreventiveMed@aol.com

Introduced by: California Academy of Preventive Medicine

Endorsed by:

Reference Committee

A

October 15 - 17, 2011

This resolution constitutes a proposal for consideration by the California Medical Association House of Delegates and does not represent official CMA policy.

-
- 1 **WHEREAS**, CMA has long recognized the value of HIV partner notification, which enables
 - 2 persons exposed to HIV to be made aware of their exposure so that they can take measures to
 - 3 avoid infection or, if already infected, to receive early care and treatment and avoid passing the
 - 4 virus on further; and
 - 5
 - 6 **WHEREAS**, California’s law on HIV partner notification, Health and Safety Code Section
 - 7 121015, imposes strict and complex requirements that must be followed before and at the time
 - 8 of a physician’s direct notification of a suspected sexual or needle-sharing partner of an HIV-
 - 9 infected patient; and
 - 10
 - 11 **WHEREAS**, these requirements include first discussing the test results with the patient and
 - 12 offering appropriate counseling on the risks of transmitting HIV and methods of avoiding this;
 - 13 attempting to obtain the patient’s voluntary consent for notification of his or her partners;
 - 14 notifying the patient of his or her intent to notify the partners; and when actually notifying the
 - 15 partners, also referring them for appropriate care, counseling, and follow-up; and
 - 16
 - 17 **WHEREAS**, many physicians may be unaware of these requirements and therefore may be
 - 18 inadvertently violating the law, or may be inhibited by the requirements, or by fear of liability,
 - 19 from becoming involved with this important function; and
 - 20
 - 21 **WHEREAS**, because of these legal requirements, and because of the special expertise of public
 - 22 health staff assigned to HIV partner services (including contact tracing and partner notification),
 - 23 it would often be more convenient and effective for a physician to refer HIV partner services to
 - 24 local public health staff, starting with a request for a public health specialist to interview an
 - 25 HIV-positive patient who has uninformed, exposed partners; and
 - 26
 - 27 **WHEREAS**, until now, the law has made such referral illegal, because physicians have been
 - 28 prohibited from identifying to the local health officer a person who is the source of exposure;
 - 29 and
 - 30
 - 31 **WHEREAS**, Senate Bill 422, signed into law August 1, 2011 and due to take effect January 1,
 - 32 2012, will help to alleviate this problem by allowing a physician to obtain written consent from
 - 33 the HIV-infected patient to refer partner services to local public health staff assigned to this
 - 34 function, and will protect both the physician and the public health staff from liability; and
 - 35

11

Error! Reference source not found.

1 **WHEREAS**, there is a need to inform physicians of both the existing legal requirements and the
2 pending changes; therefore be it

3
4 **RESOLVED:** That CMA work with the California Medical Board and the California
5 Department of Public Health to assure that all California physicians are
6 provided information about how to legally perform HIV partner notification,
7 or how to refer HIV partner services to local public health agency staff
8 following changes in the law effective at the beginning of 2012; and be it
9 further

10
11 **RESOLVED:** That CMA work with the California Medical Board and the California
12 Department of Public Health to assure that information on legal requirements
13 for HIV partner notification is posted on the Internet in a manner easily
14 accessible to all California physicians.

15
16 **Current CMA Policy:**
17 CMA recognizes the need to support legislation to permit physicians to report HIV disease infection to public
18 health officers and partners for the purpose of contact tracing, disease control and treatment (HOD 706a-91, HOD
19 720a-06). HOD 710-95 and HOD 127-97 mandated CMA to introduce legislation to require mandatory
20 reportability of HIV seropositivity to County Health Officers for the purpose of partner notification and disease
21 control. HOD 118-98 called for CMA to alert physicians of their permissive authority to notify any person
22 reasonably believed to be a patient's spouse or sexual partner, or a person with whom the patient has shared the use
23 of hypodermic needles, and/or the local health officer, that a patient has had a confirmed HIV positive test, for the
24 purposes of diagnosis, care and treatment of notified persons. HOD 108a-99 directed CMA to support legislation
25 that would protect physicians from any civil or criminal penalty for any errors or omissions in the course of good
26 faith efforts to report HIV infections to public health officers or to notify partners of HIV-infected persons about
27 their exposure.

28
29 **Fiscal Impact:**
30 Within budget