

Know Your Rights



Disclosure as a patient

The information contained in this publication is information about the law, but it is not legal advice. For legal advice, please contact a lawyer in your region.

Copies of this brochure are available at www.aidslaw.ca



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1. Do I have an obligation to disclose my HIV-positive status to health-care professionals?

There is currently no legislation or case law obliging patients to tell their doctors, nurses, dentists, surgeons, paramedics or any other health professionals that they are HIV-positive. This means that whether or not you decide to disclose your HIV status to your doctor (or any other health-care professional) is up to you. Your personal health information, including your HIV status, is private, personal information. Medical providers — whether they know about their patients' HIV status or not — are supposed to use universal precautions to prevent exposure to blood-borne infections in all settings.

While under Canadian criminal law there is a legal duty to disclose before certain

sexual activities, at the time of this writing, no such legal reasoning has been applied with respect to the provision of health care.

However, not having a *legal* obligation to disclose doesn't necessarily mean you should withhold your status from health-care providers. Telling your doctor about your HIV-positive status, even if the doctor is not your primary care physician, is often essential to get the best care possible. For instance, some dental problems may signal an opportunistic infection. If your dentist is unaware of your HIV-positive status, you might not benefit from this information. In other circumstances, disclosing your status can also help you avoid unexpected drug interactions.

2. Can I be sued for lying on a medical form about my HIV-positive status?

Health-care professionals can ask you questions that are relevant to your care. This is why you may be asked to complete a form and provide information about your health when meeting with a doctor or a dentist for the first time. However, you have no obligation to provide such information


if you don't want to. If you don't feel comfortable disclosing your HIV status, you have the right to refuse to respond to your doctor's questions. Lying to a health professional about your HIV-positive status cannot be used against you.

3. Do I need to disclose my status if a health-care professional or paramedic has accidentally been exposed to my blood or other body fluids?

In rare cases where a health professional is accidentally exposed to blood or other body fluids (e.g., via a needle stick injury), the exposed person should seek medical advice and possible treatment. The issue of whether you may have a *legal* duty to disclose your status in such circumstances has never been addressed in court. While the possibility of criminal prosecutions or civil suits can never be excluded, especially if transmission occurs, it seems unlikely given that occupational transmissions (i.e., HIV infection in the workplace) are extremely rare in Canada.

In practice, if a health-care professional is exposed to your blood or other body fluids, you will likely be asked about your HIV status or to *voluntarily* submit to testing (usually for HIV, hepatitis B and C). Even if you *may not* have a legal duty to disclose your status in these circumstances, you may choose to do so because it will help inform the health professional's medical assessment and decision to seek post-exposure prophylaxis (PEP) treatment to reduce the chances of HIV infection. PEP is anti-HIV medication that should be initiated as soon as possible, but no later than 72 hours after a potential exposure to HIV, to prevent infection. Where a patient's HIV status is unknown, PEP might not be recommended in a case of occupational exposure unless the patient is believed to be at high risk of being HIV-positive (e.g., belongs to a high-risk group). Whether PEP is recommended or not will also depend on the type of exposure and its associated risks of transmission.

In some Canadian provinces, you may even be *forced* to test if someone is exposed to your body fluids in the course of doing certain kinds of work and you refuse to voluntarily submit to testing or disclose your status. Mandatory testing legislation currently exists in B.C., Saskatchewan, Ontario, Alberta, Nova Scotia and Manitoba. Under these laws, people such as police officers, firefighters, paramedics or nurses — depending on the applicable legislation — can apply for a court order to have someone force-tested for infections following an incident of occupational exposure. If a court grants the order, the exposed professional and/or



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their physician will be informed of your test results. Mandatory testing in the context of occupational exposure has been strongly criticized for being unethical, contrary to human rights and ineffective. If you are the subject of a court order for forced testing, you should consider consulting a lawyer.

4. Can health-care professionals refuse to treat me because I am HIV-positive?

Canada's human rights laws prohibit discrimination based on disability when providing services, including health-care services. HIV and AIDS are considered disabilities under the law. This means health-care professionals cannot refuse to examine or treat you because of your HIV-positive status. However, if a doctor appropriately refers you to another health professional who specializes in HIV care, this would likely not be considered discrimination.

(See below for more information about legal recourses in case of discrimination).

You will see many different health-care professionals in your life. If you are worried about disclosing your status to your doctor, dentist or another practitioner, call your local AIDS-service organization. They should be able to refer you to professionals who are knowledgeable about and comfortable with HIV.

5. If I disclose my HIV status to a health-care professional, will it be recorded?

Health professionals have professional obligations with regard to documentation. They must keep records of a patient's consultations, medical condition and treatment. Therefore, you might not be able to prevent a doctor from including your health information in your medical record. However, if you do not want the

information to be shared with others, including other health-care professionals, you may be able to request that your doctor not share your information with others or mask the information in their system. (For more information, see **"Privacy and health records"** in this series.)

6. Can a health-care professional ask me questions about my HIV status even if not relevant to my care?


As a general principle, health-care professionals should only ask you questions that are relevant to the purpose for which the information is required. This means that they should not ask about your HIV status for the purpose of providing care if they do not need the information to examine or treat you.

If you do not understand why a health-care professional is asking about your status, you are entitled to ask how the question is relevant to your care. If you find it too difficult to engage in such a discussion or you feel you cannot trust your physician, you may want to consider finding an alternative professional, where possible.

7. Can one health-care professional disclose my HIV status to another without my express consent?

Generally, health-care professionals do not require your express consent (i.e., either stated verbally or in writing) to disclose your health information to other health-care professionals for the purpose of providing or assisting in providing care. This practice is called sharing information within the "circle of care." In many provinces, your consent will be considered implied in such

- A family physician who refers you to a specialist can share your health information with that specialist.
- A hospital can share information about your health with your family physician.
- If you disclose your status to an emergency room physician, that physician is allowed to tell other members of your care team that you are HIV-positive.
- If you disclose your HIV status to hospital staff as part of the admitting procedure, your status can be disclosed for the purposes of your visit to the hospital. The information will be included in your record, and staff members involved in your care will be able to access it for the purpose of providing care. (Health care facilities should have policies in place to safeguard privacy. For more information about how your privacy is protected and who has access to your information in any particular health-care facility, do not hesitate to call or write to them and ask about their policies.)



If you do not understand why a health-care professional is asking about your status, you are entitled to ask how the question is relevant to your care.

Note that information shared within the "circle of care" should be limited to what is *necessary for the particular purpose of disclosure*, i.e., providing or assisting in providing health care. Finally, you should know that you may be able to prevent one health-care professional from disclosing your status to another, including within a health-care facility like a hospital, if you explicitly say you do not want the information disclosed. (For more information, see **"Privacy and health records"** in this series.)

circumstances, meaning you won't be asked to provide consent.

In practice, this generally means that unless you instruct health-care professionals otherwise:

Protection of personal health information in Canada

Nine provinces (Ontario, Alberta, Nova Scotia, Newfoundland and Labrador, New Brunswick, Saskatchewan, Manitoba, B.C. and Quebec) have specific laws protecting health information. These laws impose obligations on health professionals (e.g., dentists, nurses, doctors, surgeons, pharmacists and hospital staff) to protect your personal health information. They set particular rules and conditions around the

collection, use and disclosure of personal health information. The laws in B.C. and Quebec only cover personal health information held in particular databases.

In those provinces and territories without specific legislation applicable to health information, the privacy of your health information is protected under other privacy laws governing private and public sectors at the provincial, territorial

or federal levels.

In addition to privacy laws, your right to privacy in the health-care system is addressed in codes of ethics, and standards and procedures governing health-care professionals. In Quebec, the applicable legal framework also includes the *Quebec Charter of Human Rights and Freedoms*, the *Act Respecting Health Services and Social Services*, and the *Professional Code*.

8. What can I do if I experience discrimination?

If you believe you have experienced discrimination from a health-care professional (e.g., your doctor refused to treat you because you are HIV-positive), write down what happened so you can keep a record of the situation. Sometimes, talking with the person who is responsible for the discrimination may resolve the situation. You might also try to discuss the matter with the person's supervisor, where applicable.

If you want to file a complaint, you can do so with the organization that regulates the profession of that particular health-care professional. Such organizations are usually called "colleges" (e.g., College of Physicians and Surgeons of Ontario). They can impose disciplinary sanctions on their members.

Another option is to file a human rights complaint with the appropriate human rights commission or tribunal. In most cases, the provision of health care is regulated by the province or territory. Therefore, if you wish to file a complaint against

a health-care professional or facility (e.g., a provincial hospital), you should contact the appropriate provincial/territorial human rights commission or tribunal. If you experience discrimination at a federally regulated institution, you should contact the Canadian Human Rights Commission. Human rights commissions and tribunals offer information and services to people who believe they have suffered discrimination, including information about alternative dispute-resolution mechanisms (such as mediation). Note that there is usually a "limitation period," which means you must file your complaint within a certain period of time after the discrimination takes place. Often this period is one year, but check with the relevant commission or tribunal.

Your local AIDS-service organization may also be able to support you if you experience discrimination. However, if you require legal advice about your particular situation, you should contact a lawyer.

For further information

- CATIE, *Managing your health: a guide for people living with HIV* — Your healthcare team.
On-line: www.catie.ca/en/practical-guides/managing-your-health/3
- British Columbia Civil Liberties Association, *Privacy Handbook*.
On-line: <http://bccla.org/privacy-handbook>
- Provincial/territorial government websites provide information, Q&A documents and brochures about laws that protect health information. See, for example, *Saskatchewan Health Information Protection Act* (www.health.gov.sk.ca/hipa), or *Ontario Health Information Protection Act* (www.health.gov.on.ca > Legislation).

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