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**OPINION**

**CONFIDENTIALITY, HEALTH-CARE  
PROFESSIONNALS**

**EN**

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**OPINION ON THE ISSUE OF PROFESSIONNALS  
CONFIDENTIALITY APPLICABLE TO THOSE PROVIDING  
CARE TO HIV-POSITIVE INDIVIDUALS**

Aware of the concern expressed in a number of quarters as to the risk of infection through sexual contact in the event that an HIV-infected individual fails to disclose this fact to his or her partners, the National AIDS Council resolved on its own authority at its plenary session of April 28, 1994 to consider this issue formally.

The present Opinion appears to even more necessary to Council members in view of the almost simultaneous publication of the report on Professional Confidentiality and AIDS by the National Academy of Medicine, on behalf of Commission XIX (AIDS), and the report of the Commission for the study of professional confidentiality as applicable to those in the healthcare system, produced by Doctor Louis René at the request of the Minister, Bernard Kouchner. In view of the diversity of the positions adopted on these two documents, the National AIDS Council wishes to restate the principles to which it has always held.

Both reports mentioned emphasize the fundamental character of professional confidentiality in the healthcare profession as an indispensable component of a relationship based on trust and confidence between patient and physician. The medical profession, like the wider French population, remains generally wedded to this essential safeguard. Any breach of medical confidentiality is seen by patients as a betrayal of trust.

The essential difference between the two reports resides in the following point : whereas the report of the Study Commission chaired by Louis René emphasizes the inviolable character of medical confidentiality in all circumstances (while accepting that privileged information may be shared), the report of the National Academy of Medicine, which deals solely with medical confidentiality in relation to HIV/AIDS, comes out in favour of possible disclosure, as an exception to the general rule, of a patient's HIV-infected status to his or her partner(s) if the patient him- or herself refuses to do so.

This issue is on the agenda due to the particular importance of the world AIDS epidemic, the fact that this disease cannot be cured at the present time and the current lack of any vaccine providing protection from it. HIV infection and AIDS have revived and intensified the conflict between the imperatives of protection of the rights of the individual embodied in the duty of professional confidentiality, and the imperatives of protection of the community, represented here by the partners of HIV-positive individuals. This grave conflict is illustrated by situations in which HIV-positive individuals refuse to inform their partners of their status. All these different points provide the grounds for the conclusions of the report of Commission XIX of the National Academy of Medicine.

Considering that this debate is not posed in legal terms but in terms of morality and responsible behaviour, the National AIDS Council considers it necessary to assess the advantages and disadvantages of cancelling the duty of confidentiality with respect to the sexual partners of HIV-positive individuals without the consent of the latter.

The advantages of lifting medical confidentiality would be to protect the interests of third parties in a certain number of cases by avoiding :

- infection of partners otherwise left in ignorance ;
- non-disclosure to pregnant women, who would otherwise risk infection, or infecting their unborn children, if they did not receive treatment now capable of reducing the risk of mother/foetus infection ;
- failure to inform sexual partners previously left in ignorance of the cause of death (thus preventing those partners from seeking tests and possible medical assistance) ;
- the possibility of the deliberate spreading of the infection.

The lifting of medical confidentiality brings with it dangers and disadvantages :

- the impossibility of verifying the accuracy of a patient's statements without recourse to enquiries virtually identical to police investigation ;
- the ineffectiveness of preventive strategies due to a loss of trust in the doctor/patient relationship, leading to refusal of testing,

change of doctor, failure to seek treatment, encouragement of criminal deception and loss of any sense of responsibility for one's actions ;

- the risks of abuse : the fact of openly canvassing for a breach in strict and absolute adherence to duties of professional confidentiality, even if this is an exceptional measure targeted on AIDS, leads to a risk of other breaches which, in the end, would seriously jeopardize the principle itself. This information could be requested by persons other than sexual partners (e.g. in the school, work or prison contexts) and disclosed for medical conditions other than HIV/AIDS.

All in all, no search by doctors for patients' sexual partners for the purpose of notification can be carried out without prejudicing or even destroying the relationship of trust based on professional confidentiality. Moreover, any such search would entail a set of sanctions and constraints difficult to accept from the ethical standpoint.

The National AIDS Council considers that the drawbacks of acceptance of a breach of medical confidentiality specific to AIDS are greater than the benefits. It is important to make every effort to ensure that members of the medical profession help HIV-positive individuals shoulder their responsibilities toward their partners. The National AIDS Council recommends that public information messages on prevention should particularly emphasize our responsibilities as individuals, as well as the need for respect for, and solidarity with others. The Council considers that making supposed benefits for society more important than the rights of the individual would be a source of grave injustice for those, the vast majority, who seek without duress to preserve their sense of worth as responsible individuals.