

AIDS ADVISORY COUNCIL  
SUBCOMMITTEE ON OCCUPATIONAL ISSUES  
REPORT AND RECOMMENDATIONS REGARDING  
EXPOSURE TO HIV THROUGH RAPE AND  
OCCUPATIONAL INJURY

APRIL 27, 1990

SUBMITTED BY:

Robert Newman, M.D.  
Iris Davis, M.D.  
Edwin A. Mirand, Ph.D.

2025 RELEASE UNDER E.O. 14176

In response to the Commissioner of Health's request that the AIDS Advisory Council evaluate and comment upon issues that might arise over the next few months, Dr. Rogers requested that members of the Council's Subcommittee on Occupational Issues complete a detailed review of policy options relating to occupational and criminal exposure issues. The following is a summary of the Subcommittee's recommendations, which were adopted by a majority vote the full Council at its March 1, 1990 meeting.

## PROGRAM ENHANCEMENTS

The Subcommittee identified a critical and immediate need for the Department of Health to work closely with the health care providers, public safety agencies, and rape crisis counselors to develop programs that will provide support services to rape survivors and occupationally exposed workers. The primary goals of Department initiatives should be: (1) to create a corps of counselors who are knowledgeable about the issues surrounding exposure to HIV through rape or occupational injury, and (2) to develop standards and models to guide these counselors as they provide support services to exposed workers and rape survivors.

In light of these considerations, the Subcommittee recommends that the Advisory Council urge the Department of Health to act immediately on following policy options:

- The AIDS Institute should develop a bilingual fact sheet on the risk of transmission of HIV and HBV through rape for distribution to rape crisis counselors and rape survivors. In addition, the Institute should develop guidelines for counseling rape survivors on HIV and HBV transmission issues for use by community-based and hospital-based rape crisis and victims' service programs.
- The AIDS Institute should provide training in HIV and HBV transmission issues for staff and volunteers of rape crisis and victims' service programs. In addition, the Institute should train all existing and new HIV counselors in sexual assault issues.
- The AIDS Institute should work with the AIDS Centers to develop model programs and policies for the prevention and management of occupational exposures to HIV. The models could then be adapted and implemented in other settings, such as corrections or mental health.
- The Department of Health should develop surveillance methods for ~~monitoring the policies and protocols developed by health care facilities pursuant to DOH infection control regulations.~~ These methods should ensure that exposed workers receive appropriate counseling and support services.

NEW YORK STATE DEPARTMENT OF HEALTH

## STATUTORY AMENDMENTS

These comments relate to two issues: disclosure of information regarding serostatus when it is known, and court ordered testing, without consent, when serostatus is not known. These issues are considered in the context of two circumstances: in the case of alleged rape and when there has been an exposure to blood or body fluids implicated in the transmission of HIV in an occupational setting.

Article 27-F of the Public Health Law generally prohibits the disclosure of existing HIV-related information. Exceptions to the general prohibition against disclosure are listed in the statute. The law also prohibits, with a few exceptions, HIV-related testing without the informed consent of the test subject or of a person authorized by law to consent to health care for the test subject.

Under the current provisions of Article 27-F, a health care or social service provider cannot make an unconsented disclosure of existing information on the serostatus of a rapist or alleged rapist to the rape survivor. In regard to testing, the law makes no exception to the informed consent requirement to allow involuntary HIV-related testing of an accused or convicted rapist.

Under current provisions of the law, an occupationally exposed worker would have access to existing HIV-related information on the source of the exposure only if the worker provides medical care and treatment to the source and has access to his/her medical record. All other exposed workers would have access to existing information only if the source consents to disclosure or if the worker obtains a court order for disclosure. Workers who do not have access to medical records but may incur exposures include: nurses aides, home health aides, laboratory workers, phlebotomists, pre-hospital emergency workers, mortuary workers and all public safety workers. Article 27-F does not include an exception to the informed consent requirement for involuntary testing on the source of an occupational exposure.

Amendments to Article 27-F were considered in both houses of the Legislature during the 1989 legislative session. A bill allowing unconsented disclosure in cases of occupational exposure was introduced in the Assembly, and the Senate passed a bill that would have allowed a court, under certain circumstances, to order the involuntary testing of a person indicted for rape or of the source of an occupational exposure.

### **Subcommittee Recommendations**

The Subcommittee has examined comprehensive literature reviews regarding: (1) the risk of HIV transmission through rape, (2) the risk of HIV transmission through occupational exposure, (3) the biologic, clinical and social implications of AZT as a prophylactic agent for HIV exposure and (4) the predictive value of tests to determine the presence of HIV. Based on this review, the Subcommittee found that the HIV-status of the individual who is the source of an occupational or criminal exposure is one additional piece of information - important, but by no means definitive or critical - which may be used to guide a

physician in his/her advice to the exposed individual regarding treatment and other areas of personal planning and to guide the exposed individual in responding to that advice. However, the interests of the exposed party in knowing the HIV status of the source individual are not, in the Subcommittee's opinion, sufficient to justify an invasion of the source individual's rights to privacy of personal medical information to informed consent for HIV testing, and to be presumed innocent until proven guilty.

Another concern relates to the implications for future demands to compromise the right to privacy once the precedent is set to permit mandatory testing and/or disclosure. Precisely the same logic which would support any loosening of the current protections afforded by Article 27F would, logically, apply on a very broad scale. If mandatory testing is performed and the results are negative, the same interests of the potentially exposed party would then suggest that the possible source of infection be tested again on a serial basis over the course of many months. Also, since some of the individuals involved might be deemed so unreliable as to make long-term contact questionable (e.g., because of homelessness, drug addiction, etc., another logical extension would be to keep the individual in custody, or under close surveillance. The ramifications are almost limitless.

For these reasons, the Subcommittee does not support amending Article 27-F of the Public Health Law to allow unconsented disclosure of existing HIV-related information or involuntary HIV testing in cases of rape or occupational exposure.

The positions of the Subcommittee in regard to HIV testing and confidentiality are based upon its assessment of the limitations of HIV antibody testing. The Subcommittee acknowledges that as new, more definitive tests are developed, the positions must be re-evaluated and revised.

*Occ. Exposure*

**STATE OF NEW YORK  
AIDS ADVISORY COUNCIL**



CORNING TOWER • THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA • ALBANY, N.Y. 12237 • (518) 473-7238

DAVID E. ROGERS, M.D.  
*Chairperson*

May 4, 1990

David Axelrod, M.D.  
Commissioner  
New York State Department of Health  
Corning Tower, Empire State Plaza  
Albany, New York 12237

Dear David:

Enclosed is the report from the AIDS Advisory Council on the issue of Occupational Exposure to HIV. It is the product of long and hard deliberation, several major shifts in direction, and countless discussions among Council members and representatives of outside groups.

At the Advisory Council's two-day retreat in February, Dr. Robert Newman, who chaired the subcommittee which prepared this report, presented recommendations to the full Council; a majority of members voted to adopt the positions stated in the report. The Council has not, unfortunately, had an opportunity to review the report in its entirety, however staff is now forwarding copies of the report to each member.

I know that you have been anxious to receive the Council's opinions on this issue, and it would have surely been transmitted to you sooner had the issues been more easily analyzed and the course of action more apparent. Occupational exposure to HIV is indeed a difficult problem and the Council's reversal in positions during our deliberations is a reflection of the complications involved in this policy question.

Sincerely,

*David*

David E. Rogers, M.D.

ENC.



AIDS ADVISORY COUNCIL  
SUBCOMMITTEE ON OCCUPATIONAL ISSUES  
REPORT AND RECOMMENDATIONS REGARDING  
EXPOSURE TO HIV THROUGH RAPE AND  
OCCUPATIONAL INJURY

APRIL 27, 1990

SUBMITTED BY:

Robert Newman, M.D.  
Iris Davis, M.D.  
Edwin A. Mirand, Ph.D.

In response to the Commissioner of Health's request that the AIDS Advisory Council evaluate and comment upon issues that might arise over the next few months, Dr. Rogers requested that members of the Council's Subcommittee on Occupational Issues complete a detailed review of policy options relating to occupational and criminal exposure issues. The following is a summary of the Subcommittee's recommendations, which were adopted by a majority vote the full Council at its March 1, 1990 meeting.

#### PROGRAM ENHANCEMENTS

The Subcommittee identified a critical and immediate need for the Department of Health to work closely with the health care providers, public safety agencies, and rape crisis counselors to develop programs that will provide support services to rape survivors and occupationally exposed workers. The primary goals of Department initiatives should be: (1) to create a corps of counselors who are knowledgeable about the issues surrounding exposure to HIV through rape or occupational injury, and (2) to develop standards and models to guide these counselors as they provide support services to exposed workers and rape survivors.

In light of these considerations, the Subcommittee recommends that the Advisory Council urge the Department of Health to act immediately on following policy options:

- The AIDS Institute should develop a bilingual fact sheet on the risk of transmission of HIV and HBV through rape for distribution to rape crisis counselors and rape survivors. In addition, the Institute should develop guidelines for counseling rape survivors on HIV and HBV transmission issues for use by community-based and hospital-based rape crisis and victims' service programs.
- The AIDS Institute should provide training in HIV and HBV transmission issues for staff and volunteers of rape crisis and victims' service programs. In addition, the Institute should train all existing and new HIV counselors in sexual assault issues.
- The AIDS Institute should work with the AIDS Centers to develop model programs and policies for the prevention and management of occupational exposures to HIV. The models could then be adapted and implemented in other settings, such as corrections or mental health.
- The Department of Health should develop surveillance methods for ~~monitoring the policies and protocols developed by health care facilities pursuant to DOH infection control regulations.~~ These methods should ensure that exposed workers receive appropriate counseling and support services.



## STATUTORY AMENDMENTS

These comments relate to two issues: disclosure of information regarding serostatus when it is known, and court ordered testing, without consent, when serostatus is not known. These issues are considered in the context of two circumstances: in the case of alleged rape and when there has been an exposure to blood or body fluids implicated in the transmission of HIV in an occupational setting.

Article 27-F of the Public Health Law generally prohibits the disclosure of existing HIV-related information. Exceptions to the general prohibition against disclosure are listed in the statute. The law also prohibits, with a few exceptions, HIV-related testing without the informed consent of the test subject or of a person authorized by law to consent to health care for the test subject.

Under the current provisions of Article 27-F, a health care or social service provider cannot make an unconsented disclosure of existing information on the serostatus of a rapist or alleged rapist to the rape survivor. In regard to testing, the law makes no exception to the informed consent requirement to allow involuntary HIV-related testing of an accused or convicted rapist.

Under current provisions of the law, an occupationally exposed worker would have access to existing HIV-related information on the source of the exposure only if the worker provides medical care and treatment to the source and has access to his/her medical record. All other exposed workers would have access to existing information only if the source consents to disclosure or if the worker obtains a court order for disclosure. Workers who do not have access to medical records but may incur exposures include: nurses aides, home health aides, laboratory workers, phlebotomists, pre-hospital emergency workers, mortuary workers and all public safety workers. Article 27-F does not include an exception to the informed consent requirement for involuntary testing on the source of an occupational exposure.

Amendments to Article 27-F were considered in both houses of the Legislature during the 1989 legislative session. A bill allowing unconsented disclosure in cases of occupational exposure was introduced in the Assembly, and the Senate passed a bill that would have allowed a court, under certain circumstances, to order the involuntary testing of a person indicted for rape or of the source of an occupational exposure.

### **Subcommittee Recommendations**

The Subcommittee has examined comprehensive literature reviews regarding: (1) the risk of HIV transmission through rape, (2) the risk of HIV transmission through occupational exposure, (3) the biologic, clinical and social implications of AZT as a prophylactic agent for HIV exposure and (4) the predictive value of tests to determine the presence of HIV. Based on this review, the Subcommittee found that the HIV-status of the individual who is the source of an occupational or criminal exposure is one additional piece of information - important, but by no means definitive or critical - which may be used to guide a

physician in his/her advice to the exposed individual regarding treatment and other areas of personal planning and to guide the exposed individual in responding to that advice. However, the interests of the exposed party in knowing the HIV status of the source individual are not, in the Subcommittee's opinion, sufficient to justify an invasion of the source individual's rights to privacy of personal medical information to informed consent for HIV testing, and to be presumed innocent until proven guilty.

Another concern relates to the implications for future demands to compromise the right to privacy once the precedent is set to permit mandatory testing and/or disclosure. Precisely the same logic which would support any loosening of the current protections afforded by Article 27F would, logically, apply on a very broad scale. If mandatory testing is performed and the results are negative, the same interests of the potentially exposed party would then suggest that the possible source of infection be tested again on a serial basis over the course of many months. Also, since some of the individuals involved might be deemed so unreliable as to make long-term contact questionable (e.g., because of homelessness, drug addiction, etc., another logical extension would be to keep the individual in custody, or under close surveillance. The ramifications are almost limitless.

For these reasons, the Subcommittee does not support amending Article 27-F of the Public Health Law to allow unconsented disclosure of existing HIV-related information or involuntary HIV testing in cases of rape or occupational exposure.

The positions of the Subcommittee in regard to HIV testing and confidentiality are based upon its assessment of the limitations of HIV antibody testing. The Subcommittee acknowledges that as new, more definitive tests are developed, the positions must be re-evaluated and revised.

*Occ. Exposure*

**STATE OF NEW YORK  
AIDS ADVISORY COUNCIL**



CORNING TOWER • THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA • ALBANY, N.Y. 12237 • (518) 473-7238

DAVID E. ROGERS, M.D.  
*Chairperson*

May 4, 1990

David Axelrod, M.D.  
Commissioner  
New York State Department of Health  
Corning Tower, Empire State Plaza  
Albany, New York 12237

Dear David:

Enclosed is the report from the AIDS Advisory Council on the issue of Occupational Exposure to HIV. It is the product of long and hard deliberation, several major shifts in direction, and countless discussions among Council members and representatives of outside groups.

At the Advisory Council's two-day retreat in February, Dr. Robert Newman, who chaired the subcommittee which prepared this report, presented recommendations to the full Council; a majority of members voted to adopt the positions stated in the report. The Council has not, unfortunately, had an opportunity to review the report in its entirety, however staff is now forwarding copies of the report to each member.

I know that you have been anxious to receive the Council's opinions on this issue, and it would have surely been transmitted to you sooner had the issues been more easily analyzed and the course of action more apparent. Occupational exposure to HIV is indeed a difficult problem and the Council's reversal in positions during our deliberations is a reflection of the complications involved in this policy question.

Sincerely,

*David*

David E. Rogers, M.D.

ENC.

