

The HIV Test: To know or not to know

Medical advances suggest you should learn your HIV status but legal concerns remain

BY BRADLEY WOODWORTH

In the past this column has discussed the legal implications being tested for HIV antibodies (learning your "HIV status"). The general legal advice that I used to give was that the legal reasons for not being tested (insurance coverage, employment discrimination, liability for infecting others through unsafe sex) outweighed the medical reasons for being tested (there was not much the doctors could do for you if they knew you had the HIV virus).

Well, that was then, and this is now. My general advice has changed and this column discusses how to protect your legal rights while learning your HIV status.

Counsel

Physicians who specialize in treatment of HIV disease are now nearly unanimous in their view that early diagnosis and treatment of HIV disease will usually delay the onset, frequency and severity of opportunistic infections, prolong the life span of infected persons and increase the quality of their lives. Both AZT and aerosol pentamidine are now standard prophylactic (preventive) treatments available to many infected persons. New combinations of treatments and medications are being developed and tested. Recently, the standard dose of AZT was cut in half and the side effects now are often much less than at the old higher dosage levels. From a medical standpoint, the experts tell me the picture is clear; early diagnosis and treatment will likely enhance the length and quality of life for infected persons. From a medical viewpoint, then, you should get an HIV antibody test to learn whether or not you are infected.

Nonetheless, there are still numerous legal concerns to consider before, during and after testing.

You should do everything possible to obtain any health insurance, life insurance and disability insurance that is available to you. If group health, life or disability insurance is available through your employment or through membership in a professional or other group, sign up for it. If no group insurance is available to you, then try to purchase such insurance on the private market before you get the test (see past columns on insurance and HIV). If you are confused about your coverage issues, seek legal advice.

If you don't have and can't obtain any insurance, you should probably proceed to be tested anyway. If you are positive, you will soon enough qualify for public benefits.

You should first be tested at an anonymous testing site. In anonymous testing your name is never recorded and no one else, including insurance companies, can know that you even had the test. If you have the test through your regular doctor, it will be in your medical chart forever. If the result is positive, you will be essentially uninsurable for the rest of your life.

Even if the result is negative, the mere fact that you took the test would probably be used to deny you insurance coverage. If the test is positive and your insurance is in place (or you can't get any insurance anyway) then go to your regular doctor, who will probably do a T-Cell count and form a medical treatment plan for you.

If you learn you are HIV positive, then you must take great care to inform your sexual partners of your status and refrain from any unsafe sexual practices. If you know you are infected with HIV and have unprotected sex, you may become liable to your partner for enormous damages, and could even be criminally prosecuted.

Also, if you are HIV positive, you should promptly get legal advice to put your affairs in order. You may wish to appoint a loved one, other than a family member, to be your "attorney-in-fact" for health care decisions, if you are disabled. You may need a will and living will. These are things that a gay community lawyer can help you with. But do not delay. In the past several months, I have had numerous crisis calls, where it was necessary to draw up papers in a hurry and take them to the hospital, hoping that my client still had the legal mental capacity to sign them. Get all of this business accomplished while you are still healthy. Do not wait until a health crisis occurs to put your affairs in order.

Further, if you are HIV positive, your employer may not discriminate against you in terms, conditions or privileges of employment. In addition, your employer is required to make a reasonable accommodation to your handicapping condition, so that you may continue to work. This is a complicated and technical area, and if your HIV status requires some adjustments in your work schedule or duties, a new Oregon statute requires that your employer be given notice of your HIV status. If you are in, or even approaching this type of situation, be sure to get legal advice immediately.

Note on Jay Brown:

I was privileged to spend most of Jay Brown's final evening with him at the hospital. As Jay faded in and out, we laughed and joked and recalled so many good times from years past. In one of his final lucid moments, Jay realized he had pneumonia, and kept asking us whether he was getting better. We told him he was not. He told us "Well, I guess I waited too long."

Jay felt in his heart that he was sick for many months. He delayed getting medical diagnosis until a nasty pneumonia developed. I think he would have had several more productive years publishing Just Out if he had gotten tested and treated even a few months earlier. I wish he had done so, and I hope you will.

Note: No two legal situations are exactly the same. This column discusses general legal principles only. For specific advice, consult your lawyer.

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