

Counselling in the context of the criminalization of HIV non-disclosure



Legal and ethical counselling standards checklist

The checklist below suggests minimum standards for counselling PHAs in the context of the criminalization of HIV non-disclosure. These standards are meant to ensure that a client receives all the information she or he needs to:

1. **understand his or her rights and legal obligations; and**
2. **make informed decisions about disclosing personal information to a counsellor.**

These suggested counselling standards do not represent a “gold standard,” since it is not possible to anticipate every circumstance in which issues related to HIV disclosure will arise between counsellors and their clients. Service providers should consider expanding these guidelines to meet the specific needs of their clients.

Confidentiality is as much an ethical principle of counselling as it is a legal obligation. The high level of importance assigned to confidentiality stems directly from the powerful role the counsellor plays in the client’s life. Confidentiality is meant to ease the possible challenges that a client may face so as to permit them to feel safe in expressing painful or difficult experiences. A client has a right to know at the outset of the counselling relationship how a counsellor, an AIDS service organization or another service provider and institution will treat his or her personal information.

When counselling a client, counsellors should:

- Determine whether there are mental or emotional health issues or any language barriers that may prevent the client from fully understanding his or her rights and responsibilities regarding confidentiality, the criminal law and HIV disclosure.
- Explain to the client the organization’s confidentiality and record-keeping policies. Wherever possible, offer the client copies of these policies if they exist.
- Inform the client about the limits on confidentiality in the counselling relationship.
 - The client should be told that his or her personal information *might* be disclosed without consent under a search warrant or subpoena (a type of court order), meaning it could conceivably be used against him or her in a criminal investigation or prosecution. The client should be thoroughly informed as to

how the organization would respond if client information were sought under a search warrant or subpoena.

- The client should be informed whether or not, and if so, under what circumstances, the organization would disclose the client's information without consent in order to protect another person from harm.
 - Where relevant, the client should be told about the limits of confidentiality in the counselling relationship under the applicable public health legislation (e.g., legal obligation to report HIV and AIDS cases; partner notification; and other potential circumstances which may require disclosure to public health authorities).
- Provide legal information about the criminal law and HIV non-disclosure. See “Informing PHAs about the criminal law and HIV non-disclosure,” also in this section of this resource kit.

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