

Client confidentiality and record-keeping



Preventing harm to others

N.B.: This document does not address the issue of a duty to report when a child is in “need of protection.” In such cases, provincial laws usually have explicit obligations to report these concerns to child protection authorities.

What should counsellors do if they think an HIV-positive client is having higher risk sex with a partner and the partner doesn’t know the client is HIV-positive? This is a difficult legal and ethical issue for many counsellors and community-based AIDS organizations. There is no easy answer.

All AIDS service organization staff and volunteers, and other service providers, owe each client a legal duty to maintain the confidentiality of the client’s personal information, including HIV status. In the case of those who are part of a regulated profession (such as registered nurses, social workers or psychologists), their legal and ethical duty of confidentiality is usually described in the provincial and territorial acts and regulations that govern the profession.

However, professional bodies, legislatures and courts have recognized that, in some circumstances, client confidentiality may give way in order to protect other interests — including the protection of “third parties” who are thought to be at risk of harm.

It’s not easy to say in what circumstances, under the law, confidentiality *may* or *should* be set aside in cases where there is concern that someone is at specific risk of HIV infection without their knowledge. In some cases, an organization or a service provider could be successfully sued by a client for breaching confidentiality. But in other cases, an organization or service provider could be sued for not breaching confidentiality in order to protect a person at risk of harm. At the moment, the law is unclear and provides only limited guidance.

This is why it is essential that agencies consider developing policies or guidelines for staff and volunteers, if they don’t already exist, so they are prepared to respond to such difficult situations before they may arise. To help address this complex issue, please have a look at the decision-making tree, “Disclosing to prevent harm,” also in this section.

In what circumstances *may* client confidentiality be set aside to protect others from harm?

Guiding principles set out by the courts

In 1999, in a case called *Smith v. Jones*, the Supreme Court of Canada decided that there is *discretion* (i.e., permission) to disclose confidential information about a client in order to prevent harm to another person where the following three conditions are satisfied:¹

- there is a clear risk of harm to an **identifiable person or group of persons**;
- there is a **risk of serious bodily harm or death** (e.g., the threat must be such that the intended victim is in danger of being killed or of suffering serious bodily harm)²; **and**
- the **danger is imminent** (i.e., the nature of the threat must be such that it creates a sense of urgency).³

In that particular case, the Supreme Court was deciding whether and when a lawyer’s duty of confidentiality to his or her client (protected by what is called “solicitor–client privilege”) could be waived. Solicitor–client privilege is the strictest form of privilege recognized by the law to protect the confidentiality of communications. Therefore, if a lawyer is legally permitted under this “**public safety exception**” to breach solicitor–client privilege and reveal confidential information received from a client, then these principles apply to every type of relationship in which confidential information is received from a client. It applies to every type of privilege and duty of confidentiality.⁴

In practice, this means that **the principles set out in *Smith v. Jones* apply to every service provider who works with and counsels people living with HIV, whether they are regulated professionals or not** (see the textbox below for information specific to Quebec). But because regulated professionals usually have laws, regulations or policies specifying when and how client confidentiality may be breached — including to protect a specific third party or the public — organizations should also be aware of these relevant laws, regulations and policies that may be applicable to their staff members (see below).

In crafting this “public safety exception,” the Court did not consider the precise steps a person might take to prevent harm, indicating that it might be appropriate to notify the potential victim, or police or a crown prosecutor depending on the circumstances. But the court specified that **the breach of the client’s confidentiality should be limited as much as possible**.⁵

The three conditions for a “public safety exception” allowing the disclosure of what should otherwise be kept confidential pose some particular challenges with regard to confidentiality and HIV disclosure. First, in *Smith v. Jones*, the facts were very specific:

¹ *Smith v. Jones*, [1999] 1 S.C.R. 455 at para. 77.

² *Ibid.*, at para. 82.

³ *Ibid.*, at para. 84.

⁴ *Ibid.*, at para. 44.

⁵ *Ibid.*, at para. 86.

the lawyer's client, who was charged with aggravated sexual assault of a sex worker, had described in great detail to a psychiatrist expert hired by his lawyer his plan to kidnap, rape and kill sex workers. This contrasts sharply with most cases of HIV non-disclosure where there is no intent to harm a partner.

Moreover, in the absence of any cases on this particular issue, it is unclear in what circumstances, if any, non-disclosure of HIV-positive status to a sexual partner would satisfy the three conditions set out in *Smith v. Jones*. According to the Supreme Court of Canada, confidentiality may be set aside where the facts raise real concerns that an identifiable individual or group is in imminent danger of death or serious bodily harm. But HIV is difficult to transmit even where sex is unprotected (see additional resources on HIV risks of transmission in the section on "Criminal law and HIV non-disclosure"). As a result, it may be particularly challenging to establish an *imminent danger* of serious bodily harm (such as HIV infection), although "different weight might be given to each factor in any particular case."⁶

When assessing, in light of the three criteria from *Smith v. Jones*, whether they have the *discretion* to breach a client's confidentiality in a case related to HIV non-disclosure, service providers should be sure to:

- consider whether they are reasonably certain that their client is engaging, or intends to engage, in unprotected vaginal or anal sex, rather than simply assuming this is the case; and,
- take into consideration all factors that may increase or decrease the risk posed to his or her partner(s), including, for instance, the patient's viral load and/or antiretroviral treatment (when this information is known) and the frequency of unprotected sexual intercourse.

To help you respond to such situations, please have a look at the decision-making tree, "Disclosing to prevent harm," also in this section.

The *Civil Code of Quebec* includes a right to respect for personal reputation and privacy. No one may invade the privacy of a person without the consent of the person in question, unless authorized by law. The *Quebec Charter of Human Rights and Freedoms* is similar to human rights codes or acts in other provinces and territories. However, it is also different in a number of significant ways. One difference is that the Quebec Charter protects a right to privacy and confidentiality. Section 5 provides that "[e]very person has a right to respect for his private life," and section 9 provides that "[e]very person has a right to non-disclosure of confidential information."

Therefore, AIDS service organization and other service providers in Quebec have a duty to keep client information confidential and not to release this information except with the client's consent. However, as long as the decision to disclose and the steps taken to prevent harm were reasonable, a service provider or organization might not be found liable for disclosing client information without consent. A court would look at the facts

⁶ Ibid., at para. 85.

and circumstances of the case to decide whether the decision to breach confidentiality and disclose client information was reasonable. A court is likely to analyze the issue based on the criteria set out by the Supreme Court of Canada (in the *Smith v Jones* case) that were later included in several statutes in Quebec providing for *discretion* in determining whether or not to breach confidentiality in certain circumstances (see below, “Regulated professionals”).

Regulated professionals

Note that this section is not intended to provide you with a comprehensive overview of the different laws, regulations and policies applying to regulated professionals across Canada. We note some of the rules in several different provinces as examples. Be sure to check the applicable laws, regulations or policies applicable in your own jurisdiction and to your own profession.

Laws, regulations or policies for specific professions

Regulated professionals usually have laws, regulations or policies specifying when and how client confidentiality may be breached, including to protect a specific third party or the public. They may reflect the principles set out in *Smith v. Jones*, which provide *discretion* to breach confidentiality to protect others from harm in some particular circumstances. For instance, in **Ontario**, the *Personal Health Information Protection Act* provides that:

“a health information custodian *may* disclose personal health information about an individual if the custodian believes on reasonable grounds that disclosure is necessary for the purpose of *eliminating or reducing a significant risk of serious bodily harm* to a person or group of persons.”⁷ [emphasis added]

This is not a legal *obligation* to disclose confidential health information. It instead provides those covered by the Act with the *discretion* to do so depending on what might be the most reasonable thing to do in the circumstances. The legislation protects health information custodians from lawsuits either way — from patients if they disclose confidential information, or from a third party if they don’t — as long as they act reasonably and in good faith.⁸ The term “health information custodians” generally includes traditional health care providers such as hospitals, long-term care service

⁷ *Personal Health Information Protection Act*, 2004, SO 2004, c 3, Sch A, s. 40.

⁸ *Ibid.*, section 71(1): “No action or other proceeding for damages may be instituted against a health information custodian or any other person for, (a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Act; or (b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Act.”

providers, nurses,⁹ physicians and community health centres, if their primary purpose is the provision of health care.¹⁰

In **Quebec**, the *Code of Ethics* governing social workers and family counsellors provides that a member of this profession:

“*may communicate information that is protected by professional secrecy to prevent an act of violence, including a suicide, where the member has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the member may only communicate the information to a person exposed to the danger or that person's representative, or to the persons who can come to that person's aid.*”¹¹ [emphasis added]

Note that a similar exception permitting a breach of confidentiality exists in several other statutes in Quebec, including the *Professional Code*.¹²

Public health laws applicable to professionals

Provincial public health laws may also *authorize* (or sometimes *require*) disclosure of a client's confidential information to public health authorities (e.g., the relevant medical officer of health) **in order to protect public health or to protect a person from harm**. For instance, in **Ontario**, the *Personal Health Information Protection Act* indicates that a health information custodian *may* disclose personal health information about an individual to the province's Chief Medical Officer of Health or a local medical officer of health, if the disclosure is made for a purpose set out in the *Health Protection and Promotion Act*¹³ (e.g., preventing the spread of disease and promoting and protecting the health of the people of Ontario).¹⁴

⁹ Note that the nursing standards developed by the College of Nurses of Ontario directly refer to the *Personal Health Information Protection Act*, indicating that the Act permits nurses to disclose personal health information, without a patient's consent, to eliminate or reduce a significant risk of serious bodily harm to another person or the public. See: College of Nurses of Ontario, *Confidentiality and Privacy — Personal Health Information*, June 2009 (and see pp. 9–10 for practical guidance).

¹⁰ Note that health information custodians, in the sense of the *Personal Health Information Protection Act*, do not include aboriginal healers; aboriginal midwives who provide traditional midwifery services to aboriginal persons or members of an aboriginal community; nor faith healers. See s. 3.4 of the *Personal Health Information Protection Act*.

¹¹ *Code de déontologie des membres de l'Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec*, L.R.Q., c C-26, r 286, Section 3.06.01.01.

¹² L.R.Q., c. C-26, section 60.4. See also the *Code de déontologie des médecins* L.R.Q., c. M-9, r. 17, which provides that a physician may not divulge facts or confidences which have come to his personal attention, except when the patient or the law authorizes him to do so, or when there are compelling and just grounds related to the health or safety of the patient or of others (section 20. 5e). A physician who communicates information protected by professional secrecy must, for each communication, indicate in the patient's record (...) the identity of the person exposed to danger or of the group of persons exposed to danger (...) the danger he had identified (...) the imminence of the danger he had identified (section 21).

¹³ *Personal Health Information Protection Act*, 2004, s. 39(2).

¹⁴ *Health Protection and Promotion Act*, RSO 1990, c H.7, s. 2.

In some provinces, there may be specific mention of HIV and the risk of HIV exposure in regulations under public health laws. For example, in **British Columbia**, if a physician believes that a patient poses a risk of HIV infection to another person, the physician *may* provide information about that person to the medical officer of health, in accordance with the regulations on communicable diseases made under the *Health Act*.¹⁵ In some cases, the provincial law goes further than simply *permitting* disclosure and may in fact *require* it in some form. For example, in **Nova Scotia**, the applicable public health legislation requires a physician who is not satisfied that a HIV-positive patient has informed his or her partner of a risk of exposure to HIV to consult the medical officer.¹⁶

N.B.: *In addition to possible provisions authorizing or requiring disclosure to public health authorities in order to protect public health or to protect an individual from harm, public health legislations usually require that health professionals and labs report cases of HIV and AIDS to public health authorities. Such reporting may include the name of the person testing HIV-positive depending on the provincial legislation. See document on “Reporting obligations and potential interventions under public health laws,” also in this section.*

For more information about public health laws, see the section on “Public health laws,” also in this resource kit.

Could a service provider or an organization be held civilly liable for failing to disclose confidential information to protect others from harm?

A “duty to warn”?

Courts have ruled that some institutions and professionals with specific mandates — including hospitals,¹⁷ psychiatrists,¹⁸ social workers¹⁹ and police²⁰ — have a duty, in some specific circumstances, to take reasonable steps to protect someone they can identify as being at risk of harm, by either better controlling or supervising a patient or by warning specific people known to be at risk. In those civil lawsuits, the issue has been whether the institution or professional was negligent — and therefore liable to pay some compensation (“damages”) to a person who was injured because the institution or professional failed to fulfill a “duty of care” to the person who was harmed.

¹⁵ Section 6.2, *Health Act Communicable Disease Regulations*, BC Reg 4/83: “if the physician of a positive person is not satisfied that a partner of the positive person has been informed that he or she is at risk of exposure to HIV, the physician of the positive person must consult the medical officer.”

¹⁶ *Reporting Requirements for HIV Positive Persons Regulations*. NS Reg 197/2005, s. 14: “[d]espite Sections 12 and 13, if the physician of a positive person is not satisfied that a partner of the positive person has been informed that he or she is at risk of exposure to HIV, the physician of the positive person must consult the medical officer.”

¹⁷ *Wenden v. Trikha* [1991] A.J. No. 612. Note that this particular case was dismissed, but the judge suggested that a psychiatrist who was aware that his or her patient represented a serious danger to the well-being of another person or persons owed a duty of care to take reasonable steps to protect such a person or persons.

¹⁸ *Tanner v. Norys*, 1980 ABCA 99.

¹⁹ *S(B) v. British Columbia* (1995), 12 BCLR (3d) 306, [1996] 1 W.W.R. 581 (SC).

²⁰ *Jane Doe v. Metropolitan Toronto Commissioners of Police*, 39 OR 3d 487.

In some cases, this duty of care can extend so far as to revealing information that there is otherwise a duty to keep confidential — what is often referred to as a “duty to warn.” However, it should be noted that this phrase can be misleading. The legal duty is, more accurately, a duty to take reasonable steps to prevent “reasonably foreseeable” harm to another or others. In some cases, this may not require going as far as directly warning the person the service provider thinks or knows is at risk of harm. Other steps short of this might suffice to satisfy the legal duty to try to prevent harm, and might also allow for preserving confidentiality better.

Therefore, it should not be assumed that it would always be necessary to directly warn a person thought to be at risk (e.g., of HIV infection). Rather, it is important to think through, and get legal advice about, what an organization or service provider could do in the particular circumstances. The organization or service provider has to balance a duty of confidentiality to its client against the possibility of being liable in a lawsuit if confidentiality is not breached in some way and a third party is harmed. In striking this balance, remember the principle from *Smith v. Jones*, noted above, that any breach of confidentiality should be as limited as possible. For more information on civil liability for breach of confidentiality, see the section on “Civil liability issues for PHAs and AIDS organizations,” also in this resource kit.

At this writing, we are not aware of any reported court decisions establishing a “duty to warn” in the specific context of HIV non-disclosure. We are not aware of any civil suit against an AIDS service organization or other community service provider for failing to warn a partner at risk of HIV transmission. However, we know that a few civil lawsuits have been launched against some public health units and police services, alleging that they were negligent for not warning specific individuals potentially at risk of HIV infection from someone else.²¹ But just because a lawsuit has been launched does not mean that a judge would find that a duty to warn exists with respect to HIV risk.

²¹ One of these court cases was settled out of court, but the details are confidential, as is often the case. As for the other proceedings: one is still ongoing at the time of this writing; and the other against Ontario and Toronto Public Health was dismissed, see *Whiteman v. Iamkhong*, 2010 ONSC 1456. Note that we are aware of one case related to HIV blood transfusion where a family physician was found negligent in failing to disclose to his client the fact that his client might have been infected through the blood transfusion to him. The family physician had been informed that his client received blood that might contain HIV. However, concerned about his client's heart condition and mental health, and assuming that his client was not having sex with his wife, the doctor did not advise his patient of his possible infection. His patient died of an HIV-related illness and it was then discovered that his wife had been infected. An Ontario trial court found that, had his client been given this information, it is likely that he would have sought treatment, and that his life could have been prolonged by approximately two years and, had he known, he would have probably told his wife and they could have taken steps to prevent transmission. *Pittmam Estate v. Bain*, 112 D.L.R. (4th) 257.

In 1980, an Alberta Court of Appeal speculated that if a **psychiatrist** failed to take steps to prevent a patient from doing harm to a third party, the psychiatrist may be held liable for negligence: *Tanner v. Norys*, 1980 ABCA 99. The decision referred to the famous decision of the California Supreme Court where it was decided that psychologists and psychiatrists have a duty to protect a potential victim when they are aware that a patient presents a serious danger to an identifiable person: *Tarasoff v. Regents of University of California*, 551 P.2d 334 (1976).

In Ontario, Toronto **police** were found liable for negligence for failing to warn women that they were potential targets of the so-called “balcony rapist.” In that case, the police knew the attacker’s pattern and which women in particular buildings in a particular neighbourhood were most likely to be targeted, but failed to warn them because they did not want to “scare off” the attacker whom they were trying to arrest. By failing to warn or protect these women they knew were at risk from an almost certain attack (i.e., the harm was foreseeable and a special relationship of proximity with the women existed), the police had failed to take the reasonable care required by the law: *Jane Doe v. Metropolitan Toronto Commissioners of Police*, 39 OR 3d 487.

In *Smith v. Jones*, the Supreme Court of Canada clearly **established that there is discretion** to disclose confidential information when an identifiable individual or group is in imminent danger of death or serious bodily harm. **But it did not rule that there would be an obligation to do so if these three conditions were met.** The Supreme Court left this question open, saying that it was not necessary to decide that particular question in the circumstances of that case.²²

As a result (although to date there have been no cases establishing a so-called “duty to warn” in cases of HIV non-disclosure), a service provider or an organization *might* face civil liability for failing to take the necessary steps to protect another person from an imminent threat of HIV infection — including possibly breaching a client’s confidentiality if necessary. At this time, the law does not answer this question clearly. The risk of being successfully sued may depend on various factors, including: the service provider’s relationship with the person thought to be at risk of harm; the nature of the danger, its foreseeability and imminence; and the mandate of the service provider or organization. (For example, public health departments might be more likely to face liability than a community organization, because their specific legal mandate is to protect public health. In the *Jane Doe* case mentioned above, part of the reason that police were found negligent in not warning the group of women they knew were at particular risk of being targeted was that police have a statutory obligation to prevent crime and also owe a duty to protect life and property under the common law).

²² “I would emphasize that these cases are not being examined with a view to establishing a tort duty on doctors to disclose confidential information when a public safety concern arises. That issue is not before the Court and must not be decided without a factual background and the benefit of argument.” *Smith v. Jones*, para. 59.

The Tort of Negligence:

In order for a plaintiff to be successful in a lawsuit based on the tort of negligence, he or she must **prove three elements**:

1. a **duty of care** exists between the plaintiff and the defendant;
2. the defendant **breached that duty**; and
3. the plaintiff suffered **foreseeable damage as a result** of the breach.

For more information on civil liability in Quebec and in other provinces and territories, you will find a description of applicable rules and legal concepts (e.g., Tort of negligence; Quebec Civil Code) in the document dealing with the civil liability of PHAs in the section on “Civil liability issues for PHAs and AIDS organizations,” also in this resource kit.

If the person at risk is also a client or patient, the service provider may have a heightened duty to warn him or her. It is always a good idea to get legal advice if uncertain how to proceed — and even more so if the person at risk is also a client or patient.

Minimizing the risk of liability

The best defence for an organization to protect itself (and its staff and volunteers) against lawsuits may be to have comprehensive policies in place governing what information is recorded in client files, under what circumstances that information will be disclosed or shared, and the procedure that will be followed if there is reason to believe that a client may be putting another person at risk of HIV infection. By following the applicable policy, service providers and organizations may be able to show that they acted reasonably. (PHAs should always be informed about the organization’s disclosure policies, at the outset of any counselling relationship.)

Similarly, professionals subjected to law, regulations or policies are less at risk of a civil suit for negligence for failing to warn (or not taking other steps to protect) a person at risk of HIV if they can show they followed the guidance of the relevant regulation, law or policy and, as such, exercised appropriate care.

Professional standards, policies and codes of practice developed by professional regulatory bodies (e.g., a College of Physicians and Surgeons, a College of Nurses, a College of Social Workers) provide guidance for professionals in the conduct of their practice. These create binding obligations on professionals. The penalty for not complying with these standards is disciplinary sanctions such as suspension or removal of a licence to practice. (Professional regulatory bodies are not courts, so they cannot determine whether a person is criminally or civilly liable for any conduct, nor award damages). But because professional standards, policies and codes of practice represent an important statement by the profession of what is considered good practice, they may be taken into account in a civil suit for negligence, along with other relevant legislation,

regulations and policies, to determine if a professional has failed to act with reasonable care.

In addition to these legally binding standards of practice from the profession's regulatory body, professional associations (e.g., the Canadian Medical Association or professional physicians' associations, the Canadian Nurses Association, etc.) may also develop and adopt codes of ethics and other standards or guidelines of good professional practices. These do not directly create *legal* duties for professionals. However, they may be taken into account in a civil suit for negligence, along with other relevant legislation, regulations and policies, to determine if a professional has failed to act with reasonable care.

The so-called “duty to warn”

The phrase “duty to warn” is often used as a short, simple way of referring to the idea that someone is, or may be, legally obliged to disclose confidential information about or from one person (e.g., a patient or client) in order to minimize danger or prevent harm to another person — and that if they don't, they could be held legally responsible (e.g., for negligence in a civil lawsuit). However, the phrase “duty to warn” can be misleading. It is more accurate to refer to **a duty to take reasonable steps to prevent harm to another person**. A person who possesses information given in confidence (such as a counsellor) may be able to prevent harm to a known person by taking other steps short of disclosing confidential information directly to the person who may be harmed. Through these other steps, it may be possible to adequately reduce or eliminate the risk of harm while limiting the breach of client confidentiality. Where this is the case, the other person has not been “warned” by the counsellor, but the counsellor has fulfilled any legal duty he or she may have.

For example, a physician might have reason to believe that a patient with HIV is continuing to put a known partner at risk of infection through unprotected sex without having disclosed his or her HIV status. After counselling the patient and offering to assist with the disclosure to the partner, and addressing factors that might be impeding the patient from disclosing or practising safer sex, a physician may determine that it's appropriate to **contact the local public health department**. The physician reports to public health that the client's sexual partner may be at risk of HIV infection, so that public health can follow up with the partner to let him or her know that a previous sexual contact has tested HIV-positive and he or she should seek testing, get counselling, etc. Ideally, this is done in a way that, at least initially and as much as possible in the circumstances, does not reveal the identity of the patient. The physician should inform his or her client that public health was contacted. Because the physician has not warned the partner, it is more accurate to talk about the **duty to take reasonable steps to prevent harm** to another person.

Considering breaching confidentiality

If a service provider does feel compelled to take action requiring disclosing confidential information in order to prevent harm to others, such decisions **should not be made in**

isolation. The organization's policy should indicate who in an organization staff members should report to before any decision is made, and who will be in charge of making that decision (e.g., the executive director, or a special committee).

This decision must be carefully thought through, taking into account both confidentiality concerns and the impact of the decision on the client and the organization. Recall that involuntary disclosure can have serious negative consequences for a client. It can also have a negative impact on the work of an organization by undermining the trust between the organization and its clients. Finally, while an organization may face civil liability for not disclosing if harm results, it may also face liability for an unjustifiable breach of confidentiality. The decision-making tree, "Disclosing to prevent harm," also in this section, may be helpful.

N.B.: Where registered professionals work or volunteer at the organization, the organization's decision may be affected by the particular professional's ethical or statutory obligations.

When an organization decides to take action, service providers do not have to go to the police and should be reluctant to do so (unless it is absolutely necessary given a particular exceptional situation). In fact, if service providers and organizations become, or are perceived to be, conduits of information to the police and prosecutors who are laying charges for HIV non-disclosure, it could undermine their work by breaking the trust that exists between agencies and clients. Instead, organizations and service providers should consider alternative measures.

For instance, for service providers who are in contact with the person at risk, a first step can be **a general discussion with that person about HIV, how it is transmitted, and why it is important to get tested for HIV and to take precautions to reduce the risk of exposure,** in order to raise the person's awareness about potential exposure without breaching the client's confidentiality.

N.B.: However, if the person at risk is also a client of the service provider, there may be a positive duty to warn the person at risk depending on his or her relationship to that client. Especially in such circumstances, service providers should seek legal advice.

Another approach might include **alerting public health authorities** (which may not necessarily require disclosure of the client's name but only information about his or her sexual partners thought to be at risk, depending on the public health unit in question and the extent to which the harm may be prevented without providing the client's name). If in the circumstances it is determined that there is legal discretion to breach client confidentiality and other approaches are not sufficient, the step may be taken to **warn the person that is believed to be at risk.**

If an organization or service provider decides to breach confidentiality in order to protect another person, **the disclosure of confidential information should be as limited as possible so as to protect the client's confidentiality** as much as possible while

preventing the harm. For example, a person may be advised to seek testing for sexually transmitted infections, without being told through whom they may have been exposed. This is how public health workers should normally approach “partner notification,” in which they notify someone that a sexual partner has tested positive for HIV or another sexually transmitted infection and they themselves should seek testing.

In any case, the organization should record the reasons for its decision and also **inform the client of any action to be taken**. Note that the client should be given reasonable notice *before* action is taken, unless this is not practical in the circumstances (e.g., because it might put the person thought to be at risk at even greater risk of harm).

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