Consent, compulsion and confidentiality in relation to testing for HIV infection: the views of WA doctors

ABSTRACT A survey was undertaken of all of the consultant staff members of Perth's major teaching hospitals together with all the fellows of The Royal Australian College of General Practitioners in Western Australia in order to define their views on the issues of informed consent, compulsion in relation to surgery, and confidentiality in a particular circumstance, when testing for infection with the human immunodeficiency virus (HIV). Of the 701 individuals surveyed, 548 (78.2%) responded. Of these, 74.3% considered that it was not always necessary to gain informed consent, 22.0% believed that it was always necessary to do so, while 2.3% were undecided. General practitioners (38.4%) were more likely to think it necessary to obtain consent than were hospital consultants (19.0%), but otherwise the field of specialty had little effect on opinion. Of the respondents, 39.0% believed that testing before elective surgery is mandatory for all patients, while 53.0% considered that it should be compulsory in high-risk groups. Similar views were held about compulsory HIV antibody testing after emergency surgery. Similar responses were obtained from all specialty groups. When asked about whether they would tell a sexual partner of a patient's HIV status when the patient refused, 10.5% of doctors stated they would never advise the partner, 24.7% of doctors would on some occasions, 41.0% of doctors would tell a partner, and 23.8% always were undecided. Many individuals commented that they failed to see why HIV infection was being treated differently from other serious diseases. We have found that the majority opinion of the most senior members of the medical profession is that specific, informed consent should not always be required, that there is great support for compulsory testing, and that confidentiality may be broken under certain circumstances. These views must be recognized by administrators and legislators when framing measures to control this infection.

Methods

In June 1989, we wrote to all members of the consultant staff at Perth's major teaching hospitals — Fremantle Hospital (96 doctors), King Edward Memorial Hospital for Women (69 doctors), Princess Margaret Hospital for Children (76 doctors), Royal Perth Hospital (202 doctors) and Sir Charles Gairdner Hospital (161 doctors) — as well as to all the fellows of the Royal Australian College of General Practitioners (97 doctors) listed in the WA College handbook. In this covering letter, we canvassed briefly the various views that had been expressed in relation to informed consent, compulsion and confidentiality and asked them to respond to a questionnaire (see box).

Questionnaire

Do you believe that the patient's consent should always be obtained before ordering an HIV test? — yes, no, undecided
Do you believe that under some clinical circumstances it is reasonable not to tell the patient you are ordering an HIV test? — yes, no, undecided
Do you believe that testing for HIV infection should be compulsory before elective surgery? — never, in persons at high risk (homosexuals, intravenous drug users etc.), always, undecided
Do you believe that testing for HIV infection should be compulsory after emergency surgery? — never, in persons at high risk, always, undecided
Would you advise the patient's sexual partner(s) that your patient was infected with HIV if the patient refused to do so? — never, sometimes, always, undecided
Have you ever ordered a test for HIV antibody? — yes, no
What is the nature of your practice?
Any comments?

Data obtained from returned questionnaires were analysed with a personal computer using dBase IIIPlus (Ashton-Tate, Torrance, California, USA). The statistical significances of differences between various groups were assessed by χ2 tests.

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David I. Grove and Jon B. Mulligan among members of the medical profession in various fora. Our informal observations of hospital doctors suggested that many did not believe that specific informed consent need necessarily be obtained, that there was considerable uncertainty as to the best means of creating a safe working environment, and that many had difficulty in deciding whether a patient's right to privacy and a public duty to prevent transmission of HIV infection.

Therefore, we surveyed all of the consultant staff members of Perth's major teaching hospitals as well as all the fellows of The Royal Australian College of General Practitioners in Western Australia in order to establish the views of senior members of the profession on the issues of informed consent, compulsory testing in relation to surgery, and confidentiality in the circumstances where a patient might refuse to tell a sexual partner of his or her HIV infection.

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Results
Of the 701 dispatched questionnaires, 548 (78.2%) were returned. Similar response rates were obtained from the various groups sampled, the lowest rate being from consultants at Princess Margaret Hospital for Children and the highest rate being from general practitioners: general practitioners (89%); Fremantle Hospital (81%); King Edward Memorial Hospital for Women (72%); Princess Margaret Hospital for Children (61%); Royal Perth Hospital (77%); and Sir Charles Gairdner Hospital (83%). An HIV antibody test had been ordered by 66% of respondents.

Views on the necessity of always obtaining informed consent are shown in Figure 1: 22.0% of respondents believed that it was always necessary to gain consent; 74.3% of respondents considered that it was not necessary to do so; while 2.3% of respondents were undecided. General practitioners (38.4%) were more likely to think it necessary to obtain consent than were hospital consultants (19.0%); this difference was highly significant (P<0.0002). There were no significant differences among the consultant staff members of the various hospitals in the proportion which stated that it was always necessary to obtain informed consent, apart from those at King Edward Memorial Hospital for Women (36.8% compared with 16.7% of all other consultants; P<0.002). The responses of the major groups of hospital consultants according to the nature of their specialty is indicated in Table 1. The majority of doctors in all specialties did not believe that informed consent was necessary. There was no significant difference in response between those who had or had not ordered an HIV antibody test.

When practitioners were asked whether there were some clinical circumstances in which it was reasonable not to tell the patient that an HIV antibody test was being ordered, 76.8% replied in the affirmative, 19.7% replied in the negative and 3.5% were undecided (Figure 1). Responses in relation to hospital and specialty were similar to those obtained for whether patient consent should always be obtained before ordering an HIV antibody test.

Opinions as to whether testing for HIV infection should be compulsory before elective surgery are shown in Figure 2. Only 2.6% of respondents believed that testing should never be performed; 53.0% of respondents were of the opinion that it should be compulsory in patients who were at high risk of infection, 39.0% of respondents considered that it should be mandatory in all patients and 5.5% of respondents were undecided. The influence of specialty is indicated in Table 2. Similar responses were obtained from all specialty groups. There was no significant difference in response between those who had or had not ordered an HIV antibody test.

Opinions as to whether testing for HIV infection should be compulsory after emergency surgery are indicated in Figure 2. Only 3.7% of respondents believed that testing should never be performed; 50.1% of respondents were of the opinion that it should be compulsory in patients who were at high risk of infection, 37.6% of respondents considered that it should be mandatory in all patients and 8.6% of respondents were undecided. Responses in relation to specialty were similar to those obtained for whether testing for HIV infection should be compulsory before elective surgery.

Considerable variation was evidenced by the responses to a hypothetical situation in which an infected patient refused to inform a sexual partner (Figure 3). Of the respondents, 10.5% stated that they would never advise the partner, 24.7% indicated that they would do so on some occasions, 41.0% were definite that they would always tell the partner, while 23.8% were undecided as to what they would do. The interaction between a practitioner's belief as to whether informed consent is necessary before testing a patient for HIV infection and whether they would tell a sexual partner is listed below.

*Some smaller subspecialties such as Medical Administration have been omitted as the numbers were small.

\*TABLE 1: Relation of specialty with opinion as to whether the patient's consent should always be obtained before ordering an HIV antibody test

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Yes</th>
<th>No</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anaesthetist (n=66)</td>
<td>21%</td>
<td>73%</td>
<td>6%</td>
</tr>
<tr>
<td>General practitioner (n=86)</td>
<td>38%</td>
<td>59%</td>
<td>2%</td>
</tr>
<tr>
<td>Obstetrician (n=24)</td>
<td>33%</td>
<td>54%</td>
<td>13%</td>
</tr>
<tr>
<td>Paediatrician (n=22)</td>
<td>18%</td>
<td>77%</td>
<td>5%</td>
</tr>
<tr>
<td>Pathologist (n=29)</td>
<td>28%</td>
<td>73%</td>
<td>0</td>
</tr>
<tr>
<td>Psychiatrist (n=20)</td>
<td>30%</td>
<td>65%</td>
<td>5%</td>
</tr>
<tr>
<td>Physician (n=130)</td>
<td>12%</td>
<td>84%</td>
<td>4%</td>
</tr>
<tr>
<td>Radiologist (n=23)</td>
<td>13%</td>
<td>87%</td>
<td>0</td>
</tr>
<tr>
<td>Surgeon (n=111)</td>
<td>16%</td>
<td>80%</td>
<td>4%</td>
</tr>
</tbody>
</table>

\*TABLE 2: Relation of specialty with opinion as to whether patients undergoing elective surgery should be tested for HIV infection

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Never</th>
<th>Risk</th>
<th>Always</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anaesthetist (n=66)</td>
<td>6%</td>
<td>49%</td>
<td>39%</td>
<td>6%</td>
</tr>
<tr>
<td>General practitioner (n=86)</td>
<td>2%</td>
<td>43%</td>
<td>35%</td>
<td>9%</td>
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<td>Obstetrician (n=24)</td>
<td>4%</td>
<td>38%</td>
<td>50%</td>
<td>8%</td>
</tr>
<tr>
<td>Paediatrician (n=22)</td>
<td>0</td>
<td>41%</td>
<td>41%</td>
<td>18%</td>
</tr>
<tr>
<td>Pathologist (n=29)</td>
<td>7%</td>
<td>69%</td>
<td>24%</td>
<td>0</td>
</tr>
<tr>
<td>Psychiatrist (n=20)</td>
<td>0</td>
<td>40%</td>
<td>45%</td>
<td>15%</td>
</tr>
<tr>
<td>Physician (n=130)</td>
<td>2%</td>
<td>56%</td>
<td>38%</td>
<td>4%</td>
</tr>
<tr>
<td>Radiologist (n=23)</td>
<td>0</td>
<td>57%</td>
<td>39%</td>
<td>4%</td>
</tr>
<tr>
<td>Surgeon (n=111)</td>
<td>0</td>
<td>62%</td>
<td>38%</td>
<td>0</td>
</tr>
</tbody>
</table>

*Some smaller subspecialties such as Medical Administration have been omitted as the numbers were small.
consent was necessary but the proportion of those who did believe so was increased in those who would never tell a sexual partner compared with those who would always tell a sexual partner \( (P<0.002) \).

The interaction between opinions as to whether HIV antibody testing before elective surgery should always be performed or undertaken only in the high-risk group and whether they would tell a sexual partner is listed below.

<table>
<thead>
<tr>
<th>Inform partner</th>
<th>Test before surgery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never</td>
<td>Always</td>
</tr>
<tr>
<td></td>
<td>18(36%)</td>
</tr>
<tr>
<td>Sometimes</td>
<td>39(33%)</td>
</tr>
<tr>
<td>Always</td>
<td>113(53%)</td>
</tr>
<tr>
<td>Undecided</td>
<td>41(36%)</td>
</tr>
</tbody>
</table>

There was a tendency for those who would always test patients before surgery to always tell a partner \( (P<0.005) \). There were no significant differences in the responses between those who had or had not ordered an HIV antibody test.

Thirty-four per cent of respondents took the opportunity to comment when invited to do so. Of the comments made, 69% related to the support of testing without patient consent; of these, the majority justified this approach on the basis of protection of the public (22% of respondents), protection of other health professionals (16% of respondents), or because of a similarity with control measures adopted to combat other infectious diseases (25% of respondents). Seventeen per cent of respondents suggested that compulsory HIV antibody testing should be a precondition of treatment, but a similar proportion also thought that testing without consent should be accompanied by testing of hospital staff members. Small proportions of respondents commented on many different aspects of the current debate, including 5% of respondents who disagreed with compulsory HIV antibody testing because it was seen to infringe on patient rights.

**Discussion**

In this study, we have attempted to define the attitudes of the most senior medical practitioners in Western Australia to certain key issues central to the current debate on testing for HIV infection. The interest in and importance of these matters are attested to by the high response rate (78%) that we received. Moreover, when taken in conjunction with appended comments, this study suggests that there is considerable frustration in the medical profession at large that its viewpoint has not been adequately canvassed and accepted in the formulation of policies and practices for dealing with this major public health problem. Finally, the high response rate lends great weight to the importance of these results.

One of the most contentious issues of HIV testing is the necessity or otherwise of obtaining specific, informed consent from a patient when performing a test for HIV infection. 1-13 Many public authorities share the view espoused in the Commonwealth Department of Community Services and Health's policy 4 that specific, informed consent should always be obtained. On the other hand, others have argued that consent may be taken as implied when a patient consults a doctor. Furthermore, there is evidence that requiring informed consent may actually be counterproductive. First, refusal to give consent is associated with an increased risk of infection. 4 Secondly, unnecessary distress may be engendered in patients who are being tested. 11

It is quite clear from our study that the majority of senior medical practitioners do not believe that specific, informed consent should always be required. This belief prevailed in all specialties of medical practice including general practice and among the staff members of all the teaching hospitals. The somewhat higher proportion of general practitioners compared with specialists who thought that consent should be obtained, possibly may be related to the limited responsibility for continuing care generally exercised by specialists. No significant differences were found among the various specialist categories, contrary to an expectation that surgeons might be more inclined to test patients without obtaining consent than would other groups of specialists. Furthermore, views were not influenced by experience as there was no difference between those who had or had not ordered HIV antibody tests.

Our study supports the principles of the policy discussion paper of the Commonwealth Department of Community Services and Health 4 that health providers have a right to a protected working environment. Our results offer some guidance on measures regarded by medical practitioners as capable of conferring such protection. In particular, a large proportion of practitioners supports compulsory HIV antibody testing both before elective surgery and after emergency surgery, although many would limit this to patients at high risk of infection. It is likely that as the prevalence of HIV infection in the community increases, a greater proportion of doctors would favour compulsory testing of all patients. Comments noted in relation to this question highlighted the dilemma perceived in balancing the rights of the individual against the interest of the wider community. 13 Many respondents questioned why there is an apparent reluctance to apply to this condition public health measures that are effective in the control of other infectious diseases.

The greatest indecision was evident in response to the issue of whether to breach patient confidentiality in the specific circumstance where sexual partners were at risk because of a patient's refusal to disclose his or her state of infectivity. 14-18 Even so, the majority (66%) of practitioners would disclose information under certain circumstances. However, 24% of doctors were undecided as to what their response would be. This partly reflects uncertainty over the legal consequences of such a breach, for many individuals wrote an annotation to this effect. The legal consequences of breaking confidentiality have not been tested in a WA court. Legal concerns are not limited to the possibility of personal damage claims by patients but extend to standards of professional behaviour that may be assessed by medical registration boards and other statutory authorities. 19 Perhaps not surprisingly, an association was found between the lack of a perceived need to obtain consent, support for compulsory testing and a willingness to inform sexual partners.

In the policy discussion paper of the Commonwealth Department of Community Services and Health 4 considerable importance is attached to the necessity for obtaining the cooperation of infected and at-risk individuals in the control of this disease. Thus far, however, the views of the medical profession, whose cooperation and assistance are necessary for the control of HIV transmission, have not been given similar importance. We have shown that the majority opinion of senior members of the medical profession is that specific, informed consent should not always be required, that there is great support for compulsory testing, and that confidentiality may be broken under certain circumstances. The nature of medical practice is to synthesise information and to make judgements which balance many, often competing, interests. This survey demonstrates...
that senior members of the profession do not accept that issues relating to HIV infection are fundamentally different from those pertaining to other serious diseases. There is an urgent need to remove the significant legal uncertainties constraining medical practitioners in the management of patients with HIV infection.

References
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