FREQUENTLY ASKED QUESTIONS

TOPIC: Guidelines for Medical Health Officers: Approach to persons with HIV/AIDS who may pose a risk of harm to others

1. What is the purpose of these guidelines?

These guidelines are designed to assist Medical Health Officers (MHO) in situations where a person poses a risk to others because they are unable or refuse to act to prevent transmission of HIV. They are meant to help public health officials prevent HIV transmission.

2. Do these guidelines represent a new approach or change to current practice?

These guidelines do not represent a new approach or change to current MHO practice, but rather document the approach that is currently used by MHO in British Columbia to approach situations where a person with HIV poses a risk to others. These situations are not new and have occurred periodically since the 1990's, when an earlier version of these guidelines was first created. These guidelines also include references to the current *Public Health Act* which replaced the *Health Act* in March 2009. The process to revise these guidelines and develop this current version was initiated in 2006.

3. How often would a Medical Health Officer use these guidelines?

Situations where an MHO needs to intervene with an individual infected with HIV who poses a risk of transmission of HIV to others (and is unwilling or unable to act to prevent transmission of HIV) occur rarely. Actions taken by MHO in these situations are a minor – but important – part of overall strategies for HIV prevention and control.

4. How were these guidelines developed?

These guidelines were developed by Medical Health Officers, public health nurses and other representatives from Health Authorities and the Population and Public Health division of the Ministry of Health Services who have experience working in public health, with HIV prevention programs, or with people who are HIV positive. These guidelines update those developed in 1993, and considered guidelines from other jurisdictions and recommendations by other groups such as recommendations from an expert working group convened by the Federal/Provincial/Territorial Advisory Committee on HIV/AIDS, and the Canadian Legal HIV/AIDS Network.

5. Do these guidelines apply to other infectious diseases?

The general principles and the public health legislation on which these guidelines are based apply to any communicable disease where an individual may pose a risk of harm to others through transmission of the infection, such as tuberculosis or syphilis. As such elements of the framework are currently routinely used by MHO for other communicable diseases where relevant. A guideline specific to HIV has been established due to the need to consider information that is specific to HIV, such as the degree of risk associated with different behaviours and the consideration of viral load as a factor when assessing risk to others.

6. How do these guidelines compare with similar guidelines in other jurisdictions?

Some jurisdictions in Canada have similar guidelines, and others are working on developing them. The best known example of a similar guideline comes from the Calgary Health Region (CHR; "Management of Unwilling or Unable Persons with HIV" 2003). The BC guidelines incorporate many of the same elements as the CHR guidelines (i.e., principles, values and definitions) although they have been adapted based on differences in BC legislation.

7. What principles and values inform the guidelines?

- Prevention is the primary objective.
- The "least intrusive, most effective" intervention should be followed.
- Public health interventions must balance the rights of the individual against the duty to protect the public
- The most effective measures for preventing HIV transmission within the population include voluntary testing, counseling, education, and health promotion programs.
- Measures that punish individuals to try and prevent the spread of HIV create stigma and discourage participation in voluntary programs for HIV prevention, such as testing or partner notification.
- HIV prevention strategies adopted in partnership with physicians, other health care providers, and community groups, are most likely to succeed.
- All members of the public need to understand how HIV is spread, and how to protect themselves and others.
- Responses by public health should be proportional to the risk of transmission.
- Due process and the Charter of Rights and Freedoms must be respected.

8. How do these guidelines incorporate Charter rights?

Charter Rights and Freedoms are respected by the *Public Health Act* through:

- The inclusion of voluntary measures on behalf of the individual;
- The ability to have orders reconsidered, reviewed, and reassessed; and
- Use of the courts to impose penalties and for proceedings regarding applications for injunctions and detentions.

9. What resources are available to persons who decide that they would like counsel to represent them when interacting with an MHO?

Public health legislation outlines what a person can do in response to actions taken by an MHO, and these would be communicated when any orders are issued by an MHO. At any point, a person has the right to involve legal counsel when they are interacting with MHOs, through their own means or through legal assistance services.

10. The guidelines are not prescriptive, but offer guidance to MHO. How will an MHO determine what option for intervention is most appropriate?

Every situation involving a person with HIV who may be putting others at risk of HIV infection will be different, and the actions taken by a MHO will be tailored to the unique circumstances of each case according to his or her clinical judgment. This may include, for example, considering the likelihood that the individual may comply with a potential intervention.

11. The guidelines state that if at any step or level the MHO is satisfied that the person is not putting, or is no longer likely to put, others unknowingly at risk with his or her

behaviour, further intervention may not be warranted. When would it be decided that follow-up for a person is no longer needed?

Again, this will be at the discretion of the MHO based on the unique situation. Some people may require longer follow-up than others; however, once an MHO is satisfied that a person no longer poses a risk of transmission to others, further follow-up would not be needed.

12. These guidelines speak of a physician's role in reporting to an MHO any person who may pose a risk of HIV transmission to others. Do other health professionals (such as nurses) or other professionals (such as social workers or outreach workers) have a similar responsibility to report suspected cases to MHOs?

Section 10 of the *Public Health Act* states that health professionals (as regulated under the *Health Professions Act*, including nurses) and people responsible for hospitals and medical laboratories must report people who are or may be infected with HIV to an MHO. Therefore, the reporting aspect of these guidelines applies to all health professionals.

Those outside the health system, such as social workers and outreach workers, are not required to report; however, if they do, these reports may be investigated by MHOs.

13. If people can be ordered to take an HIV antibody test, could they also be ordered to complete other HIV related testing, such as CD4 and viral load counts, in order to assess risk?

Yes. An MHO can request examinations, including HIV testing, CD4+ or viral load counts, if this information is needed assess their risk of transmitting the infection to others. For example, tests that show an individual consistently has undetectable viral loads may provide evidence of lower potential risk of transmission to others.

14. The guidelines state that disease stage and management need to be considered when assessing risk, as individuals with low or undetectable viral loads are less infectious. However this does not eliminate the risk as viral loads can fluctuate depending on a number of factors. Is this acceptable?

Having an undetectable viral load does reduce an HIV positive person's ability to pass the infection to others, and an individual with consistently undetectable viral loads will be at lower risk to others. Viral loads can change over time; however, this is only one part of what is considered by MHOs in an overall assessment of risk of transmission (along with things such as disclosure, sexual or injection-related behaviours, and what situations risk behaviours occur). Decisions about interventions are based on this overall assessment of risk of HIV transmission and not solely on viral load.

15. What happens if an MHO is unable to contact a person to inform them of their intention to give information without their consent?

An MHO will try to contact a person to inform them of their plan to disclose information about them to a third party (for example, by a letter). The guidelines do not specify what a "reasonable attempt" to inform is. This will be at the discretion of the MHO, will vary from case to case, and needs to be balanced against the potential risk of transmission to a third party.

16. How are threats of violence, such as pimp to sex worker violence, or patron ("john") to sex worker violence considered in these guidelines?

The circumstances of each case will be different; however, in general terms the guidelines highlight the importance of considering factors such as threats of violence during the assessment process. Domestic violence and disclosing HIV infection in small populations are described specifically as factors to consider in this context, as well as other factors such as pimp or john to sex worker violence.

17. Are there ways an MHO could inform a group of people or population about a person who may pose a risk of harm to them while respecting privacy?

An MHO will consider how best to balance their duty to warn about public health risks, the privacy rights of the person with HIV and the potential for public warnings to contribute to HIV stigma and/or lead to decreased HIV testing. A public release of information about a person who poses a risk of HIV transmission to others would be a very rare event and would occur after a full discussion with the Provincial Health Officer and legal counsel. A more likely scenario is that an MHO may issue a media release or send prevention messages to a particular population at risk that does not identify the individual or raise unnecessary fear; for example, a media release that emphasizes safer sex.

18. Once it is confirmed that a person is HIV-positive, is the person going to be pressured or forced to be on HIV treatment?

No one can be forced to take treatment for HIV. A decision to start HIV treatment is made together with a clinician once all factors have been considered. Research has shown that HIV treatment can potentially reduce one's ability to transmit the virus, and should be considered when assessing risk. These guidelines are aligned with current practice to connect those diagnosed with HIV/AIDS to medical supports whenever possible. For example, an MHO may issue an order which requires a person with HIV who poses a risk of transmission to others to present to an HIV physician for appropriate care including treatment, among other requirements to reduce the risk of transmission to others.

19. Who will be monitoring MHO actions taken in relation these guidelines, and the outcome of these actions?

These guidelines describe the range of actions available to MHOs under public health legislation, and suggest a recommended approach to exercising them. These guidelines detail only one of the activities that are part of a MHO's day to day practice, which happens under the monitoring by chief MHOs and the Provincial Health Officer (PHO). In the end, MHOs are clinicians who will need to use their clinical judgment and exercise discretion in the application of these guidelines. Any concerns with regards to a MHO's response to a person with HIV/AIDS that is unable and/or refuses to act to prevent further transmission of the virus can be raised through existing complaint processes in regional health authorities, the office of the PHO or the College of Physicians and Surgeons of BC.

20. What are the advantages to a public health approach compared to legal proceedings under the Criminal Code? What evidence is there that the public health approach is better?

A public health approach aims to prevent HIV infection and thereby better the health of the larger population, has more options for intervention (both voluntary and involuntary), and maintains confidentiality to a greater extent. Criminal proceedings are aimed at punishment for activities that put others at risk. At a community level, public health measures are far less likely to stigmatize people with HIV and to drive HIV "underground" (i.e., where people who may have HIV do not come forward for testing, treatment and support). Public health laws are also able to be flexible so that actions can best meet the needs of each individual with HIV who may pose a risk of HIV transmission to others.

We have been unable to find any reports evaluating the impact of a public health based approach to persons with HIV who pose a risk of transmission to others. We do know this approach can lead to behaviour changes that would reduce the risk of transmission to others. Adopting a public health based enforcement approach to these people is recommended by many agencies including the Canadian HIV/AIDS Legal Network and UNAIDS.

21. If a person who is putting someone else at risk of HIV infection can be charged under the criminal law, are MHOs required to turn someone they know is putting someone else at risk of HIV infection over for criminal prosecution?

No. MHOs must meet ethical standards, such as beneficence (to do good) and maleficence (not to do harm) applicable to all medical doctors licensed by the College of Physicians and Surgeons of BC, and to protect the health of the population using powers laid out in the *Public Health Act*. It should not be necessary for an MHO to refer a matter to the police for criminal investigation as a way to protect the public health from the transmission of HIV, given the large range of actions available to MHO under BC's public health laws. In the unlikely event that an MHO thinks a referral to the police may be necessary, consultation with the Provincial Health Officer and legal counsel is recommended before continuing.

22. Once a third party has been warned that they have been placed at risk of contracting HIV do they then have the right to bring their case to police for criminal investigation? If they decide to go this route what role does the MHO play in the investigation?

At any time, a person who believes they have been placed at risk of HIV infection can go to police to initiate a criminal investigation. This initiates a separate process under criminal law, which is different from the process described in these guidelines that cover MHO powers under the *Public Health Act.* An MHO would not participate in a criminal investigation, but if a criminal investigation leads to a subpoena for information held by the MHO or his/her delegate, this may lead to release of public health records.

23. Has there been consultation or communication with the Solicitor General's office or law enforcement agencies about these guidelines?

The guidelines do not comment on disclosure as it relates to potential charges of assault, aggravated assault, and other criminal charges, which are determined by the *Criminal Code of Canada* and relevant case law. These guidelines are based on public health legislation and focus on actions that are available under the BC *Public Health Act*, and consultation with law enforcement agencies in their development was not needed. However, communication with these agencies about the guidelines is planned.

24. What opportunity is there for feedback on these guidelines?

As with all provincial public health guidelines for communicable diseases, these guidelines will be reviewed on an ongoing basis and revised accordingly. Feedback from community agencies will be considered in addition to factors such as changes to legislation and consideration of MHO experience in applying the guidelines.