

RESPONSE FROM ROYAL COLLEGE OF GENERAL
PRACTITIONERS (SCOTLAND)

Wednesday, 18 May 2005

Scottish Executive
Justice Department
Area 1W
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Consultation: Blood Testing following Criminal Incidents where there is a risk of Infection

Thank you for seeking our views on the key issues for GPs in terms of Cathy Jamieson, Minister for Justice's, proposal to introduce mandatory blood-testing in circumstance where there is believed to be a risk of infection.

We are grateful to the Sex, Drug and HIV Task Group of the Royal College of General Practitioners for their input, which has helped to form the basis of our response.

We have responded to the questions asked but we do have major concerns about this proposal. We oppose the legislation in the first place as it has potential to significantly impair the doctor-patient relationship, especially with regard to testing for blood-borne viruses. It is essential that we encourage people at risk to test for these infections and that we resist any measure which will deter people from testing.

The questions in the consultation actually do not allow for any opposition to the principle of the legislation, but we have nonetheless attempted to answer them fairly

1. Do you agree that any legislation giving rights to individuals to apply for information about blood-borne viral infections with which they may have been infected, should apply universally? Or should the protection be restricted to particular groups of people? If the latter, what groups should it be restricted to and what would be the justification for this?

If such legislation were enacted then we can see no reason why it should apply only to Police Officers. There are various other professionals who could also be seen to be at risk, particularly health-care workers and members of other emergency services.

2. Do you agree that mandatory blood testing should only be ordered by a sheriff?

Although we have grave concerns about this proposal in the first place, if it were enacted mandatory blood testing should only be possible through a sheriff. We also believe that it has serious potential to damage the doctor-patient relationship and would be particularly concerned if the patient's own GP were involved in any way - such as the release of medical records (even if with apparent consent). This could lead to people not presenting for testing, or failing to inform their GP of their status, for fear of subsequent disclosure. This has been clearly seen previously where the possibility of disclosure of medical information to insurance companies discouraged patients from asking their GPs to carry out HIV testing.

Re-PCOA

3. Do you agree that mandatory blood testing should not be applied to anyone who has committed no crime but may *accidentally* have exposed another person to a prescribed blood-borne viral infection, so that such people should be free to decline to give a blood sample?

Yes we agree with this. However we also believe that the risk of transmission of HIV and Hepatitis C in such incidents, for example through biting, is so small as to make the legislation an overreaction in the first place. There is an effective vaccination against Hepatitis B which is more easily transmitted – all police officers should be immunized and tested for their response to this.

4. Do you agree with the principle of mandatory blood testing for those who commit serious physical or sexual assaults and thereby put the victim of the crime at risk of infection with a prescribed blood-borne virus?
5. Do you agree that the provisions for mandatory testing should extend to any type of case where the applicant may have been exposed to a prescribed blood-borne viral infection as a result of a crime being committed by the other party?

Answer to question 4 & 5.

Even serious physical assaults are unlikely to result in transmission of HIV or Hepatitis C. Hepatitis B is more infectious but there can be good protection from both immunization or post-exposure immunization which would need to be given long before the result of any test on an assailant became available (the same also applies to PEP for HIV). If this legislation were limited to the victims of serious sexual assault then the case for mandatory testing may be stronger.

6. Do you think there should be any variation in these provisions for cases where the suspect is under age?

Testing of under age people would seem to be absolutely out of the question, on both ethical and moral grounds.

7. Do you agree that persons at risk of infection from a criminal incident should be entitled to seek information from the Procurator Fiscal about the prescribed blood-borne viral infection risks they may face?

As before we have grave concerns about the Procurator Fiscal being able to obtain medical records from the GP in these circumstances. As well as deterring patients from coming forward for testing it could also increase cases where such information is obtained but not recorded in medical records at the patient's request.

8. Do you agree with the proposed criteria for mandatory testing orders?

No – there are absolutely no grounds listed for what constitutes a reasonable suspicion that an individual could be infected with a blood borne virus. Years of experience as practicing GPs have shown us that suspicions can be totally unfounded and are often based on prejudice or ignorance. It seems likely that in these difficult situations unfounded ideas are likely to surface, leading to many people who have never been at risk being forced to be tested.

9. Do you have any comments on the proposed civil application process?

No comment given

10. Do you agree that information provided from mandatory testing orders should be for the sole purpose of benefiting the applicant, and should not be retained by the police?

No comment given

11. Do you agree that the costs of the testing process should fall to the applicant?

No comment given

12. Should some support organisations be empowered to act on an applicant's behalf and to provide support and advice as appropriate?

If this legislation were to go ahead, it would be essential that all individuals affected, both applicants and suspects, had access to informed advice and support.

I hope that you find these comments helpful.

Yours sincerely



Dr Jenny Bennison
Deputy Chair (Policy)

JMB MS RW SLET