AIDS Law

When known HIV exposure occurs

June 1, 1994 By Fred Bimbler

PWAs may be found financially responsible for exposing their partners if they do not reveal their HIV status prior to sex and if their partners become infected by the exposure. Applying New Jersey state law, Federal District Court Judge H. Lee Sarokin ruled in *J.B. v. Bohonovsky*, a case brought in federal court because the parties are from different states, that there is a right to sue for intentional exposure to HIV infection. The Court found that to prove liability, the plaintiff -- the person suing -- must show 1. that the defendant "knowingly and recklessly" exposed the plaintiff to HIV and 2. that the plaintiff became infected by that exposure.

When applying this test, the Court found against J.B. (whom we shall refer to as Michael). Michael sued the estate of his deceased lover, J.K. (whom we shall refer to as Peter), on this theory because early in their four-year relationship Peter became HIV positive and developed AIDS, all the while hiding it from Michael. Michael learned of Peter's health status only six weeks before Peter died, two months after the last time they had sex. The Court found that Peter, therefore, "knowingly and recklessly" exposed Michael to HIV, satisfying the first part of its test of liability.

However the Court has denied Michael any money from Peter's estate because Michael failed the second part of the Court's test -- more than three years later, Michael is still HIV negative. And in the Court's opinion, Michael is not likely to become HIV positive from his sexual relationship with Peter. Thus the Court found that Michael sustained no injury for which he could be compensated.

Michael has filed an appeal. According to his attorney, Steven Polansky, Michael "should be entitled to some damages regardless of noninfection because the wrongful action is one of affirmative wrongdoing. Exposing someone to AIDS without infecting him is no different than trying to run him down in a car without hitting him."

New York: As in the movie *Philadelphia*, the estate of Geoffrey Bowers, the attorney upon which Tom Hanks' character is loosely based, recently was awarded $500,000 in damages from his previous employer.

Maryland: State officials may have jumped the gun when they pulled over, arrested and imposed an AIDS test on a man suspected of being HIV positive in August 1992. The man filed suit against five officials who had a hand in forcefully subjecting him to a HIV

test. According to the man, he was contacted by a Maryland AIDS agency several times over the course of a few months because the agency discovered that one of his former sex partners had tested positive for HIV. When he failed to respond, the man alleges, an arrest warrant was sought. Incidentally the man discovered he was HIV positive as a result of this forced test. He is suing the five Maryland officials for $1.5 million.

Oregon: On the criminal front, Oregon has used its general criminal statues to prosecute people who have sex with the intent of transmitting HIV. Timothy Hinkhouse, 23, recently was convicted of more than 30 counts of attempted murder, reckless endangerment and attempted assault for refusing to use a condom during sex with three women partners after he knew that he was HIV positive.

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