Bad Bio-Rad

April 1, 2002 By Tom Beer

Who owns HIV? You've probably never asked yourself this bizarre question. But it lies at the heart of a new controversy over rapid HIV testing. Several North American manufacturers are eager to release state-of-the-art tests that can detect telltale HIV-antibody proteins in blood or saliva -- *within minutes*. But they can't, because the "owner" of HIV-2 -- a less virulent form of the virus that now accounts for a mere 200 cases in the U.S. -- won't let them.

HIV-1, the leading strain here, is in fact owned by the National Institutes of Health (NIH) and France's Institut Pasteur, which as codiscoverers of the virus in 1984 were awarded a joint patent. Anyone who wants to test or study HIV-1 has to get permission and pay fees. (The NIH rakes in nearly $30 million a year from all its patents.) The agency has readily granted licensing rights for HIV-1. But Bio-Rad, the biotech firm in Hercules, California, which controls the patent for HIV-2, has turned down all comers.

Prevention professionals are deeply dismayed by this development, for the benefits of immediate notification of HIV-antibody test results are clear. Not only would it save those recently at risk from days or weeks of hand-wringing anxiety, but the estimated 70,000 people who test each year at public clinics but never return for their results would know their status right away, potentially averting thousands of new infections. "This appears to be a situation where perhaps public-health interests and business interests collide," said Bernard Branson, MD, of the Division of HIV/AIDS Prevention at the Centers for Disease Control and Prevention.

Gregg Gonsalves, director of Treatment and Prevention Advocacy at GMHC, was more blunt. In January, he wrote to Bio-Rad, threatening to make the company's "intransigence" the centerpiece of a "worldwide campaign to foster the development of new, simpler and less expensive" tests.

But nobody expects Bio-Rad to license the U.S. rights to HIV-2 any time soon. The company, along with three partner firms (Abbott, Chiron and Johnson & Johnson), dominate the $20 million market for the old-school lab-based tests, so it has little incentive to encourage competition from a speedier test. (A spokesperson for Bio-Rad, whose rapid test is unavailable in the U.S., declined to speak to *POZ* on the record.) Meanwhile, smaller companies are reluctant to market a test that, with HIV-2 infections rising, detects only HIV-1, fearing it would soon be obsolete. The irony of this whole affair does not escape HIVers: After all, Bio-Rad is clinging to its HIV, while they would be happy to part with their own.

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