Legal Eye

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An HIV positive friend is having unprotected sex without disclosing to partners. Do I have a legal or moral obligation to stop him?
—Is Intervention Divine?

Dear Divine—
You have no legal obligation to control your friend's conduct or warn others of the danger to which they are exposed. Even if your state deems HIV exposure a crime, the law doesn't deputize you to report it. Any duty to warn third persons applies only to special legal relationships (e.g., doctor-patient).

Although state law varies, it's doubtful you'd be successfully sued for disclosing your friend's status to known partners. The long-term impact of partner notification, however, is unclear; even the Centers for Disease Control and Prevention, which promotes it, has no studies showing it prevents HIV's spread.

Your moral obligation? I'm not an ethicist, but ultimately condoms, not disclosures, interrupt transmission. Outing your friend or getting him jailed may halt his current trysts, but it won't stop the cause of most transmissions: avoiding condoms and hinging self-protection on whether a partner claims to be negative. All parties to unprotected sex are responsible for spreading HIV.

I hope you'll urge your friend to change his unsafe ways, but I don't buy loaded-gun analogies. Only superheroes can stop fired bullets; every person can protect himself against HIV. Condoms are a drag; relationships have power imbalances; and user-controlled prevention methods (e.g., microbicides) are sorely needed. But don't we have a responsibility to use and promote condoms—in schools, jails, bedrooms and backrooms? That, plus accurate sex ed and treatment for the drug abuse and self-hate that fuel dangerous behavior may be a tall order, but what's the alternative?

Catherine Hanssens, JD, founded the Center for HIV Law and Policy. Her column offers general guidance and shouldn't substitute for a lawyer's counsel. Send your own legal queries to law@poz.com.

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