Legal Eye

February 1, 2005 By Catherine Hanssens

I’m HIV positive and have been offered a job. The company wants me to complete a medical form first. Must I disclose my status? Can I lie?
—Anonymous

Dear Anonymous,

Even if it weren’t a commandment, I’d tell you honesty’s the best policy. That, however, differs from volunteering information unnecessarily. Thanks to the Americans with Disabilities Act, employers can’t snoop into your health history unless the info relates directly to your performance ability (e.g., asking if you can lift a parcel for a UPS position). But once you have an offer, an employer can require health-related answers before starting, as long as the requirement applies to all position applicants. If a form asks whether you take meds and you are on HAART, you must answer yes. However, if asked whether you have “AIDS” and you are HIV positive, period, then you can answer an honest no.

Unless your health affects your performance ability, your answers can’t cancel an offer. Employers must also separate such info from your regular personnel file—and keep it confidential. Once you’re an employee, medical questions unrelated to the position are off-limits.

A warning to hair- and health-care workers: Outdated state laws may deem your HIV relevant to working safely. It isn’t, of course, but if your offer comes from a hospital, hair salon or any field requiring state licensing, consult a lawyer familiar with HIV and local law before disclosing. To find a lawyer, try www.abanet.org/AIDS/publications/aidsdirectory.pdf, a national directory of free HIV legal services, published by the American Bar Association’s AIDS Coordination Project; or try your local legal services office, a local AIDS service organization, or a national or legal agency such as Lambda Legal or the ACLU.

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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