

Article 78

The Case of Dominique: A Client's HIV Disclosure and Related Risks

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Abstract

Receiving an HIV positive diagnosis used to be an almost certain death sentence. In recent years, there have been many advances in prevention, detection, and treatment of HIV. Treatments have become more effective at prolonging life, although HIV remains a progressive, incurable disease. Even with the revolutionary advances in the past 30 years, there are many ethical considerations and issues that must be considered when a client makes a disclosure of being HIV positive during a counseling session. Individuals with HIV face many challenges: initial diagnosis, treatment, disclosure of HIV status with others, relationship issues, and adhering to medical treatment. The Duquesne University Master's Ethics team applied a HIV-specific decision-making model to the case study of Dominique to address the ethical issues presented in the case. This case also presents complexities of counseling a professional athlete and considerations concerning social media. The ethical and legal concerns of duty to warn and duty to protect with an HIV positive client are discussed. The team researched current literature, applied the 2014 ACA code of ethics, and reviewed appropriate legal codes through the application of the HIV-specific decision making model.

The counseling relationship, with its high value on confidentiality, creates a safe and therapeutic environment for clients to share sensitive information. These disclosures often create ethical dilemmas, as counselors must consider how to handle the information, what options exist for resolution, and the implications of different conclusions. When these situations arise, ethical decision-making models provide a framework to structure a course of action and act in the best interest of all parties involved. The process of making ethical decisions does not always follow neatly in a linear, step-by-step fashion (Corey, Corey, & Callanan, 2011). Despite the murky waters such dilemmas create, ethical codes, decision-making models, and examining the professional literature can help clear the way for counselors to make informed, moral decisions.

Case Scenario

Dominique is a 28-year-old male and the star player of a professional football team. He was recently arrested on drunken driving charges, and his team is requiring that he complete mandatory counseling in order to be eligible to continue playing in the season. As part of the referral, it is noted that several teammates have observed that Dominique no longer cares for his physical appearance, as he once did, and that he is often “moody.” In his third counseling session, Dominique reveals that he was diagnosed with AIDS 3 years ago and feels that his life is harder to deal with because of the disease. He reports that he frequently takes medication “holidays,” because the side effects impact his performance on the field. Thus far, through a series of payments to the team doctor, Dominique has been able to hide his diagnosis from both the team and the public. During a session, Dominique discloses that he has been in a relationship for two weeks. He has not informed his girlfriend, Michelle, of his diagnosis, because he believes she will reject him. He states that if she rejects him, he will kill her. Michelle and Dominique have come close to being intimate a number of times, and Dominique is considering moving forward in the relationship without telling her. Dominique reports that he has had many previous sexual encounters with other partners without informing them of his diagnosis. The day after the third session, the counselor logs into his/her Instagram account and views the popular page. Two of Dominique’s pictures have made the Popular feed, and the pictures, along with his notes, display him showing off guns and knives and comparing himself to Shakespeare’s Othello.

Choosing an Ethical Decision-Making Model

The case of Dominique requires consideration of multiple ethical concerns. The American Counseling Association (ACA) *Code of Ethics* indicates the importance of using a credible model when confronted with complex ethical dilemmas (ACA, 2014). Considering the many aspects surrounding Dominique’s disclosure of his HIV diagnosis, the model for ethical dilemmas in HIV-related psychotherapy as presented by Barret, Kitchener, and Burris (2001) will be applied. The model outlines 8 steps for decision making: 1) review personal response to the case, 2) review the facts, 3) conceptualize an initial plan, 4) consult the ethics code as well as five foundational principles, 5) examine the legal consequences of initial plan, 6) identify and assess options to refine initial plan,

7) choose a course of action, and 8) implement the course of action and evaluate the outcomes (Anderson & Barret, 2001). This model provides us with a framework of how to apply the ACA code of ethics to this particular case.

Identify Personal Response to Case

Reflecting on one's personal feelings regarding the case enables a counselor to uncover any personal biases that may exist regarding the client, in this case, Dominique. Recognizing how difficult it must be to keep such information secret and the implications of revealing his HIV diagnosis to his teammates causes us to empathize with him. It must be hard to decide between his overall health and his performance on the field. We have an overwhelming concern for Dominique with regard to hiding his diagnosis, taking medication holidays, and his seeming apathy for his well-being.

Overall, the first impulse is to assess the lethality of the situation including the potential dangers that exist: a recent DUI arrest, health implications of "medication holidays," paying off the team doctor, potential harm to his girlfriend, and potential harm to self. Thinking through these things increases our potential concern about the implications of the counselor's ultimate decision. What is the personal liability for us, as the counselor, if Michelle rejects his honest disclosure of his HIV status, and if Dominique follows through on his threat to kill her? What about our liability if he does not inform her before they are intimate—resulting in her contracting HIV?

As women, identifying with Dominique's girlfriend, Michelle, comes naturally, resulting in our desire to warn Michelle of the potential risks of both Dominique's HIV status and his potential violent behavior towards her. This gut reaction and personal bias to protect Michelle is based upon the team's personal desire for a warning if we were in a relationship that presented these risks. If these feelings remain, it could impede our ability to act responsibly towards both Michelle and Dominique. The presenting client, Dominique, lacks a strong support system and needs our support.

Exploring bias further, the team finds judgment mixed with concern about Dominique's irresponsible behaviors. Because of the difficulties of living with an HIV positive diagnosis and his status as a professional athlete, it is in Dominique's interest that we seriously consider the implications of breaking confidence. Yet, our desire to protect Michelle still exists. We must keep all of these concerns in mind as we review the facts of the case.

Review the Facts of the Case

Dominique indicates that he received an AIDS diagnosis 3 years ago and currently takes "medication holidays" to avoid the side effects that affect his job performance. He is a star player on a professional football team who has come to counseling as a result of a decision by his team after his DUI arrest. At this point, it seems that his diagnosis remains a secret from everyone in his life, in part by his paying off the football team doctor.

There is the presence of risk-taking behavior as evidenced by his recent arrest and previous sexual encounters that place his partners at risk. He has threatened to kill his girlfriend if she rejects him, along with conceptualizing himself as Othello in an Instagram photo. Teammates noticed a decline in Dominique's physical appearance along with moodiness. Dominique mentioned in previous sessions that his life is harder to deal

with because of the disease. A lot of these “facts” come from self-reports; therefore, exploration to ensure that they are factual in nature is important.

Conceptualize an Initial Plan Based on Clinical Issues

Overall, Dominique appears to be very much alone in his HIV diagnosis. There is no information provided to conclude that he has disclosed his diagnosis with anyone. His risky behaviors—medication holidays, previous sexual encounters, and threat to Michelle if she rejects him—give the impression that he is afraid to disclose his HIV status to anyone because of the possible implications. Our first response would be to identify ways to help him find healthier coping mechanisms to deal with his diagnosis and understand the importance of taking medication to reduce the amount of the virus in his blood, his viral load. For 3 years, he has continued playing football, found ways to develop romantic relationships, and created strategies to deal with the side effects of his medication. While we may not personally agree with some of his decisions, recognizing and building upon his current resilience has the potential of helping him to deal with his diagnosis. By recognizing his potential lack of a support system, strengthening the therapeutic relationship through empathizing with him in his feelings of loneliness seems to be important.

Once we have strengthened our alliance, we would discuss the requirements of his mandatory counseling by clarifying what he needs to do to move forward, the requirements of his employers, and his expectations for his counselor. Clarifying confidentiality, creating a safe space, and identifying potential limits with regard to dangerousness are important in moving forward with Dominique. Openly communicating and abiding by ethical standards can create a model for Dominique of the effort and commitment necessary to maintain a principled relationship (Herring, 2001). Dominique needs to understand what the limits are to his counselor’s ability to maintain confidence with respect to the nature of the information he has disclosed especially since he is a mandated client.

The next step would be to assess the current threats and engage Dominique in the development of a safety plan to reduce the risk of harm, both to himself and to others. Because disclosing HIV status to a potential partner can have serious emotional consequences, we would offer to have Michelle come in with Dominique for a session, so that he could disclose his diagnosis to her with his counselor’s support (Alghazo, Upton, & Cioe, 2011). An important component of the plan would be helping Dominique to create a support system of people with whom he can be honest about his HIV diagnosis. Helping him find social support has the potential to decrease any depression he may be experiencing, increase his quality of life, and even clinical outcomes such as reducing his viral count (Hurt, Wrubel, Branstrom, Acree, & Moskowitz, 2012).

It is our hope that Dominique would agree to a safety plan that would not require breaking confidence. At this point, we would reiterate that if we (Dominique and his counselor) are not able to work together to follow this plan, confidentiality may have to be broken to ensure safety. Our ultimate focus would be to help Dominique in being comfortable with his diagnosis and to create a healthy plan for moving forward.

Consult the Ethics Code

This case challenges the counselor to explore the harm of breaking confidence and the potential consequences of not breaking confidence. Involuntary disclosure can put Dominique at risk for significant losses in his life including Michelle, his teammates, family, and friends as well as the loss of the counseling relationship (Huprich, Fuller, & Schneider, 2003; Stanard & Hazler, 1995). Breaching confidence could stop the spread of HIV by protecting Michelle from potentially contracting the virus, and also from the threat of death. By applying the ethics code and fundamental ethical principles, we hope to uncover a responsible, moral course of action. As American Counseling Association members, the team also would be able to contact the ACA and receive a free ethics consultation from the ACA Ethics and Professional Standards Department either by email or phone (ACA, 2012).

ACA Ethics Code. According to the ACA code of ethics, the requirement that counselors keep information confidential “does not apply when disclosure is required to protect clients or identified others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed” (ACA, 2014, B.2.a, p. 7). Some important considerations are: the behaviors or threats which constitute “serious or foreseeable harm” and the predictability of violence (Costa & Altekruze, 1994). At this point, there has been no action on the part of the counselor to move forward on addressing Dominique’s threat to kill Michelle if she rejects him. That threat is contingent upon two things: 1) Dominique sharing his diagnosis (which he is unsure if he will do), and 2) her subsequent rejection of him.

According to the ACA Code of Ethics:

When clients disclose that they have a disease commonly known to be both communicable and life threatening, counselors may be justified in disclosing information to identifiable third parties, if the parties are known to be at serious and foreseeable risk of contracting the disease. Prior to making a disclosure, counselors assess the intent of clients to inform the third parties about their disease or to engage in any behaviors that may be harmful to an identifiable third party. (ACA, 2014, B.2.c, p. 7)

In the case of the HIV disclosure, breaching confidentiality is not based on threat of deliberate violence, but by the harm done through irresponsibility; however, the end result to the third party is essentially the same (Huprich et al., 2003). The ACA code additionally directs counselors to look to the law that governs their state concerning related disease disclosure (ACA, 2014, B.2.c, p. 7). At this point, the counselor knows that Dominique is considering moving forward in the relationship without telling Michelle. Even with this information, the counselor must balance this with the fact that “trust is the cornerstone of the counseling relationship” (ACA, 2014, p. 4). The ACA code makes clear that “counselors disclose information only with appropriate consent or with sound legal or ethical justification” (ACA, 2014, B.1.c., p. 7).

With regards to the Instagram photo, the ACA code gives us a framework by indicating that “counselors respect the privacy of their clients’ presence on social media unless given consent to view such information” (ACA, 2014, H.6.c., p. 18). The counselor does not appear to have Dominique’s consent to view any information he has posted on social media outlets. The fact that Dominique is a high profile client, and his

Instagram photo showed up on the counselors popular feed does not change the fact that the counselor does not have consent to view his posts on social media.

The ethics code reminds us that it is important to discuss the limits to confidentiality with mandated clients. “Counselors explain what type of information will be shared and with whom that information will be shared prior to the beginning of counseling” (ACA, 2014, A.2.e., p. 4). Dominique’s employer required he attend counseling services and may ask the counselor to share information regarding Dominique’s progress. The counselor needs to make sure that he/she has properly communicated this information with Dominique. Now that we have reflected upon the relevant parts of the Ethical Code, foundational professional ethical principles will help us determine how to respond.

Foundational Ethical Principles. Due to Dominique’s desire to keep information private, autonomy becomes one of the primary considerations. Breaching his confidence by disclosing his HIV status would compromise his ability to make his own choice (Alghazo et al., 2011). Valuing his autonomy respects the fact that he does not want to disclose the information to anyone. Anderson and Barret (2001) provided an important reminder that just because individuals have a right to hold their own opinions and actions does not mean they have a right to engage in activities which threaten others. Dominique could violate Michelle’s autonomy by not informing her of his HIV diagnosis before they are intimate.

The counselor needs to ensure that his or her actions are most beneficial to Dominique. When exploring beneficence, a balance must be struck between acting in the best interest of an individual client versus the welfare of others and society as a whole (Anderson & Barret, 2001; Alghazo et al, 2011; Kitchener, 1984; Stanard & Hazler, 1995). Based on the fragile relationships with people in his life, it is important to ensure that the counselor does not violate Dominique’s trust or autonomy by breaking confidence. At this point, the potential exists for the client to collaborate with the counselor to maintain control of his behavior (Costa & Altekruze, 1994).

The best course of action is one that will minimize the harm and maximize the benefits for all individuals (Huprich et al., 2010). The ethical principal of doing no harm fits with much of what we have considered regarding beneficence. There must be a balance between the harm that might occur to Dominique if we break confidence and also the harm to Michelle if we do not break confidence. All things considered, Kitchener (1984) suggested that if we must choose between harming someone and benefiting them or someone else, the stronger obligation would be to avoid harm.

Fidelity forces us to consider the power that trust and loyalty have within the counseling relationship. Along with the issues regarding breaking confidence, it is important for us to consider the implications of sharing with Dominique that we have seen his photo on Instagram. The photo is considered public information, based on the fact that he has posted it with the purpose of being accessed by anyone (Frankish, Ryan, & Harris, 2012). Kaplan, Wade, Conteh, and Martz (2011) reminded us that clients want to be in control of their disclosures and that visiting their social media sites may be seen as a violation of trust. While the photo showed up on the public feed, this is still an important consideration with regard to fidelity. If we directly bring it up in a session, Dominique could find this to be a violation of trust that impedes the therapeutic

relationship. If the therapeutic relationship is broken, the opportunity to influence behavior change in the future is eliminated (DiMarco & Zoline, 2004).

The last consideration relates to justice concerning whether we are treating Dominique fairly. Factoring in his status as a star professional football player, we want to make sure that this is not influencing how we treat Dominique as our client. It also means considering the discrimination he might face if he were to disclose his HIV status to his teammates (Stanard & Hazler, 1995). The impact of sharing his diagnosis with Michelle could also affect his ability to keep this information out of the public eye. The counselor must remember that Dominique's image is important to his livelihood.

Identify the Legal Issues

The legal issues involve concern for a lawsuit with regard to Dominique's HIV positive diagnosis and if his threats to harm Michelle are serious. Welfel (2013) reminded us that courts often can apply the duty to warn not just to situations where the counselor knows about an imminent threat, but also to the times a therapist should have known about the danger. In order to understand what applies to us, we will look to the law in the state where we live. In Pennsylvania, there is no written law governing the duty to warn or duty to protect. The issue was addressed by the Supreme Court of Pennsylvania in a 1998 decision of *Emerich v. Philadelphia Center for Human Development* giving importance to the duty to warn for mental health professionals. This is not necessarily true of all states, and responsible practitioners must be aware of the law in their state.

In *Emerich v. Philadelphia Center for Human Development* (1998), Justice Cappy wrote, as part of the majority opinion, that:

when the patient has communicated to the professional a specific and immediate threat of serious bodily injury against a specifically identified or readily identifiable third party, and when the professional determines that his patient presents a serious danger of violence to the third party, then the professional bears a duty to exercise reasonable care to protect by warning the third party against such danger.

This case sets up a duty to warn within the Commonwealth of Pennsylvania, but does not explicitly define the duty to protect. The court indicated that "a duty to warn is subsumed in this broader context of a duty to protect... we leave for another day the related issue of whether some broader duty to protect should be recognized in this Commonwealth" (*Emerich v. Philadelphia Center for Human Development*, 1998). The court also indicated that a third party should be warned of "an immediate, known, and serious risk of potentially lethal harm." (*Emerich v. Philadelphia Center for Human Development*, 1998).

The next question becomes how the national and state law regarding confidentiality of records might apply to the HIV diagnosis. Pennsylvania's Act 148, named the Confidentiality of HIV-related Information Act, applies confidentiality to HIV-related information with some permissible disclosures without consent including partner notification (AIDS Law Project of Pennsylvania, 2014). It also sets up an obligation for health care, social service providers, and clinical labs to report the names of people with HIV/AIDS to the local health department, which are required to keep HIV records confidential (AIDS Law Project of Pennsylvania, 2014). This law limits our ability to follow through on a duty to warn Michelle of Dominique's HIV status, if we

felt it necessary, although it does give the opportunity to contact the health department if we wanted to take some action.

With regard to the photo posted on Instagram, Dominique has not communicated this information directly to us in a counseling session or given us permission to view his social media postings. It showed up on the popular feed, which is not a component of the special relationship that exists between a client and counselor. We are really not sure about our liability with this information. His star status on a professional football team increases the likelihood of running across information concerning our client on social media or in the news. Even if our informed consent includes a statement that the counselor will not connect with or actively seek out information on clients on social media, this creates a sticky situation. Consulting an attorney concerning particular liabilities and legal duties would be wise to make sure we are not missing any important concerns.

Identify and Assess the Options

After reviewing the ACA Code of Ethics, evaluating foundational ethical principles, and learning about federal and state laws, we are adequately prepared to evaluate our initial plan. As we assess our options, discussing the case with our supervisor and/or respected colleagues is imperative. Our initial plan, overall, seems to be in line with the ethical code and foundational ethical principles. Currently, Dominique is not in an intimate relationship with Michelle, hopefully giving us time to assist him in developing a plan to tell her about his HIV positive diagnosis. The threat of her becoming infected with HIV does not seem to be immediate or imminent at this time. This course of action is contingent upon our ability to trust Dominique regarding his relationship with her.

In order to confirm his diagnosis and to understand his disease and the medications he is taking, we would ask him to sign a release allowing us to talk with his doctor. The ability to consult with his doctor better allows us to understand Dominique. Even with a confirmation of the diagnosis, we would hesitate to break confidence and disclose Dominique's HIV status based on the state and federal laws protecting that information. Because of Dominique's fame and the stigma related to an HIV diagnosis, we do not see any positive outcome to contacting the local health department.

Another major concern is how to deal with the Instagram photo. Because the information was not given to us during a counseling session, and clients have control over what information they bring up in sessions, it is not appropriate for us to bring up this information directly as it would be a violation of the ACA code of ethics. Talking about the potential difficulties regarding the counselor's access to information through newspapers, Web sites, or on social media might be a good idea considering Dominique is a high profile client. It is in his best interest that he understands how his counselor might see or hear things about him simply because of his public profile as a professional athlete. We would consult with him to see if he has some thoughts regarding how his counselor can navigate this concern.

Right now, issues such as depression, anger, and denial are affecting Dominique's situation. Taking an HIV test and receiving a positive result has the potential to be a traumatic experience. That news coupled with lifelong antiretroviral treatment can lead to development of post-traumatic stress disorder, anxiety, depression, and even suicidal

ideation (Clucas, Sibley, Harding, Liu, Catalan, & Sherr, 2011; Sherr, Clucas, Harding, Sibley, & Catalan, 2011). At this time, the counselor's energies might be best utilized by helping Dominique to reduce any anxiety he may be experiencing, to mobilize out of potential depression, and to deal with any suicidal thoughts he may be experiencing (Sherr, Davey, & Strong, 1991). He would not have come to counseling if it were not a mandatory requirement related to his DUI. It is important to maintain trust in the hopes of helping Dominique with some of the thoughts, struggles, and difficulties he is encountering.

Our plan includes discussion with Dominique to ensure that we are empathetic to the complexities of keeping his diagnosis a secret. We would ask him to clarify his expectations for us and even explore some ideas he may have for how we can help him. Acknowledging our concern for Michelle and other potential sexual partners, along with creating a plan for how Dominique can communicate his diagnosis with her and any other potential partners, are important considerations. Knowing if he has communicated his HIV diagnosis with previous sexual partners and how his disclosure affected his relationships could help us create a plan. Opening dialogue regarding the potential of communicating with his doctor helps the counselor include the client in the process, hopefully resulting in a signed release form. Ultimately, our goal is to help Dominique deal with any anxiety or depression he is experiencing, including the possibility of creating a danger plan. Having reached a decision, we would make sure that we discuss it with our supervisor and document the decision along with our rationale.

Choose a Course of Action and Share It With Client

The next time Dominique comes in for a session, we would work through our action plan with him. Our overarching goal would be to make sure that Dominique is empowered and becomes an ally with us in his treatment plan (Anderson & Barret, 2001). Knowing that things do not work out in real life as they do on paper, we would want to be prepared for the concerns, confusion, or anger that Dominique may express. Having worked through the decision-making model, we feel as prepared as possible to handle his concerns. After meeting with Dominique, documentation regarding the outcome of the session would be included in the appropriate case notes.

Implement Course of Action

After communicating with Dominique, we would want to evaluate our course of action. This would be a starting point, followed by monitoring our choices and consultation with colleagues. Continuing to consult the literature can help us to keep current with laws and research that assist us in validating our choices. The personalized nature of decision making not only requires consulting with colleagues and maintaining current standards, but most importantly, possessing the willingness to engage in a continual and honest process of self-examination (Tarvydas, 1987). The implementation of ethical decision making in the context of professional practice can be challenging. Collaborating with Dominique during the execution of the process is important to make sure that the counselor continues to act ethically.

Conclusion

This case study involved complexities regarding a client with a communicable disease disclosing his unwillingness to share his diagnosis with potential affected third parties. Over the past three decades, there have been substantial medical and scientific advances that have significantly changed our understanding of HIV/AIDS. Education related to understanding prevention and transmission has not only decreased the number of new HIV cases, but also has helped the public come to a better understanding of the disease. Development of new treatments has moved an HIV diagnosis from a death sentence to a chronic medical illness by prolonging the ability for those with HIV to live a productive life. All of these advances have changed the landscape with regards to a client's HIV positive disclosure in a session with a counselor. Ethical codes have changed over the course of the three decades to reflect a better medical understanding of communicable diseases, including HIV/AIDS, and a counselor's responsibility with regards to a client's disclosure. Most of the literature related to HIV/AIDS disclosure with duty to warn and duty to protect comes from the early stages of the epidemic. The HIV-specific model used by the team allowed us to explore our personal biases along with addressing important legal and ethical considerations. Self-awareness is an important part of ethical decision making, and this model allowed us to be reflective when tackling a complex, controversial ethical dilemma.

While the team was able to take time to work through the decision making process, ethical decision making in professional settings is challenging as dilemmas arise unexpectedly from clients' disclosures. Applying ethical decision making models to complex scenarios can help counselors, especially counselors in training, to build a foundation for responsible practice. By thinking through consequences and risks from multiple perspectives, counselors can understand how ethical codes and laws, along with moral principles, inform professional ethical decision making.

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