

3. The Open Purse

In Michigan, HIV-related information is confidential and cannot be released unless the patient authorizes disclosure, or a statutory exception applies. This confidentiality statute applies to all reports, records, and data pertaining to testing, care, treatment, reporting and research. It also applies to information pertaining to partner counseling and referral. A patient may authorize a disclosure of his/her medical records. This authorization must be in writing, and must contain a specific statement if the release is to also cover HIV-related information in the records.

Michigan statutes also provide that an individual who is a “health threat to others” may be arrested and placed in custody in order to prevent transmission of HIV or any other serious communicable disease. The “health threat to others” law applies to anyone who is known to be infected with an infectious agent or is reasonably believed to harbor an infectious agent, and by the individual’s conduct, has displayed an unwillingness or an inability to conduct himself/herself in such a manner as to not place others at risk of transmission. This includes past or present behavior evidencing an intent to transmit the infectious agent, showing a disregard of whether transmission may occur, or lying about his/her condition before engaging in behavior that could transmit the infectious agent.

Denise was driving her SUV and probably didn’t realize that her brake lights were out until she was pulled over by a local police officer. Denise has been living with HIV for 11 years and has finally gotten to a better place in her life after suffering from very low self-esteem.

The police officer approached the car and asked Denise and her passenger to get out of the vehicle. When Denise opened her purse to get her driver’s license, the officer asked her what else she had in her purse (he thought that he smelled marijuana). When he saw bottles of medication in her bag he asked her “What is that?” Feeling under duress, Denise reluctantly shared with the police officer that they were her HIV medications.

The police officer immediately seemed upset and said to her, “That’s probably something you needed to tell me when you got out of the car.” The police officer then continued to comment on the situation, and on his perceived risk, referring to the possibility of getting stuck with anything sharp inside her purse. Denise had no such sharp objects inside her purse or on her body.

Study questions:

1. Given the state law on HIV confidentiality and the “health threat to others” statute, do these circumstances allow Denise to keep her HIV status private?
2. Is the officer justified in thinking that Denise is a health threat? Is there a difference between what he may justifiably believe, what he may justifiably say to her, and what he may justifiably do to her or require her to do?
3. Would the situation be different if Denise actually did have a syringe, or another sharp object, in her purse, but the officer did not know this?
4. Given the evident tension between Michigan’s confidentiality statute and its “health threat to others” statute, should either of these be changed? If so, which one?