



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

October 2008

Dear Infection Control Practitioner:

The purpose of this letter is to provide you with additional information concerning the August 1, 2008 letter to the Chief Executive Officers of hospitals in New York State (NYS). That letter (Attachment I), clarified NYS provisions for sharing of confidential information in cases of potential occupational exposure of emergency responders to HIV. It asked that hospital staff review and update applicable policies and procedures and requested that hospital staff be informed of the steps to be taken in such situations.

The original Ryan White law, enacted in 1990, required emergency response agencies (i.e., fire departments, police departments, emergency medical services) to have a "designated officer" to field calls from employees regarding possible exposures to communicable diseases and to obtain the disease status of the patients in those exposures from the medical facility providing treatment to that patient. This language was included in subsequent reauthorizations of the Ryan White law until 2006, when Public Law 109-415 eliminated them.

Despite the changes to the federal law, emergency responders can access HIV test results on patients when there has been a bona fide risk exposure. NYS regulations which had been superseded by the federal law, now govern the manner in which disclosure of the HIV status of a patient may be made to emergency responders. Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations provides for disclosure in such instances.

The changes discussed in this letter and attachments pertain to testing for HIV. Testing for hepatitis B and C in cases of potential occupational exposure should also be considered.

Over the years, I have worked with many of you regarding the Ryan White recommendations and occupational exposures. I thought it would help to clarify some of the issues which have or will likely generate questions as you start to revise your facility's policies and procedures. Attached for your reference are a Resource Sheet (Appendix II), a chart that illustrates the differences between how you have handled these situations in the past and how you handle them now (Appendix III) and an algorithm (Appendix IV). I hope that you find this information helpful. For additional guidance concerning policies, procedures or general questions, I may be reached at (518) 473-8815 or by email at lcs02@health.state.ny.us.

Sincerely,

Lyn C. Stevens, MS, NP, ACRN
Deputy Director
Office of the Medical Director
AIDS Institute

Attachments:

Appendix I - August 1, 2008 Letter to Hospital CEOs

Appendix II - Emergency Responder Occupational Exposure Resource Sheet

Appendix III - Emergency Responder Occupational Exposure Chart: Past and Present

Appendix IV - Emergency Responder Occupational Exposure Algorithm

Appendix V – DOH 4054, “Informed Consent to Perform a Confidential HIV Test and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood or Body Fluids”



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

August 1, 2008
DPACS: 08 - 06

Dear Chief Executive Officer:

The purpose of this letter is to clarify New York State (NYS) provisions for sharing of confidential information in cases of potential occupational exposure of emergency responders to HIV, to ask that you review and update applicable policies and procedures and to request your help in making sure that hospital staff know the steps to be taken in such situations.

The original Ryan White law, enacted in 1990, contained provisions by which emergency response agencies (i.e., fire departments, police departments, emergency medical services) were required to have a "designated officer" to field calls from employees regarding possible exposures to communicable diseases and obtain the disease status of the patients in those exposures from the medical facility providing treatment to that patient. This language was included in subsequent reauthorizations of the Ryan White law until 2006, when Public Law 109-415 eliminated them.

Despite these changes to the federal law, emergency responders can access HIV test results on patients when there has been a bona fide risk exposure. NYS regulations now govern the manner in which disclosure of the HIV status of a patient may be made to emergency responders. Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations provides for disclosure in such instances. Section 63.8(m) differs from the previous federal law as follows:

- (1) The federal law required disclosure to a "designated officer" of the emergency response employer. Under Part 63.8(m), such disclosure may be made to the physicians or other medical providers of the emergency responders.
- (2) The federal law did not require knowledge of the HIV status of the emergency responder for disclosure of the patient's HIV status. NYS regulations for disclosure require that the emergency responder's status is HIV-negative. If the emergency responder's HIV status is unknown, an HIV test must be offered and administered with consent of the emergency responder.

Therefore, the following steps are now required when a significant risk exposure occurs:

1. An incident report documenting the details of the exposure, including witnesses to the incident, if any, is on record with supervisory staff at the emergency response agency.
2. A request for disclosure of the patient's HIV status is made to the patient's physician or to the medical provider designated by the hospital or clinic to which the patient is brought. This request may be made by the exposed person (emergency responder) or by his or her physician as soon as possible after the alleged exposure if a decision relating to the initiation or continuation of post-exposure prophylactic treatment is being considered.
3. The medical provider of the emergency responder or the medical provider designated by the hospital or clinic must review, investigate and evaluate the incident and certify that:
 - (a) the information is necessary for immediate decisions regarding initiation or continuation of post-exposure prophylactic treatment for the emergency responder; and
 - (b) the emergency responder's status is either HIV negative or unknown and that if the patient's status is unknown, the emergency responder has consented to an HIV test; and
 - (c) if the emergency responder's test result becomes known as positive prior to the receipt of the patient's HIV status, no disclosure of the patient's HIV status will be made to the emergency responder.
4. Documentation of the request is placed in the medical record of the emergency responder.
5. If the patient's physician or the medical provider designated by the hospital or clinic determines that a risk of transmission has occurred or is likely to have occurred in the reasonable exercise of his/her professional judgment, the patient's physician or medical provider designated by the hospital or clinic may release the HIV status of the patient, if known. The Patient's physician or medical provider in the hospital or clinic may consult with the local director or commissioner of public health to determine whether a risk of transmission exists. If consultation occurs, both the medical provider of the hospital or clinic and the local director or commissioner of public health must be in agreement if the HIV information is to be disclosed. In the disclosure process the name of the patient shall not be provided to the emergency responder. Rediscovery of the HIV status of the source is prohibited except when made in conformance with Public Health Law Article 21, Title III.

Although preventing exposures to blood and body fluids is the primary means of preventing occupationally acquired HIV infection, each emergency response agency is required to have plans in place for post exposure management. In cases of significant exposure, seeking medical treatment immediately is crucial. NYS Department of Health (NYSDOH) guidelines recommend that post exposure prophylaxis (PEP) should be initiated as soon as possible, ideally within two (2) hours and generally no later than 36

hours post-exposure. Emergency responders usually rely on hospital emergency rooms for evaluation of exposure and emergency response agencies have established relationships with hospitals for purposes of accessing confidential information about the HIV infection status of patients.

In addition to the above, the NYSDOH recommends that, if the patient's HIV status is not known, consent of the patient be obtained for a rapid HIV test. Rapid test results are usually available within 30 minutes of testing. Rules regarding confidentiality and consent for testing are identical to those for other HIV tests. A form, titled "Informed Consent to Perform a Confidential HIV Test and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood or Body Fluids" (DOH- 4054, Rev 8/05) is attached. This form is available at the NYSDOH web site at: <http://www.nyhealth.gov/forms/doh-4054.pdf>.

At this time, your hospital should review and update its policies and procedures to ensure that they are in compliance with section 63.8(m) and notify individual staff of the procedures to be followed in cases of possible exposure. NYSDOH AIDS Institute recommendations for PEP following occupational exposure are based on careful review of available studies and constitute the considered opinion of expert HIV clinicians. They are available for review on the NYSDOH HIV Guidelines Website at www.hivguidelines.org. If you need clinical assistance please contact the NYSDOH HIV Clinical Education Initiative's PEP, Testing & Diagnosis Center of Excellence (212-604-2980). This Center provides education and technical assistance to providers regarding post-exposure prophylaxis. This Center operates the PEP Line (1-888-448-4911), a 24-hour provider consultation line for the management of post-exposure prophylaxis.

Attached for your reference is a copy of Part 63.8(m) and letters from the Department to emergency response agencies and local health departments in NYS notifying them of the status of the federal law and applicable NYS regulations. Your attention to this matter is appreciated.

Sincerely,



Martin J. Conroy
Director,
Division of Primary & Acute Care Services

Attachments:

- Part 63.8(m) of Title 10 NYCRR
- "Informed Consent to Perform a Confidential HIV Test and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood or Body Fluids" (DOH- 4054, Rev 8/05)

Title 10 NYCRR: Part 63.8(m) as of April 2008

(m) When the requirements of this section have been met, physicians and other diagnostic providers may disclose HIV-related information to physicians or other diagnostic providers of persons whom the protected individual may have exposed to HIV under the circumstances noted below that present a risk of transmission of HIV, except that disclosures related to exposures of emergency response employees governed by federal law shall continue to be governed by such law:

- (1) the incident must involve exposure to blood, semen, vaginal secretions, tissue or the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural; and
- (2) a person has contact with the body substances, as noted in paragraph (1) above, of another to mucus membranes (e.g., eyes, nose, mouth), non-intact skin (e.g., open wound, skin with a dermatitis condition, abraded areas) or to the vascular system. Examples of such contact may include needlesticks; puncture wound injuries and direct saturation or permeation of non-intact skin by potentially infectious substances. These circumstances shall not include those delineated in subdivision (d) of section 63.10; and
- (3) the exposure incident occurred to staff, employees or volunteers in the performance of employment or professional duties:
 - (i) in a medical or dental office; or
 - (ii) in a facility regulated, authorized or supervised by the Department of Health, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Office of Children and Family Services, Office of Alcoholism and Substance Abuse Services, Department of Correctional Services; or
 - (iii) involved an emergency response employee, paid or volunteer, including an emergency medical technician, a firefighter, a law enforcement officer (e.g., police, probation, parole officer) or local correctional officer or medical staff; and
- (4) an incident report documenting the details of the exposure, including witnesses to the incident, if any, is on record with supervisory staff; and
- (5) a request for disclosure of HIV status is made to the provider of the source or to the medical officer designated by the facility by the exposed person or by the provider of the exposed person as soon as possible after the alleged exposure if a decision relating to the initiation or continuation of post-exposure prophylactic treatment is being considered; and
- (6) the medical provider of the exposed person or the medical officer designated by the facility reviews, investigates and evaluates the incident and certifies that:
 - (i) the information is necessary for immediate decisions regarding initiation or continuation of post-exposure prophylactic treatment for the exposed person; and
 - (ii) the exposed person's status is either HIV negative or unknown and that if the person's status is unknown, the person has consented to an HIV test; and
 - (iii) if such test result becomes known as positive prior to the receipt of the source's HIV status, no disclosure of the source's HIV status will be made to the person; and
- (7) documentation of the request is placed in the medical record of the exposed person; and
- (8) if the provider of the source or the medical officer designated by the facility determines that a risk of transmission has occurred or is likely to have occurred in the

reasonable exercise of his/her professional judgment, the provider or medical officer may release the HIV status of the source, if known. The provider or medical officer may consult with the municipal health commissioner or district health officer to determine whether a risk of transmission exists. If consultation occurs, both the provider and the local health officer must be in agreement if the HIV information is to be disclosed. In the disclosure process the name of the source shall not be provided to the exposed person. Redislosure of the HIV status of the source is prohibited except when made in conformance with Public Health Law Article 21, Title

Appendix II

Emergency Responder Occupational Exposure Resource Sheet

For Specific Incidents: NYS DOH HIV Clinical Education Initiative's Post Exposure Prophylaxis Center of Excellence

- (212) 604-2980 education and technical assistance for emergency response employers
- (888) 448-4911 clinician consultation line for the management of PEP

For Policy, Procedure and General Questions: Lyn Stevens, NP, ACRN, Deputy Medical Director, NYSDOH AIDS Institute at 518-473-8815 or lcs02@health.state.ny.us

For more information regarding EMS and occupational exposures, including an informational slide set, see NYS DOH web site:

http://www.health.state.ny.us/nysdoh/ems/aids/occupational_exposure/

Educational Resources

NYS Department of Health

Are there drugs that can prevent infection after I've been exposed to HIV?

<http://www.health.state.ny.us/diseases/aids/docs/9104eng.pdf>

HIV/AIDS Educational Materials for Consumers: Free HIV educational materials from NYS DOH at: <http://www.health.state.ny.us/diseases/aids/publications/edmat.htm>

USDHHS Centers for Disease Control and Prevention

Exposure to Blood: What Health-Care Workers Need to Know at:

<http://bookstore.pfh.org/prod290.htm>

*Please note, when directed to this site you will be asked to create an account

Preventing Occupational HIV Transmission to Healthcare Personnel: Occupational Exposure Handbook for ERE Exposures at:

<http://www.cdc.gov/hiv/resources/factsheets/hcwprev.htm>

Other

Medications: This web site offers medication sheets for all HIV antiretrovirals. If an alternate drug is used you may go to this web site and print out the appropriate sheet.

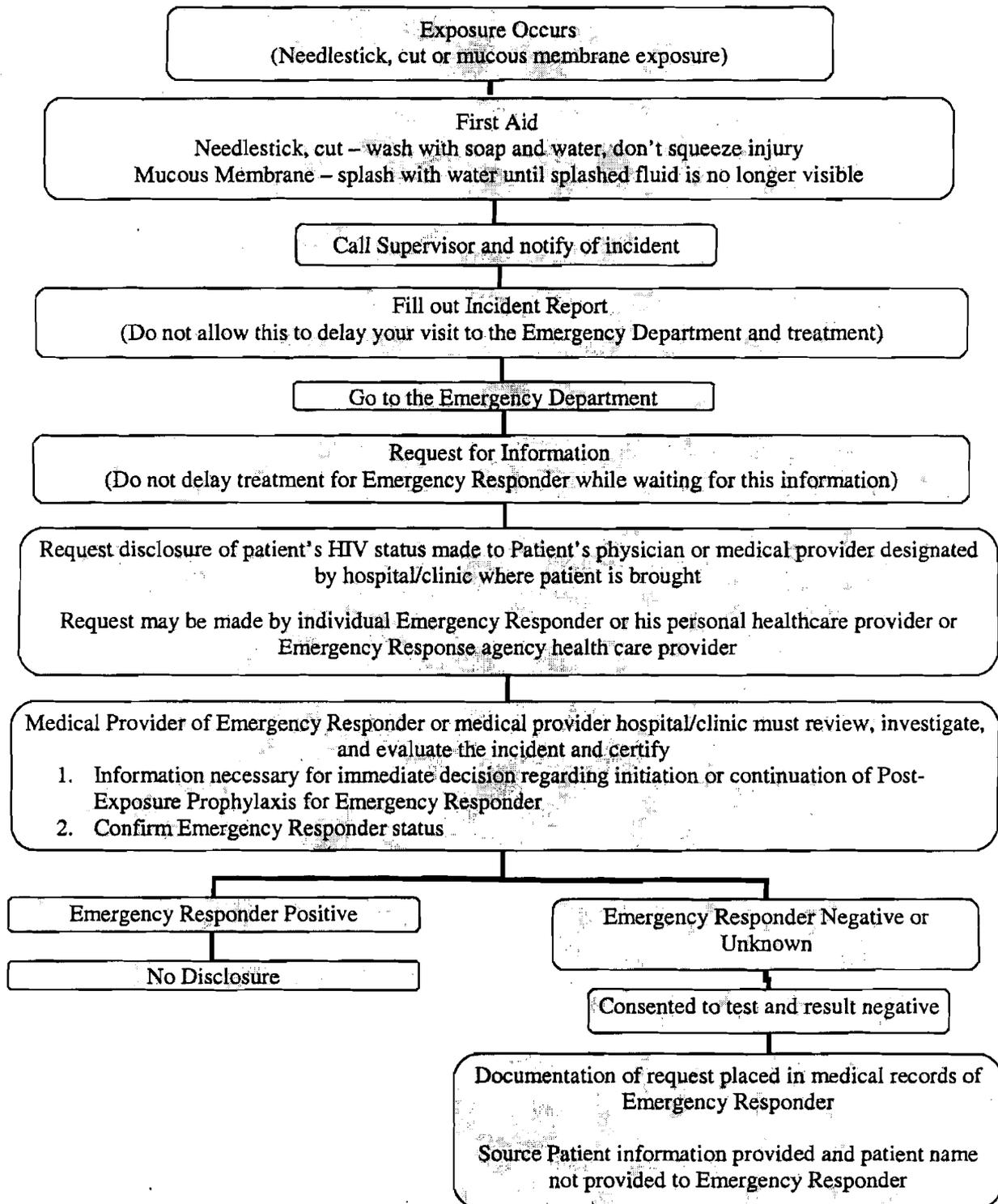
Combivir: http://www.aidsinfonet.org/fact_sheets/view/417

Tenofovir: http://www.aidsinfonet.org/fact_sheets/view/419

New York State Department of Health
Appendix III - Emergency Responder Occupational Exposure Chart: Past and Present, September 2008

Feature	Past	Present
Designated Officer (DO)	Emergency response agency and hospital required to have a DO that navigated the process and communication	There is no DO requirement. An emergency response agency may maintain a DO to serve as a resource for blood borne pathogens, update policy and procedure, provide staff education, maintain hospital contact information and relationship and maintain records.
Request Mechanism	Request must be made in writing	Emergency responder contacts his/her personal health care provider or agency health care provider to apprise them of incident. Responder or health care provider contacts emergency department (ED)/clinic provider or patient's health care provider to request information If there is any difficulty with this process, local health departments may be contacted for assistance
Response Time	Hospital had 48 hours to respond	Respond as soon as possible (ASAP).
Response Mechanism	The hospital DO would review medical record of source patient and share information	ED or source patient health care provider may verbally share information with emergency responder's health care provider
Source Patient HIV Testing	No requirement to test source patient	Requested that ED or private provider approach source patient for rapid HIV test ASAP so informed decision may be made for emergency responder's treatment
Emergency Responder	Emergency responder contacted his DO and waited for answers. Emergency responder went to ED for own treatment	Emergency responder must have HIV test and state that he/she is HIV negative in order to receive information.

New York State Department of Health
Appendix IV - Emergency Responder Occupational Exposure Algorithm
October 2008



**Informed Consent to Perform HIV Testing
and Authorization for Release of HIV-related Information
for Purposes of Providing Post-exposure Care
to a Health Care Worker Exposed to a Patient's Blood or Body Fluids**

An employee has been exposed to your blood or a body fluid in a manner which may pose a risk for transmission of a blood-borne infection. Many individuals may not know whether they have a bloodborne infection because people can carry these viruses without having any symptoms. We therefore are asking for consent to test you for the presence of human immunodeficiency virus (HIV), the virus that causes AIDS. You will also be tested for hepatitis B virus (HBV) and hepatitis C virus (HCV).

Under New York State law, HIV testing is voluntary and requires consent in writing (consent can be withdrawn for testing at any time.) There are a number of tests that can be done to show if you are infected with HIV. Your provider or counselor can provide specific information on these tests. Anonymous testing is available at selected sites. These tests involve collecting and testing blood, urine or oral fluid. Additional testing also will tell whether you are carrying HBV or HCV.

HIV Testing is Important for Your Health

- If your test result is negative, you can learn how to protect yourself from being infected in the future
- If your test result is positive:
 - You can take steps to prevent passing the virus to others
 - You can receive treatment for HIV and learn about other ways to stay healthy. As part of treatment, additional tests will be done to determine the best treatment for you. These tests may include viral load and viral resistance tests.
- An infected mother can pass HIV to her child during pregnancy or birth or through breastfeeding.
- If you are pregnant and have HIV, treatment is available for your own health and to prevent passing HIV to your baby. If you have HIV and do not get treatment, the chance of passing HIV to your baby is one in four. If you get treatment, your chance of passing HIV to your baby is much lower.

If You Test Positive:

State law protects the confidentiality of your test results and also protects you from discrimination based on your HIV status.

- In almost all cases, you will be asked to give written approval before your HIV test can be shared.
- Your HIV information can be released to health providers caring for you or your exposed child; to health officials when required by law; to insurers to permit payment; to persons involved in foster care or adoption; to official correctional, probation and parole staff; to emergency or health care staff who are accidentally exposed to your blood; or by special court order.
- The names of persons with HIV are reported to the State Health Department for tracking the epidemic and for planning services.
- The HIV Confidentiality Hotline at 1-800-962-5065 can answer your questions and help with confidentiality problems.
- The New York State Division of Human Rights at 1-800-523-2437 can help if you think you've been discriminated against based on your HIV status.

If you are positive, your counselor/doctor will talk with you about notifying your sex or needle-sharing partners of possible exposure to HIV.

- Your partners need to know that they may have been exposed to HIV so they can be tested and get treated if they have HIV.
- If your health care provider knows the name of your spouse or other partner, he or she must report the name to the health department unless it would result in harm to you.
- Health department counselors can help notify your partner(s) without ever telling them your name.
- To ensure your safety, your counselor or doctor will ask you questions about the risk of domestic violence for each partner to be notified.
- If there is any risk, the Health Department will not notify partners right away and will assist you in getting help.

You are also being asked to authorize the release of confidential HIV-related information related to this consent for testing to the health professional, named below, who is treating the health care worker that has been exposed to your blood or body fluid. This is necessary to provide appropriate care and to counsel the worker about his or her risk of becoming infected and possibly infecting others. Under New York State law HIV-related information can only be given to people you allow to have it by signing a written release, except in the instances outlined above. These individuals are prohibited by law from re-disclosing testing results in a way that could reveal your identity.

Name and address of facility/provider disclosing HIV-related information: _____

Name and address of facility/provider to be given HIV-related information: _____

Describe information to be released: **HIV Test Results**

Time period during which release of information is authorized From: _____ To: _____

You may revoke this release, but disclosures cannot be revoked, once made. Additional exceptions to the right to revoke this release, if any: _____

Describe consequences, if any, of failing to consent to disclosure upon treatment, payment, enrollment or eligibility for benefits. (Note: Federal privacy regulation may restrict some consequences): _____

I understand that I am being asked to submit a specimen for HIV testing for occupational exposure. I agree to testing for the determination of HIV infection. If I am found to have HIV, I agree to additional testing that may occur on the sample I provide today to determine the best treatment for me and to help guide HIV prevention programs. I also agree to future tests to guide my treatment. I understand that I can withdraw my consent for future tests at any time.

I also authorize release of this information to the health care professional, named above, who is treating the health care worker that has been exposed to my blood or body fluid.

Signature: _____
(Test subject or legally authorized representative)

Printed Name: _____

Date: _____

Patient ID#: _____

DOB: _____

Address: _____

If legal representative, indicate relationship to subject:
