



MAP Legal Services provides advice, direct representation and referrals to a network of volunteer attorneys, for HIV-related legal matters, including estate planning, discrimination, social security, immigration and employment-related concerns. Participants must be HIV-positive, meet financial eligibility requirements and complete our legal intake process. MAP also provides brief consultation to HIV service providers and family members on HIV-specific legal topics. We hope you find this update informative and useful! If you have any comments or suggestions, please contact Warren Ortland, Legislative Research and Policy Coordinator, at wortland@mnaidsproject.org or (612) 373-2433. If you do not wish to receive future editions of MAP Legal News, or if you would like your name added to the list, please contact Dan Kelly, Legal Services Assistant, at dkelly@mnaidsproject.org or (612) 373-2426.

In this issue:

- Reflections on Ten Years of Providing Legal Service
- Updates on HIV-related Case Law
- Minnesota AIDS Project Public Policy News
- Upcoming MAP Events

Reflection on Ten Years of Providing Legal Service

Lynn Mickelson, Legal Service Manager

St. Patrick's Day represents more than the "luck of the Irish" to me. On March 17, 1995 I started working at the Minnesota AIDS Project providing legal services to Minnesotans infected with HIV or affected by it. I consider myself lucky to have had the opportunity to work with more than 5,000 clients over the past ten years. I only wish legal services for people living with HIV were no longer necessary.

In 1995 the death rate among people living with HIV was still high. It wasn't unusual for a legal client to die each week. Together with an incredible group of volunteer attorneys, MAP Legal Services went to hospitals and hospices to assist clients in preparing health care directives, powers of attorneys and wills to make sure that their wishes were honored. This need to protect an individual's right to direct their health care decisions remains critical as demonstrated by current events, such as the Terri Schiavo case. This work, perhaps the most intimate of my career, remains the most humbling and rewarding service.

As HIV treatment improved quality of life and longevity for our clients, new legal issues became priorities – discrimination and privacy. Given the highly stigmatized nature of HIV disease and the fear it engenders, our clients are especially vulnerable to unfair treatment and improper disclosure of private medical data. Protecting these rights is an ongoing challenge because society and systems do not always appreciate the impact of stigma and the courage it takes for a

client to assert their rights. I have again and again been impressed by the strength of people living with HIV and their commitment to living well.

And then there is the challenge of addressing ever emerging legal issues as new communities face their own HIV crisis. This is most evident with our foreign born clients. Bringing the burden of prejudice from their home countries they face the daunting task of navigating U.S. health care and immigration legal systems. I have been deeply moved by the stories of these clients.

Finally, I never forget that providing legal services to people with HIV is an important part of a public health strategy to stop further HIV infections. Facing a life threatening and complicated medical condition is challenging enough without being compounded by legal difficulties. Managing a legal need in addition to the demands of health care creates a serious diversion from our public health objectives. We work hard to eliminate these barriers so that our clients can focus on health and harm reduction. Knowing that our work has helped many live safer, better, and longer is perhaps the greatest reward of ten years of providing legal service.

Updates on HIV-related Case Law

We have no recent cases from the United States Supreme Court, Eighth Circuit, or the Minnesota District. Here are some interesting cases from around the country:

HIV+ Flight Attendant Applicants Get Trial on Challenge to Blood Tests; from Findlaw article by Linda Coady (March 17, 2005): A federal appeals court in San Francisco reversed the lower court's summary judgment decision on the privacy claims of three HIV-positive flight attendant applicants. *Leonel et al. v. American Airlines, Inc.*, Nos. 03-15890, 03-15893, 03-15897, 2005 WL 502874 (9th Cir. Mar. 4, 2005). The court found an issue of fact existed as to whether American Airlines should have obtained the informed consent of the applicants before running comprehensive pre-employment blood tests. The court also held that the plaintiffs were entitled to a trial on whether the withdrawal of job offers by American after obtaining the results of the blood tests violated California and federal disability laws. One of the key issues discussed in the case is the stage of the hiring process at which a medical examination may be conducted. According to the court, the Americans with Disabilities Act (ADA) and the California's Fair Employment and Housing Act (FEHA) mandate that medical examinations be conducted only after all other steps in the employment offer process have been taken. As the court stated, "Both the ADA and FEHA deliberately allow job applicants to shield their private medical information until they know that, absent an inability to meet the medical requirements, they will be hired, and they if they are not hired, the true reason for the employer's decision will be transparent."

Federal Court Says HIV Not a Disability; From Lesbian/Gay Law Notes (March 2005): The United States District Court for the District of Connecticut dismissed a discrimination claim on the ground that the plaintiff's HIV status did not meet the statutory definition for a disability because the plaintiff had no interest in having children. The plaintiff in *Worster v. Carlson Wagon Lit Travel, Inc.*, 2005 WL 237762 (D. Conn., Jan. 4, 2005) claimed discrimination and retaliation under the Americans with Disabilities Act, but the judge found the threshold issue to

be whether the plaintiff was an individual with a disability. U.S. District Judge Ellen Bree Burns wrote that “HIV positive status does not qualify as a matter of law as a per se disability in this CircuitIt is not enough for a plaintiff to show simply that he or she has a certain disease which may potentially or hypothetically be disabling. Instead, a plaintiff must show that his or her impairment, in fact, substantially limits a major life activity.” Judge Burns found that Worster could not claim that he was substantially limited in the major life activity of reproduction because Worster had testified in a deposition that he had no plans for having children. On this issue of impairment of the major life activity of sexual activity, the judge wrote that, “[t]o the extent that a jury could infer from his assertions that his HIV-positive status restricted his ability to engage in unprotected sex, no reasonable jury could find from the evidence that this restriction rose to the level of a substantial restriction.”

The holding in the *Worster* case is very similar to the holding in a case from the U.S. Court of Appeals for the Fifth Circuit, *Blanks v. Southwestern Bell Communications, Inc.*, 310 F.3d 398 (5th Cir. 2002). The *Blanks* court cited the United States Supreme Court decision of *Bragdon v. Abbott*, 524 U.S. 624 (1998) by stating that “an HIV-positive person who shows that he or she is substantially limited in the major life activity of reproduction is entitled to protection under the ADA.” In reviewing the facts in the case, the court in *Blanks* found that years before the alleged discrimination, Blanks and his wife had decided not to have any more children, and the wife had undergone a procedure to prevent further pregnancies. The court held that because the plaintiff did not want to have any more children, “he does not raise a triable issue of fact to indicate that his HIV status substantially limited his major life activity of reproduction.” (citing *Gutwaks v. American Airlines, Inc.*, No. 3:98-CV-2120-BF, 1999 WL 1611328 (N.D. Tex. Sept. 2, 1999).

Texas Appeals Court Affirms 25 Year Sentence for Prisoner Who Bit Guard; From Lesbian/Gay Law Notes (February 2005): The Court of Appeals for the Fifth District of Texas upheld a lower court ruling that a bite by an HIV-positive inmate on a guard constituted assault with a deadly weapon, thereby justifying a twenty-five year sentence. *Degrate v. State of Texas*, No. 05-04-00218-CR, 2005 WL 165182 (Tex. App. Dist. Jan. 26, 2005). The guard was bitten while providing assistance to other guards in subduing the inmate. The intake nurse testified that a human bite is capable of causing death or serious bodily injury, and that “a bite from a person infected with HIV can potentially transmit the virus to the person bitten.” The court stated that “[I]t is appellant’s act of intentionally or knowingly biting Sneed, knowing his medical condition, hard enough to draw blood that supports the finding that appellant used his mouth as a deadly weapon.”

Minnesota AIDS Project Public Policy News

The MAP Public Policy team is working on five pieces of legislation in the current state legislative session:

Comprehensive Family Life and Sexuality Education. SF 878 / SF 1262 / HF 1301. Minnesota AIDS Project (MAP) has been working on this bill for several years in association with partners such as the Sex Ed for Life Coalition and Minnesota Organization for Adolescent Pregnancy, Prevention and Parenting (MOAPP). The bill provides a more detailed definition of comprehensive sexual education that includes references to abstinence, but also addresses

contraception and prevention of sexually transmitted infections. One version in the Senate, SF 1262, includes additional language emphasizing abstinence as a way to delay initiation of sexual activity. The chief authors of the legislation in the Senate are Senator Sandy Pappas (SF 878) and Senator Kierlin (SF 1262). In the House, the chief author is Representative Neva Walker (HF 1301).

Refunding Regional Training Centers SF 1261 / HF 1300. The cities of Grand Rapids, Park Rapids, Winona, Brainerd and Hopkins had HIV/STD regional training centers that provided support to the local school districts in development and delivery of a comprehensive sexual education curriculum. The funding for these sites was eliminated in 2004. MAP has introduced legislation for refunding of these sites. The chief author in the Senate is Senator John Marty (SF 1261), and the chief author in the House is Representative Mindy Greiling (HF 1300).

African-Born Prevention Education SF 968 / HF 1373. In response to the disproportionate impact HIV infection is having on the African-born community, MAP has sponsored legislation requesting additional funding for prevention education that is culturally and linguistically appropriate for the African-born community. The bill requests \$300,000 over the next biennium for the Department of Health to be directed to community-based organizations with proven expertise in delivery of health and social service needs of the community. The chief author of the legislation in the Senate is Senator Scott Dibble (SF 968), and the chief author in the House is Representative Karen Clark (HF 1373).

HIV Prevention and Health Care Access Program SF 1836 / HF 1892. Due to budget constraints, the Department of Human Services implemented cost share requirements in their HIV insurance reimbursement and drug assistance program. Approximately 50 Minnesotans below 300 percent of the federal poverty guidelines have been unable to make the cost share payments for at least six months and are being threatened with termination of their benefits. MAP has drafted legislation to ensure that low-income Minnesotans who are HIV-positive will have access to the treatment and medication that they need. The bill would also expand benefits to include treatment for chemical dependency and mental health issues, and would prevent the State from terminating benefits if the individual is unable to pay a cost-share or a co-pay. The chief author of this legislation in the Senate is Senator John Hottinger (SF 1836), and the chief author in the House is Representative Paul Thissen (HF 1892).

HIV Confidentiality Bill. A breach of an individual's privacy concerning their HIV status is a recurring issue among clients contacting MAP Legal Services. Employees in the private workplace have little recourse if information they may have shared voluntarily with a manager is subsequently communicated to other manager or co-workers. Minnesota AIDS Project reviewed HIV confidentiality laws in other states and drafted similar legislation for Minnesota. This bill will be introduced later in the session with hearings held in the summer and next fall.

Upcoming MAP Events

AIDS Action Day. This year's AIDS Action Day is coming up on Tuesday, April 12th, from 10 am to 2 pm, in the Great Hall at the Minnesota State Capitol. The focus of this year's Action Day is educating legislators about the need to ensure that everyone who needs health care can get

health care. Minnesotans who are at or below 300% of the federal poverty guidelines should not have to choose between paying their rent so that they can keep a roof over their heads, and paying a cost-share so that they can continue to afford their medications. In addition to eliminating cost-share and co-pay requirements, the program follows the recommendation of an Institute of Medicine report and includes coverage for treatment of chemical dependency and mental health. Participants in AIDS Action Day will be talking to their legislators and asking them to support the bills establishing the HIV Prevention and Health Care Access Program, guaranteeing health care to low-income HIV-positive Minnesotans (SF 1836 / HF 1892).

You can register by contacting Kate Nelson at knelson@mnaidsproject.org or at (612) 373-9162, or register on-line at www.mnaidsproject.org/publicpolicy. If you register in advance, MAP will try to schedule an appointment with your legislator. You will also be able to register on the day of the event at the Great Hall in the Capitol. To stay up to date on what is happening at the legislature, sign up to receive the MAP Advocate, our on-line legislative newsletter. You can sign up by visiting <http://www.mnaidsproject.org/publicpolicy/beanadvocate.htm>.

Minnesota AIDS Walk. Mark Sunday, May 15, 2005 on your calendar for the annual MN AIDS Walk, held the third Sunday in May each year at Minnehaha Park in Minneapolis. This event is the oldest and largest HIV fundraising event in Minnesota. Walk as an individual, as part of a team, or with your pet. Encourage your fellow attorneys or co-workers to create a team to demonstrate your firm's or your agency's involvement in supporting those affected by HIV/AIDS. For more information or to register on-line visit www.minnesotaaidswalk.org, or call (612) 373-2411.