



June 1, 2006

**By email and first class mail**

Dr. Jeffrey Klausner  
Director of STD Prevention and Disease Control  
San Francisco Department of Public Health  
1360 Mission Street #401  
San Francisco, CA, 94103

Dr. Susan Philip  
Medical Director  
San Francisco City Clinic  
Department of Public Health  
356 7th Street  
San Francisco, CA 94103

Dear Dr. Klausner and Dr. Phillip:

We write on behalf of the American Civil Liberties Union AIDS Project and the ACLU of Northern California regarding HIV testing at the San Francisco City Clinic.

As you are aware, on April 17, 2006, Governor Arnold Schwarzenegger signed into law Senate Bill 699, which requires health care providers and laboratories to report cases of HIV infection by name to local health departments. These reporting requirements took effect immediately.

As a recent client visit to the San Francisco City Clinic revealed, however, the City Clinic continues to inform people seeking HIV testing that their names will *not* be reported to the Department of Public Health and fails to inform them of the availability of anonymous testing at other sites. Specifically, on May 26, 2006, a counselor obtained consent to testing using the attached form, which states that:

I understand that this test is CONFIDENTIAL. My test results will be included in my confidential City Clinic medical record. If I test positive, my test results will be reported to the San Francisco

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
LESBIAN & GAY  
RIGHTS PROJECT  
AIDS PROJECT

PLEASE RESPOND TO:  
NATIONAL OFFICE  
25 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T: 212.549.2627  
F: 212.549.2650  
WWW.ACLU.ORG

CALIFORNIA OFFICE  
663 MISSION STREET,  
SUITE 460  
SAN FRANCISCO,  
CA 94103-2400

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RICHARD ZACKS  
TREASURER

Department of Public Health AIDS Office. *However, my name will not be reported with this positive result.* Instead, a special non-names reporting code using a portion of my name, date of birth, and last four digits of my social security number will be created for reporting.

Similarly, the City Clinic website continues to advise potential clients that “Current California law requires all positive HIV tests to be reported. Reports can be made without using your name, but instead via a unique code. Currently, a person who gets either type of HIV test is asked to participate in pre- and post-test counseling.”<sup>1</sup> Although we cannot be sure of the extent of use of this erroneous form since April 17, 2006, we are deeply concerned that many individuals may have undergone HIV testing based on false information about the consequences of testing positive, believing that their confidentiality will be maintained.

California law requires that no person shall be tested for HIV without informed consent. See Cal. Health & Safety Code § 120990. As the California Supreme Court has long noted, informed consent is necessary to protect the fundamental right of a “person of adult years and in sound mind . . . in the exercise of control over his own body, to determine whether or not to submit to lawful medical treatment.” *Moore v. Regents of the Univ. of Ca.*, 51 Cal. 3d 120, 129 (1990). “The patient’s right of self-decision is the measure of the physician’s duty to reveal. That right can be effectively exercised only if the patient possesses adequate information to enable an intelligent choice. The scope of the physician’s communications to the patient, then, must be measured by the patient’s need, and that need is whatever information is material to the decision.” *Cobbs v. Grant*, 8 Cal. 3d 229, 245 (1972).

HIV status remains highly-sensitive personal information, and people living with HIV continue to experience stigmatization and discrimination. Because state law now requires the reporting to government officials of the name of anyone who tests positive, an individual cannot meaningfully agree to testing for HIV without knowing that his or her name will be reported as a consequence of testing positive. Indeed, some people may wish to be tested anonymously, rather than having personally identifiable information about their status reported to the government. If people are not informed of the consequences of testing and of the availability of anonymous testing, they cannot make an informed decision to be tested. The City Clinic already implicitly recognizes that information about what public health officials will

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<sup>1</sup> <http://www.dph.sf.ca.us/sfcityclinic/stdbasics/hiv aids.asp>

Dr. Jeffrey Klausner & Dr. Susan Phillip  
June 1, 2006  
Page 3

do with test results is material to the decision to get tested, as this is the primary focus of the now-outdated consent form. By providing patently erroneous information about the consequences of testing positive for HIV, the City Clinic has tested individuals without obtaining their informed consent in violation of Cal. Health & Safety Code § 120990.

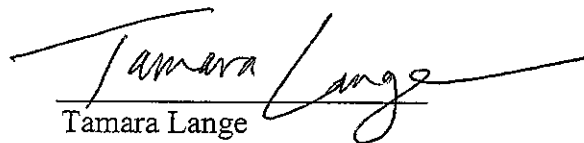
We also note that providing false or incomplete information about the consequences of testing positive may have extremely counter-productive effects, as patients who later learn that their name will be reported to the government may feel deceived and, as a result, be less likely to proceed with follow up testing and care. While we fully support the goal of increasing the number of people who are tested for HIV, that goal cannot be met unless procedures are in place to ensure meaningful consent to testing, in order to protect both patient autonomy and the doctor patient relationship.

Accordingly, we ask for immediate assurance that the San Francisco Department of Public Health will promptly ensure that individuals seeking HIV testing at any public testing site are provided with accurate information about the significance and consequences of HIV testing and about the availability of anonymous testing at other sites. We also ask for an assurance that the names of any individuals who consented to HIV testing after being explicitly told that their names would not be reported to the Department of Health, will not be reported.

Sincerely,



Rose A. Saxe  
Staff Attorney  
ACLU LGBT & AIDS Projects  
125 Broad Street, 18th Floor  
New York, NY 10004



Tamara Lange  
Senior Staff Attorney  
ACLU LGBT & AIDS Project  
39 Drumm St.  
San Francisco, CA 94111

Encl.

cc: (All via email and first class mail)  
Mayor Gavin Newsom  
Dr. Mitchell Katz, Director, San Francisco Department of Public Health  
Health Commission, San Francisco Department of Public Health  
Laura E. Lund, Chief, HIV/AIDS Case Registry Section, Office of AIDS, California Department of Health Services

Last Name

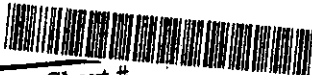
First Name

DOB

Race/Ethnicity

CITY CLINIC:  
Visit: 05/26/2006

DUB: REDACTED  
NO PAYER



Patient Chart #

### PATIENT CONSENT TO PERFORM HIV (AIDS VIRUS) TEST

The HIV test is a blood test that detects HIV virus or my body's antibodies in response to the infection of HIV (the virus that causes AIDS). The test does not tell me if I have AIDS. It does show whether or not I have been infected with the HIV virus. For more information about AIDS or the HIV test, I can talk with my clinician or my HIV Risk Reduction Counselor. I can also call the California AIDS Hotline at 415-863-AIDS or on-line at [www.aids hotline.org](http://www.aids hotline.org).

I understand that this test is CONFIDENTIAL. My test results will be included in my confidential City Clinic medical record. If I test positive, my result will be reported to the San Francisco Department of Public Health AIDS Office. However, my name will not be reported with this positive result. Instead, a special non-names reporting code using a portion of my name, date of birth, and last four digits of my social security number will be created for reporting. As with all of my medical records, my HIV test result can only be shared confidentially.

I understand that I will receive my result in approximately 2 weeks. If I fail to return for my appointment, I understand that City Clinic will contact me. If I test positive, I will have an opportunity to discuss my results with my counselor and a medical provider. I understand that City Clinic has a program called "Partner Counseling and Referral Services," that can help me inform any of my partners anonymously.

I agree to have my blood tested for HIV. I have been informed about the HIV test and I understand the meaning of the test results and the benefits and risks of this test. I have had an opportunity to ask questions and all of my questions have been answered.

Date: 5/26/06

REDACTED  
Staff Providing (Print)  
Risk Assessment

REDACTED  
Staff Providing (Signature)  
Risk Assessment

Date: 5/26/06

REDACTED  
Patient Name (Print)

REDACTED  
Patient Name (Signature)

Address (Patient): \_\_\_\_\_  
Street Address

Zip Code

Phone (Patient): \_\_\_\_\_  
Home #

Work #

6/17/05