

HIV: Scary History, Statutory Response

By Donald Barthel, Esq.
Law Offices of Bradford & Barthel, LLP



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



Meet our Team

Donald Barthel, Esq.
Founding Partner
dbarthel@bradfordbarthel.com



Michael Burns, Esq.
Partner
mburns@bradfordbarthel.com



Tahmeena Ahmed, Esq.
Executive Managing Partner
tahmed@bradfordbarthel.com



Tammey Welty
Director of Training & Communications
twelty@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



Certificates

Sent via email

PowerPoint & Video

<https://bradfordbarthel.com/training/>

Blog Articles

bradfordbarthel.blogspot.com/

Next Live Webinar – 03/10/26

RFAs, URs, AND IMR, OH MY!! By Zane Uribarri



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



NEW PODCAST!!!



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



JOIN OUR TEAM

We are **HIRING!**



Positions Available:

- ❖ Workers' Compensation Defense Attorneys
- ❖ Hearing Representatives

Apply today at:

<https://bradfordbarthel.isolvedhire.com/jobs/>



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



HIV: SCARY HISTORY

HIV hits headlines =1980s

Mysterious Killer

lack of knowledge + prejudice

=

fear (catching?)

discrimination (homophobia)

hatred (nature's answer to gay)

violence against (including murder)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



HIV: STATUTORY RESPONSE

As of 2026, +60% of states
 =
 law criminalize
 or
 enhance penalties...
 ... for behaviors HIV+ people



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
 New File Referrals: edocs@bradfordbarthel.com



7

HIV: BODILY & LEGAL LESSONS

Keep a secret!

Protection --

- US Constit.
- CA Constit.
- Fed. Law: ADA
- Labor Code, CMIA (Confidentiality of Med Info Act), FEHA
- Case Law



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
 New File Referrals: edocs@bradfordbarthel.com



8

Overall objectives:



- ❖ physical safety
- ❖ legal safety (e.g., discrimination)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



9

Know ALL Rule Or Face a minefield!

How did today's presentation get started?

Innocently...

..."Did you know..."



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



10

Stricter than ordinary medical privacy

overrides general discovery rules



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



11

What = “HIV-Related Info”?

Includes ANY reference to:

- ❖ HIV status (+ or -)
- ❖ AIDS diagnosis
- ❖ HIV testing
- ❖ Antiretroviral meds.
- ❖ Risk assessments or exposure hs.
- ❖ Lab results (CD4, viral load, etc.)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



12

In Camera Review (Core Safeguard)

WCAB's default mechanism

Procedure:

- ❖ Records submitted directly to WCJ
- ❖ Redacted records served on AA
- ❖ Not placed in public EAMS file
- ❖ WCJ reviews privately



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



13

In Camera Review, cont'd

Outcome options:

- ❖ Entire HIV-related material excluded
- ❖ Limited disclosure of non-identifying summaries
- ❖ Redaction of HIV references before admission
- ❖ Sealing of admitted exhibits



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



14

What goes to WCJ? (Unredacted but Sealed)

CAPTAIN OBVIOUS, to the rescue!



WCJ can't rule re relevance, privilege, etc w/out seeing records in question

->no mind reading allowed!!!<-



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



15

Procedure:

- a) placed in a sealed envelope
- b) marked clearly with "CONFIDENTIAL - FOR IN CAMERA REVIEW ONLY."
- c) hand delivered



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



16

What goes to AA? (Notice Only)

Do NOT send a copy of the sensitive records (redacted or unredacted) to AA at this point (exception below)

Def serves a “Notice of Lodging:”

PLEASE TAKE NOTICE that on _____ (date), defendant/party _____ lodged under seal with the chambers of the Hon. _____, Department _____, confidential records relating to this matter (the records themselves are not filed or e-filed). The lodged materials are being provided for in camera review by the Court pursuant to California Health & Safety Code § ____ and applicable law.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



17

Notice of Lodging (con't)

- ❖ The lodged materials remain in the custody of the Court and are not part of the public court file
- ❖ Notice may be filed electronically to reflect Lodging (no particular)
- ❖ WCAB likely handle (phew)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



18

Why?

California Health & Safety Code § 120980: revealed HIV test results

- negligence is enough - \$1,000 per (+ ct costs)
- actual damages (including psych...not w/c psych)
- willful- \$1,000-\$5,000
- willfully or maliciously

+

econ, bodily, or psych harm

=

misdemeanor (up to 1 yr and/or \$10,000)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



19

Exception (If you must serve them)

- ❖ If (1) specific agreement or
(2) order requiring service lodged documents
- ❖ But be careful: verify
 - (a) order (duh!), or
 - (b) AA has a signed release from IW that specifically ok's receipt of HIV/AIDS info
(as standard medical releases often exclude)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



20

Delivery Method: Hand Delivery vs. Mail

Verdict: Hand Deliver

Why?

- Mail the records = May go to mailroom
- Clerks may open all mail and scan it into EAMS before WCJ sees



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



21

The Risk:

If accidentally scanned, visible to all parties
catastrophic privacy breach (negligence?)

- ❖ hand sealed envelope directly to WCJ
- ❖ (secretary shld understand “lodging”)
- ❖ I&A - unneeded additional pair of eyes (unless WCJ orders)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



22

Recipient:

Presiding Judge (PJ) vs. Assigned Judge (WCJ)

May depend on the status of case:

- If a WCJ is assigned, deliver to them
 - If NO Judge is assigned: Presiding Judge (PJ)
- >unscientific, non random, sample of 2 = PJ<-



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



23

The Packaging Protocol (Crucial)

Must scream "DO NOT OPEN"

DO NOT OPEN



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



24

Labeling:

- ❖ CONFIDENTIAL - LODGED FOR IN CAMERA REVIEW
- ❖ TO BE OPENED BY JUDGE [NAME] ONLY
- ❖ DO NOT SCAN



The Paper Trail (Proof of Lodging)

- ❖ Since no EAMS, need proof delivered
- ❖ Prepare a “Notice of Lodging of Confidential Records”
- ❖ Does not contain the records:
“Def has today lodged confidential records for in camera review.”



Action:

When hand deliver sealed envelope, have "Notice" document with you.

- ❖ Ask PJ whom to have date stamp
- ❖ With PJ blessing - file "Notice of Lodging" into EAMS
- ❖ Reflects PJ has without
 - Themselves being online
 - Revealing of nature of docs other confidential req'ing PJ input



Summary Checklist

1. Do not e-file the records
2. Do not mail the records (risk of accidental scanning)
3. Hand deliver directly to the specific Judge's chambers assigned (not me!)
4. Get a date stamp on your "Notice of Lodging" cover sheet



Admission at Trial

If admitted at all:

- ❖ Exhibits sealed
- ❖ Access limited to:
 - WCJ
 - Reviewing courts
- ❖ No public access
- ❖ No cite in F&A unless unavoidable
- ❖ WCJ typically paraphrases rather than quotes



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



29

Motions to Quash & Sanctions

When HIV records are sought/disclosed:

AA may file:

- ❖ Motion to quash subpoena
- ❖ Pet. for protective order
- ❖ Request for sanctions LC § 5813

"bad faith" actions or frivolous tactics



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



30

Motions to Quash & Sanctions

LC 5813- sanctionable – most common:

- ❖ Filing Frivolous Petitions: Filing docs that are indisputably w/out merit or based on false statements
- ❖ Harassment: Actions done primarily to harass or maliciously injure



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



31

WCAB Reality (What Actually Happens)

In practice:

- ❖ WCJs extremely conservative
- ❖ HIV rarely admitted
- ❖ Def. usually loses unless relevance is unmistakable (e.g., causation of immune-related condition)
- ❖ Even then, disclosure is min.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



32

Few reported “HIV-only WCAB cases”

- ❖ Mostly foundational privacy and discovery cases
- ❖ WCJs repeatedly cite/apply when HIV info implicated



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



33

Britt v. Superior Court (1978)

- ❖ Privacy Limits on Medical Discovery in California Workers' Compensation



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



34

Britt v. Superior Court (1978)

- ❖ Discovery Limits & Privacy in WCAB Proceedings
- ❖ Defense Litigation Perspective
- ❖ California Sup:
 - constitutional privacy
 - shapes medical discovery: civil & WCAB litigation



Britt v. Superior Court 20 Cal.3d 844 (1978)

- ❖ H: Filing suit waives privacy only as to conditions placed “in controversy”
- ❖ Must be “**directly relevant**” and “**narrowly tailored**”
- ❖ Overbroad “all records” SDT improper



California Constitution, Article I, § 1 - Right to Privacy

Balancing test:

- Legitimate discovery need
- Reasonable expectation of privacy
- Narrow tailoring requirement

Balance: not automatically favor disclosure



What Is Actually Waived?

When an IW files a claim:

Applies to:

- Claimed body parts
- Claimed conditions
- Alleged psychiatric injury (if pled)

NOT apply to:

- Entire lifetime medical history
- Unrelated conditions
- Purely personal medical matters



WCAB Application

- ❖ WCJs rely on Britt to:
 - ❖ Grant Motions to Quash
 - ❖ Issue Protective Orders
 - ❖ Order In Camera Review
- ❖ Limit subpoenas by:
 - ❖ Date range
 - ❖ Body part
 - ❖ Specialty



Compliant SDT Strategy (self-police?)

Limit by:

- ❖ Body part (e.g., lumbar spine only)
- ❖ Date range (e.g., 5 years pre-injury)
- ❖ Specialty (e.g., ortho, pain mgmt)
- ❖ Condition (e.g., prior low back complaints)

Include relevance language in



Sensitive Records (Heightened Protection)

- ❖ Psych
- ❖ HIV / infectious disease
- ❖ Substance abuse treatment (42 CFR Part 2)
- ❖ Sexual history
- ❖ Genetic testing



Courts may require:

- ❖ In camera review
- ❖ Specific factual showing
- ❖ Protective order



WCAB Balancing Test Framework

WCJ weighs:

- Is HIV directly placed at issue?
- Is there a medical-legal nexus?
- Can redaction suffice?
- Is in camera review appropriate?
- Is request narrowly tailored?



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



43

When HIV Becomes Discoverable

HIV records MIGHT be discoverable if IW claims:

- Immune suppression injury
- Occ.exposure (e.g., needle stick)
- Aggravation of pre-existing HIV

- ❖ Causation overlap (e.g., infectious disease claim)
- ❖ Apportionment analysis
- ❖ Tx dispute where HIV affects healing



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



44

Britt v. Superior Court 20 Cal.3d 844 (1978)

- ❖ **H:** Filing suit waives privacy only as to conditions placed “in controversy.”
- ❖ Must be **directly relevant and narrowly tailored.**
- ❖ Overbroad “all records” SDT improper



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



45

California Constitution, Article I, § 1 - Right to Privacy

Balancing test:

- Legitimate discovery need
- Reasonable expectation of privacy
- Narrow tailoring requirement

Balance: not automatically favor disclosure



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



46

What Is Actually Waived?

When an IW files a claim:

Applies to:

- Claimed body parts
- Claimed conditions
- Alleged psychiatric injury (if pled)

NOT apply to:

- Entire lifetime medical history
- Unrelated conditions
- Purely personal medical matters



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



47

WCAB Application

- ❖ WCJs rely on Britt to:
 - ❖ Grant Motions to Quash
 - ❖ Issue Protective Orders
 - ❖ Order In Camera Review
- ❖ Limit subpoenas by:
 - ❖ Date range
 - ❖ Body part
 - ❖ Specialty



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



48

Compliant SDT Strategy

Limit by:

- ❖ Body part (e.g., lumbar spine only)
- ❖ Date range (e.g., 5 years pre-injury)
- ❖ Specialty (e.g., ortho, pain mgmt)
- ❖ Condition (e.g., prior low back complaints)

Include relevance language in



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



49

Sensitive Records (Heightened Protection)

- ❖ Psych
- ❖ HIV / infectious disease
- ❖ Substance abuse treatment (42 CFR Part 2)
- ❖ Sexual history
- ❖ Genetic testing



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



50

When HIV Becomes Discoverable

HIV records MIGHT be discoverable if IW claims:

- Immune suppression injury
- Occ.exposure (e.g., needle stick)
- Aggravation of pre-existing HIV

- ❖ Causation overlap (e.g., infectious disease claim)
- ❖ Apportionment analysis
- ❖ Tx dispute where HIV affects healing



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



51

A Statutory Penalty



Statute: *Health & Safety Code § 120980 et seq.*

The Rule: Negligent disclosure results in civil penalties (\$1,000+ per instance). Willful disclosure results in higher fines (\$5,000+) and potential misdemeanor charges.

The Lesson: "I didn't notice it was in the file" is an admission of **Negligent Disclosure**.



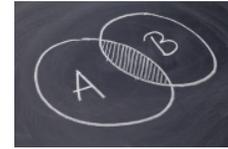
Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



52

A Federal Trap

42 CFR Part 2: Substance Use



Confidentiality - When HIV Records and Rehab Records Overlap

The Scenario

You subpoena records for an HIV-positive applicant. The records often contain history of IV drug use or referrals to methadone clinics.

The Danger: You are now holding records protected by **Federal Liability**.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



53

The Law (42 CFR Part 2)



Scope: Protects records identifying a patient as having a substance use disorder (SUD) if the provider is federally assisted (which almost all are).

The Rule: Unlike HIPAA, **42 CFR Part 2 is more restrictive.**

- It does **not** have a standard "Workers' Compensation Exception."
- Disclosure requires a specific, written consent form (compliant with § 2.31) OR a specific court order showing "Good Cause" (under § 2.64).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



54

Attorney Liability for "Inadvertent" Disclosure

Case: *Jeffrey H. v. Imai, Tadlock & Keeney* (2000) 85 Cal.App.4th 345



The Holding: A law firm was sued for invasion of privacy after receiving HIV records by mistake (via a copy service error) and failing to properly secure/return them.

The Lesson: You cannot blame the copy service or the doctor. If *you* (the law firm) receive the records and then disseminate them (to the QME, carrier, or service list) knowing they contain protected info, **you are liable**.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



55

Audit Your Subpoena Vendors

Copy services often "auto-serve" records to all parties.



Action Item: Instruct your copy service to **HOLD** all records for attorney review before serving them on opposing counsel or the WCJ, especially for "sensitive" providers (infectious disease specialists, rehab clinics).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



56

"Chinese Wall"

- ❖ Adjuster can see
 - ❖ pay for the testing and medication.
 - ❖ Also bound by medical confidentiality laws



- ❖ Employer: **CANNOT** see sensitive medical diagnosis



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



57

"Chinese Wall"

- ❖ Adjuster can only tell employer: “The claim is accepted,” “The worker needs time off,” or “The worker has these work restrictions.” They cannot say
 - ❖ “The worker is HIV positive,” etc.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



58

Legal Staff Considerations



ID "Red Flag" Specialists: Infectious Disease, Immunology, Retro-Viral Clinics, Methadone/Substance Abuse Centers.

"Wait & See" Policy: All records from these providers must be reviewed by the "ATTORNEY" **BEFORE** they are scanned or served.

Copy Service Alerts: Update your standing instructions with copy services (e.g., Compex, Knox) to "Hold for Review" any records containing keywords like *HIV, AIDS, Antiretroviral, or 42 CFR*.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



59

A true insider's perspective...

Hats off to Wendy Humphrey...

The inside scoop:

WCJs see few "Petitions to Seal"
"Maybe a couple a year"



All WCAB districts follow the same rules
All adhere to Rule 10813 (below)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



60

"HIV" removed (but survives in spirit and cross-reference)

Rule 10813 (a) lists the specific types of info that justify sealing a document. It allows sealing for documents containing references to, among others:

- ❖ "Sexual habits or practice" (Often used as code for HIV status)...



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



61

Entire file is not sealed

WCJ "issues an order permitting certain redacted documents be accepted for filing in place of the unredacted documents."

"The unredacted documents are kept by us under seal. The redacted documents go into the Board file, and are available for public inspection... by way of a Public Records Act Request"

Public Record Act Request = approx 160/month



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



62

What CCR 10813 Does:



- ❖ Gives WCJ authority to "seal" specific medical reports or docs so public cannot see
- ❖ If doc is "sealed," is placed in a separate, secure envelope in the court file.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



63

What Can Be Sealed?



WCJ's, limited staff, have a list of types of sensitive information justify sealing order. Documents w/references to:

- ❖ Sexual habits or practices (This is the category usually used for HIV/AIDS status).
- ❖ Mental or emotional health (Psych records).
- ❖ Use of or addiction to alcohol or other drugs.
- ❖ Unreasonable invasion of privacy



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



64

Who CAN see it?

- Only the Judge & staff, AA & DA



Who CANNOT see it?

- General public, employer (only allowed to know work restrictions), and parties not directly involved in lit of that specific issue.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



65

Searching EAMS you find:

- 1) person's real name
- 2) that a document or entire file is sealed



Hint: would signal to DA there are VERY INTERESTING records to review

Reason: for the record/file to sealed, it was done per Rule 10813(c) (presumably at AA's request):



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



66

CCR Title 8, Section 10813(c): test a WCJ) must apply before ordering seal-

- Expressly find facts establish:...
- (c) WCJ/WCAB may order doc sealed only after expressly finding facts that establish:



1. Overriding public interest that overcomes the right of public access to the record;
2. Overriding public interest supports sealing the record;
3. A substantial probability exists that the overriding public interest will be prej. if record not sealed;
4. Proposed sealing is narrowly tailored; and
5. No less restrictive means exist to achieve the overriding public interest.



- "Narrowly Tailored" (Point 4): cannot seal an entire med file if only one para contains the sensitive info. Seal only the specific pages or redactions necessary.
- "No Less Restrictive Means" (Point 5): If redacting a name or a social security number is enough to protect privacy, the court must choose that option.
- "Expressly Finding Facts": WCJ must write a specific order explaining why sealing is necessary based on these five points; cannot issue generic "granted" order.
- If you are filing a Petition to Seal under this rule, your petition must explicitly argue these five points. (Help your judge!)



Consequences of Violation

It's Not Just a Slap on the Wrist

VIOLATION

- **Civil Penalties (H&S § 120980):**
 - **Negligent Disclosure:** Civil penalty of up to \$1,000 *per instance*.
 - **Willful Disclosure:** Civil penalty of up to \$5,000 *per instance*.
 - **Misdemeanor:** Causing economic, bodily, or psych harm through disclosure can be a misdemeanor (imprisonment up to 1 year).
- **Prof. Liability:** Pot. State Bar discipline for violating privacy laws.
- **Malpractice:** Firm can be sued for damages resulting from breach of privacy



When Is It Actually Discoverable?

The "Direct Relevance" Test

- HIV status is generally **not discoverable** unless it is directly relevant to the specific injury claimed.
 - *Ex:* Needle stick injury at a hospital (Directly Relevant).
 - *Ex:* Stress claim purely based on workplace harassment (Likely Not Relevant).
 - *Ex:* Ortho back injury (Likely Not Relevant, unless arguing wasting syndrome/recovery issues).
- **Burden of Proof:** Def must show a **compelling state interest** in disclosure that outweighs the constitut right to privacy.



Best Practices for Defense Counsel



Protect Your License & Client



- **Redact First:** If records arrive with HIV info, redact *before* distribution to anyone (including the carrier).
- **In Camera Review:** If you believe HIV status is relevant to the defense (e.g., life expectancy for a buyout), file a petition for an *In Camera* review by the WCJ.
 - *Let the Judge decide relevance before the records are released.*
- **QME Letters:** Do not mention HIV status in your advocacy letter unless it is already an admitted part of the record.
- **Secure Storage:** Keep unredacted sensitive records in a separate, sealed envelope or password-protected sub-file, not the main claim file.



Donald Barthel, Esq.
dbarthel@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



73