

Multi-Country Review of Laws and Policies on HIV Testing and Counseling in East Asia and the Pacific

A Country Report: Philippines

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For

UNICEF EAPRO

May 29, 2007

Disclaimer: This paper was prepared as part of a multi-country review of laws and policies on select countries in East Asia and the Pacific commissioned by UNICEF EAPRO. The views expressed are those of the author and do not necessarily reflect those of UNICEF.

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ACKNOWLEDGEMENTS

The author would like to acknowledge the individuals who generously contributed their time and insights in answering the questionnaire for the conduct of this Review, as well as, identifying materials worth looking into in order to get a better picture of the legal and policy environment surrounding issues on consent, counseling, and confidentiality. A list of mentioning these individual are attached to this Review. Special thanks to Jose “Joe” Romero MD of the Perpetual Help Hospital of Las Pinas and Ma. Teresa Goyena for their support and encouragement throughout the process.

METHODOLOGY

The author was commissioned by UNICEF – East Asia Pacific Regional Office (EAPRO) to conduct this Legal and Policy Review of the existing Philippine laws and policies surrounding HIV Testing and Counseling as additional inputs to the discussions on HIV testing approaches, and to gain a glimpse of the legal and policy environment protecting the three C's (Consent, Counseling, and Confidentiality) in currently implemented approaches in the countries covered by the Review. The additional task of consolidating these individual country reports and presenting the major findings as they affect the populations within the UNICEF focus is part of that engagement.

As a starting point, and, to find common ground in embarking on this task, a Questionnaire was prepared containing a list of questions focusing on the main concerns and issues under review. A desk review of the existing laws, policies, guidelines, official national or departmental reports, relevant jurisprudence, strategy papers; interviews of the key stakeholders responsible for formulating as well as implementing these policies or national strategies; and, a review of the articles and other similar relevant materials published by civil society organizations, constitute the adopted methodology for this Review.

RESPONSE TO THE QUESTIONNAIRE

1. What are the laws and regulations in the country that are relevant to HIV testing and counseling ?

As a consequence of the first recorded case of HIV in 1984, the Department of Health issued several Administrative and Memorandum circulars to address concerns surrounding HIV/AIDS, such as:

- Declaring HIV a Notifiable Disease (1986),
- Administrative Order No. 18, series of 1995 "Guidelines for the Management of HIV/AIDS in Hospitals"
- Administrative Order No. 9, s. of 1997, "Amendment to Administrative Order No. 18"
- Administrative Order No. 2, s. of 1997, "National Policy Guidelines for the Prevention and Management of Sexually Transmitted Diseases"
- Administrative Order No. 16-A, s. of 1997, "Guidelines for the Management of Asymptomatic Women with RTI/STD"
- Guidelines for Infectious Disease Control in Hospitals (1997)
- Administrative Order No. 5, s. of 1998, "Implementing Guidelines in STD Care Management in the Different Levels of the Health Care System"
- Administrative Order No. 5, s. of 1998, "Implementing Guidelines in STD Case Management at the Different Levels of the Health Care System"
- Ethical Guidelines in Aids Investigations in the Philippines (2000) by the Philippine National AIDS Council.

On February 13, 1998, the Philippine Congress adopted and signed into law a HIV-specific legislation that provided the national policy on HIV prevention, control, care and support. This is Republic Act No. 8504, otherwise known as the "Philippine AIDS Prevention and Control Act of 1998".¹ This legislation contains the definitive State Policies on HIV/AIDS² on concerns affecting Testing, Screening, and Counseling³; Monitoring⁴; and, Confidentiality⁵.

It also reconstituted and strengthened the former national advisory committee on HIV prevention and control by establishing a 26-member multi-agency Philippine National AIDS Council (PNAC)⁶ which was mandated to be the central advisory, planning and policy-making body for the comprehensive and integrated HIV/AIDS prevention and control program of the country.

More than a year later, the PNAC adopted and issued an Administrative Order, otherwise known as the “Rules and Regulations Implementing the Philippine AIDS Prevention and Control Act of 1998”⁷, which among others, detailed and prescribed the guidelines, procedures, and standards in implementing provisions of RA 8504.

As in all legislation emanating from the Philippine Congress, RA 8504 contains a repealing clause which declares that “All laws, presidential decrees, executive orders and their implementing rules inconsistent with the provision of this Act are hereby repealed, amended, or modified accordingly⁸.” Thus, in practical effect, RA 8504 and its Implementing Rules are the controlling documents as it pertains to the policy matters under this review.

Nevertheless, there are several other laws which pre-dated RA 8504 which may have relevance to HIV testing and counseling. The first 5 enumerated laws have been specifically acknowledged within the provisions of RA 8504 or its Implementing Rules and Regulations. These are:

1. Republic Act No. 7170, also known as the “Organ Donation Act”⁹,
2. Republic Act No. 7719, also known as the “National Blood Service Act”¹⁰,
3. Republic Act No. 3815, as amended, otherwise known as the “Revised Penal Code of the Philippines”, specifically:
 - Articles 264¹¹ (Administering Injurious Substances),
 - Article 335 (Rape)¹², and
 - Article 337 (Qualified Seduction)¹³.
4. Republic Act No. 7659, otherwise known as the “Death Penalty Act”, specifically Section 11, paragraph 5¹⁴ (Rape, when the offender knows he is afflicted with Human Immuno-Deficiency Virus HIV, AIDS, or any other sexually transmitted disease and the virus is transmissible to the victim), and
5. Executive Order No. 209, otherwise known as the “Family Code of the Philippines”, specifically Article 45¹⁵ (Annulment of Marriage) and

Article 46 ¹⁶(Circumstances Constituting Fraud re: Annulment of Marriage).

6. Republic Act 7919, also known as the “Alien Social Integration Act of 1995”, specifically Paragraph 4.4, Section 4 (Integration Requirement and Fees)¹⁷
7. Presidential Decree no. 442, also known as “The Labor Code of the Philippines”, specifically Article 284 (Disease as Ground for Termination), Book 6 (Post Employment), Title1 (Termination of Employment)¹⁸

2. Do the laws or any other regulations provide for the following?

2.1 Consent

Under the provisions of RA 8504, informed consent is defined as “. . . *the voluntary agreement of a person to undergo or be subjected to a procedure based on full information, whether such permission is written, conveyed verbally, or expressed indirectly.*¹⁹”

It also declares that “*No compulsory HIV testing shall be allowed. However, the State shall encourage voluntary testing for individuals with a high risk of contracting HIV: Provided, that written informed consent must be first obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of minor or a mentally incapacitated individual.*²⁰”

The Family Code of the Philippines or Executive Order No. 209, states that emancipation from parental authority takes place at the attainment of majority which commences at the age of eighteen years.²¹ Upon reaching this age, a person shall be qualified and responsible for all acts of civil life²² unless otherwise provided or qualified by the provisions of the Civil Code or other laws, such as in requiring parental consent when marriage is entered into by an individual below 21 years of age.

The implementing rules of RA 8504 likewise states that when the person to be tested is unable to write, a thumbprint shall substitute for the signature on the written consent form²³. The rules also allow an instance when consent is presumed to be given as when “*a written consent of a person to act as a volunteer or donor of his/her blood, organ, or tissue for transfusion, transplantation, or research shall be deemed a consent for HIV testing*”²⁴

While the law allows consent to be verbalized, it is not clear when and under what circumstances such a form of consent to HIV testing can be legally acceptable. It also does not provide guidance in HIV testing of abandoned or orphaned children and minors whose parents, legal guardians, and next of kin cannot be located.

Other than the above plenary prohibition of compulsory HIV testing and the requirement of written informed consent to evidence the voluntary nature of the individual's submission to testing, the law goes further and specifically prohibits and deems unlawful HIV testing as a precondition to:

- a. employment,
- b. admission to educational institutions,
- c. the exercise of freedom of abode,
- d. entry or continued stay in the country,
- e. the exercise of the right to travel,
- f. the provision of medical service or any other kind of service, and
- g. the continued enjoyment of the above undertakings.²⁵

Note however, that the law and the implementing rules enumerate specific situations as exceptions²⁶ to the prohibition against compulsory HIV testing as when the same is in compliance with a valid court order issued pursuant to cases enumerated in the law. Please refer to table 1 below.

In addition to this, Overseas Filipino Workers (OFWs) applying for work abroad, especially seafarers, land-based workers to the Middle East, Taiwan, and lately, Malaysia, have been known to be required to undergo HIV testing as a condition to the issuance of a work visa by the receiving countries and/or as a specific condition for employment imposed by foreign employers. This is just a partial list of countries or regions requiring applicants requiring the same.

Table 1
Instances When Written Informed Consent for HIV Testing
Is Required and When It s Not Required

Situation	Requirement	Who's Consent
HIV Test of a person of legal age (18 and above)	Written Informed Consent to a HIV Test	By the Person to be Tested
HIV Test of a minor (below 18) And of a mentally incapacitated person	Written Informed Consent to a HIV Test	By the parent or the legal guardian of the minor or the mentally incapacitated person
HIV Test of a Blood or Organ	Written Consent to act as a	By the volunteer or donor

Donor	volunteer or donor	
When a person is criminally charged under Arts. 264 (Administering Injurious Substances), 335 (Rape), 337 (Qualified Seduction), Art 338 (Simple Seduction), Section 11, par. 5, RA 7659 (Rape, when the offender knows that he is afflicted with AIDS) and Section 2, RA 8353 (Rape, when the offender knows that he is afflicted with HIV or any other sexually transmitted disease that is transmissible to the victim)	Upon a Court Order	The consent of the person accused is <u>not</u> required
In a Civil Case for Annulment of Marriage invoking Articles 45 and 46 of the Family Code of the Philippines.	Upon a Court Order	No consent of the defendant is necessary

2.2 Confidentiality

Under the provisions of the law and its implementing rules, confidentiality of the fact of taking an HIV Test, the identity of the person to be tested, and the medical record and data arising from the test are all clothed with the protective mantle of shared medical confidentiality²⁷. See Table 2 below. To ensure compliance with medical confidentiality, penalties for specific instances of violations thereof are provided for.

Table 2

Confidentiality of the Test	Confidentiality of Medical Information Arising from the Test	Exceptions
(1) Allows the use of an assumed or code name ²⁸	(1) All health professionals, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of medical record, file, data, or test results are to strictly observe confidentiality in the	(1) When complying with reportorial requirements of the AIDSWATCH Program ³⁰

	handling of information of all medical information, particularly the identity and status of the person with HIV ²⁹ .	
(2) Mechanism for unlinked anonymous testing ³¹	(2) Limits the Release of HIV test to person tested, the parent or legal guardian of the minor, insane or orphan who is tested, person authorized under AIDSWATCH, and to the proper Court ³²	(2) When informing other health workers directly involved or about to be involved in the treatment or care of a person with HIV/AIDS ³³ The implementing rules qualify this as only those health workers who are exposed to invasive procedure and may potentially be in contact with blood and bodily fluid likely to transmit HIV. Those not at risk of transmission must not be informed of a person's HIV status. ³⁴
	(3) Provides Penalties for Violation of medical confidentiality such as imprisonment & administrative sanctions (fines & suspension or revocation of violator's license as well as cancellation or withdrawal of license to operate and accreditation of hospitals, laboratories, clinics ³⁵	(3) When responding to a subpoena duces tecum and subpoena ad testificandum issued by the proper Court ³⁶

The provision on the confidential nature of medical information is not new. The Code of Ethics of the Medical Profession states that *“The physician is obliged to respect the confidentiality of all information he acquires on the basis of his professional capacity, and not to divulge the information unless there is signed consent from the patient, or when the common good so requires (as defined by specific circumstances).”*³⁷

A violation of this duty shall constitute an unethical and unprofessional conduct, and shall be grounds for reprimand, suspension, or expulsion from the Philippine Medical Association. Further, if the violation is sufficiently grievous, the Board of Governors of the Association, may endorse the case to the Professional Regulatory Commission for possible revocation of registration³⁸.

The Rules on Evidence³⁹ likewise acknowledge that the privilege nature of communications between a patient and a physician is intended to inspire the patient and encourage full disclosure to the physician as to his symptoms and condition, by preventing physicians from making known to the curious the ailment of their patients, particularly when afflicted with diseases which might bring reproach, criticism, unfriendly comment, disgrace, stigma, and discrimination upon the patient. Republic Act 8504 has gone one-step further and extended medical confidentiality to cover nurses, attendants, and medical staff assisting or acting under the direction of a physician in the treatment of his patient by adopting the concept of shared medical confidentiality.

2.3 Counseling

*All testing centers, clinics, and laboratories which perform any HIV test shall be required to provide and conduct free pre-test counseling and post-test counseling for persons who avail of their HIV/AIDS testing services. However, such counseling service must be provided only by a person who meet the standards set by the Department of Health.*⁴⁰

The Implementing Rules of RA 8504 amplify this provision by prescribing the content of a Pre-test counseling; a Post-test counseling after a negative result; and, the Post-test counseling after a positive result⁴¹. While the preferred mode for counseling is on an individual basis, it also allows group pre-test and post-test counseling (with a negative result) for Overseas Filipino Workers (OFWs). In case of a positive result to an HIV test, individual counseling is always required.⁴²

2.4 Notification (case reporting for surveillance purposes)

RA 8504 established a comprehensive national HIV/AIDS monitoring Program called "AIDSWATCH"⁴³ under the Department of Health. The Program's primary mandate is to determine and monitor the magnitude and progression of HIV infection in the Philippines for purposes of evaluating the adequacy and efficacy of the counter-measures employed by government. It shall receive all information and other data emanating from hospitals, clinics, laboratories, and testing centers doing blood screening, diagnostic testing, and voluntary testing.

AIDSall employ both passive⁴⁴ and active⁴⁵ surveillance methods in monitoring the magnitude and progression of HIV infection.⁴⁶ According to

the National AIDS/STD Prevention and Control Program, even HIV testing for surveillance purposes requires written informed consent.

2.5 Contact tracing / partner notification

The Department of Health has been empowered to conduct contact tracing and all other related health intelligence activities to enable it to monitor the progression and magnitude of HIV⁴⁷. Nevertheless, such activities may be exercised for as long as:

- a. They do not run counter to the general purpose of the law or its Implementing Rules,
- b. The information gathered shall remain confidential and classified and can only be used for statistical and monitoring purposes, and
- c. That no information gathered from contact tracing may be used as basis or qualification for any employment, school attendance, freedom of abode, travel, or access to health and other social services.

The law makes it a legal obligation for a person with HIV to disclose his/her status and health condition to his/her spouse or sexual partner at the earliest opportune time.⁴⁸ Assistance may be sought by the HIV positive individual from health workers or counselors who provided them with post-test counseling.⁴⁹ There are however, no provisions under RA 8504 law or its implementing rules that provide guidance in determining: what the phrase “earliest opportune time” actually means; how government or participating agencies and partners will ensure compliance with this legal obligation; what government office will monitor compliance; or, what are the legal consequences of failure to disclose such status.

3. *With regard to the following populations, are there any provisions, legal and other, that provide for compulsory (involuntary) testing?*

As stated earlier, RA 8504 proscribes compulsory HIV testing and requires written informed consent. However, in very specific instances enumerated, see Table 2 above, a court order may be issued compelling a defendant in a civil case or an accused in a criminal case to undergo HIV testing and that the results thereof brought to the attention of the court issuing such order.

An official of the Department of Justice who sits as an alternate member of the DOJ in the Philippine National AIDS Council who was

interviewed stated that she is not aware of any department circular or guidelines issued to the city and municipal prosecutors who by law are mandated to investigate criminal complaints (preliminary investigation or indictment proceedings), and who are likewise tasked by law to prosecute criminal cases elevated to the courts. She further stated that any such guidelines issued by the department pursuant to a new penal law, or a legislation containing penal provisions such as RA 8504, are usually distributed to all its personnel nationwide who are involved in the investigation or prosecution of the same. Oftentimes, this become subject of nationwide training courses initiated by the department and participated in by city and municipal prosecutors⁵⁰.

Neither has the Supreme Court issued new rules to govern court proceedings, specially with regard to motions filed to compel the HIV testing of perpetrators who are under detention awaiting trial. Under Philippine legal system, it is only the Supreme Court which can issue rules to govern the conduct of trials within all courts.

4. *Is mandatory testing prescribed as a condition in the laws and regulations(policies / guidelines) for some other benefit? (eg. donating blood, immigration purposes, visas, getting married, joining uniformed services or other kinds of employment, pre-surgery, emergency care, dental care patients etc)*

Table 3 contains a listing of the existing Philippine laws where one can find a provision requiring mandatory testing. Note however that in the case of the Overseas Filipino Workers (OFWs), this does not involve an enforcement of a Philippine law, but one involving compliance with the legal requirements of a foreign country for issuance of a visa for temporary workers who are not citizens or residents, or, compliance to the requirements of an employer for an overseas work contract offered to a Filipino citizen.

Table 3.

Activity	Legal Basis
Blood Donation	Republic Act No. 7719
Organ Donation	Republic Act No. 7170
Visas for Aliens Applying for Philippine Residency Status	Republic Act No. 7919 or the Alien Integration Act
Overseas Filipino Workers	Required by the Foreign Employer and/or as Part of the Working Visa Requirements of the Country of Deployment

With regard to aliens applying for residency status under RA 7919, this requirement for HIV testing has been taken-out from the application forms listing the various medical tests an alien applicant has to undergo and the results thereof submitted to the Bureau of Immigration⁵¹. Despite this, however, there were instances when alien applicants still submitted results of HIV testing because the requirement still appears as part of the provisions of RA 7719 unaware of its constructive repeal with the enactment of RA 8504. Further, as their countries of origin require HIV testing for immigrants and for foreign visitors who stayed beyond the allowable period accorded to temporary visitors, they must have thought that a similar requirement is operative under Philippine laws⁵².

Another instance when Filipino citizens are required to undergo mandatory testing is when they apply for overseas employment. Specifically, we refer to the Overseas Filipino Workers who are required by host countries and/or foreign employers to undergo HIV testing. Only those with negative test results are hired. They have to undergo this procedure every time their contracts are renewed.

We quote certain portions of “HEALTH AT STAKE: Access to Health of Overseas Filipinos 2005 Report” prepared by Achieve, Inc. and Caram-Philippines:

“The components of the medical examination for migrant workers required by all countries of destination are the following: x x x HIV/AIDS

The medical certificate issued by the accredited diagnostic clinics is only valid for 3 months. This means that if the processing of the OFW’s application takes more than 3 months, s/he will have to undergo medical examinations again once his/her visa is issued.

x x x

Worse, many OFWs are not aware they have been tested for HIV because none of the procedures they undergo are explained to them. Those who are aware they are being tested for HIV find-out because they read the medical examination report.

x x x

The clause on anonymity and confidentiality is breached in the process of medical testing because the diagnostic clinics are required by their clients, the recruitment agencies, to forward all medical test results to the agency, not to the worker. The migrant worker is made to sign the medical examination report giving his/her permission to furnish the agency with the findings of his/her examination.⁵³

x x x

Despite the requirement of pre and post test counseling in HIV Antibody testing, this is not commonly practiced by the diagnostic clinics."

In 2002, the Philippine Overseas Employment Administration, the national agency overseeing overseas deployment of Filipino workers, issued Memo Circular No. 7 informing local placement agencies and Taiwan-bound OFWs that the Taiwanese Department of Health has officially announced the effective May, 2002 that all OFW bound for their country must undergo HIV Serological Examinations.⁵⁴

Likewise, from the News and Information Page of the Department of Labor Website there appears a report dated March 2006, which announced that;

". . . Citing a report from the Philippine Overseas Labor Office (POLO) in Kuala Lumpur, Labor and Employment Secretary Patricia A. Sto. Tomas said that the Malaysian government requires OFWs and other foreign workers including domestic workers to undergo medical examinations within the first month of their arrival in Malaysia and again at the end of their first year of stay in this country.

A third check-up is also required of all foreign workers at the end of their second year of stay in Malaysia, Sto. Tomas said adding that the new Malaysian immigration ruling also applies to foreign workers who are already in Malaysia."

An inventory of the host countries that require HIV testing as a condition for issuance of a visa, and/or countries where employers require OFWs to undergo HIV testing, will provide a clearer picture of the extent of this practice.

5. Are the rights to autonomy and privacy protected in the country?
(Please refer to page 23 in paper by Ralf Jurgens for guidance)

5.1 Please enlist the relevant treaties, laws and provisions, and briefly comment on the enforcement of these provisions.

Table 4

International Bill of Human Rights	Signature	Ratification	Accession
<u>International Covenant on Economic, Social and Cultural Rights</u>	19 Dec 1966	7 Jun 1974	
<u>International Covenant on Civil and Political Rights</u>	19 Dec 1966	23 Oct 1986	
<u>Optional Protocol to the International Covenant on Civil and Political Rights</u>	19 Dec 1966	22 Aug 1989	
<u>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</u>	Not signed		
Women's and Children's Human Rights	Signature	Ratification	Accession
<u>Convention on the Elimination of All Forms of Discrimination against Women</u>	15 Jul 1980	5 Aug 1981	
<u>Convention on the Rights of the Child</u>		26 July 1990	
<u>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime</u>	14 Dec 2000	28 May 2002	
<u>Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime</u>	14 Dec 2000	28 May 2002	
Slavery and Slavery-Like Practices	Signature	Ratification	Accession
<u>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery</u>			17 Nov 1964
<u>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</u>	20 Dec 1950	19 Sep 1952	
Protection from Torture, Ill-Treatment and Disappearance	Signature	Ratification	Accession
<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>		26 Jun 1987	
Freedom of Association	Signature	Ratification	Accession
<u>Freedom of Association and Protection of the Right to Organise Convention</u>		29 Dec 1953	
<u>Right to Organise and Collective Bargaining Convention</u>		29 Dec 1953	
Education	Signature	Ratification	Accession
<u>Convention against Discrimination in Education</u>		Ratified	
<u>Rome Statute of the International Criminal Court</u>	28 Dec 2000		

The fact that the Philippines has signed, ratified, or acceded to these multilateral treaties does not mean that by that fact alone, treaty obligations are immediately executory. Under the Philippine legal system, such treaty obligations have to be enacted into an appropriate

legislation or executive orders be issued for them to be recognized as part of the law of the land.

In so far as the relevant rights are concerned, specially, the right to equality, the right to human dignity, the right to privacy, the right from unreasonable searches and seizures, the right to assembly, the right to health, the right to information and other relevant rights have all been enshrined in the 1987 Philippine Constitution which are contained in Article III (Bill of Rights)⁵⁵.

In order to ensure compliance with these constitutional rights, an independent Commission of Human Rights⁵⁶ was created which is mandated to investigate all forms of human rights violations.

Even the Civil Code of the Philippines (RA 386), which was enacted in 1949, has recognized the sanctity of these rights and provide for civil liability for violations thereof.

CHAPTER 2 **HUMAN RELATIONS (n)**

Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another's residence;*
- (2) Meddling with or disturbing the private life or family relations of another;*
- (3) Intriguing to cause another to be alienated from his friends;*
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.*

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;*
x x x
- (8) The right to the equal protection of the laws;*
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;*
- (10) The liberty of abode and of changing the same;*

(11) *The privacy of communication and correspondence;* (12) *The right to become a member of associations or societies for purposes not contrary to law;*

x x x

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

Furthermore, RA 8504 and its Implementing Rules, prescribes penalties for specific violations of the rights of individuals who are HIV positive arising as a result of:

- a. Unsafe practices and procedures (non-compliance with recommended universal precautions);
- b. Any violations of medical confidentiality; and
- c. Discriminatory acts and practices.

5.2 Under what circumstances can the state or the rights of other individuals serve to infringe upon the individuals rights?

In the exercise of the inherent right of the State to promote the common good, it can exercise its police power or the power to promote public welfare by restraining and regulating not only the property but, more importantly, the liberty of private persons.

In an En Banc Decision of the Supreme Court of the Philippines in the case of *Ople vs. Torres* (GR No. 127685, July 23, 1998), the Court declared unconstitutional Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" issued by the Office of the Philippine President.

In doing so, the Court declared that:

"the essence of privacy is the "right to be let alone" and that ". . . we will find that the right . . . is recognized and enshrined in several provisions of our Constitution."

The Court further stated that:

“. . . The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector--protection, in other words, of the dignity and integrity of the individual--has become increasingly important as modern society has developed.”

This does not imply that the right to privacy is absolute as the Court qualified its arguments by saying that:

“In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused and a compelling interest justify such intrusions. Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny.”

In the more recent case of Sabio vs. Senator Gordon (GR No 174340, October 17, 2006), the Court had occasion to elaborate on the right to privacy.

“Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a “constitutional right” and “the right most valued by civilized men,” but also from our adherence to the Universal Declaration of Human Rights which mandates that, “no one shall be subjected to arbitrary interference with his privacy” and “everyone has the right to the protection of the law against such interference or attacks.”

Our Bill of Rights, enshrined in Article III of the Constitution, provides at least two guarantees that explicitly create zones of privacy. It highlights a person's "right to be let alone" or the "right to determine what, how much, to whom and when information about himself shall be disclosed." Section 2 guarantees "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose." Section 3 renders inviolable the "privacy of communication and correspondence" and further cautions that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

In evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.

*X x x **the right to privacy is not absolute where there is an overriding compelling state interest.** In *Morfe v. Mutuc*,^[51] the Court, in line with *Whalen v. Roe*, employed the rational basis relationship test when it held that there was no infringement of the individual's right to privacy as the requirement to disclose information is for a valid purpose, i.e., to curtail and minimize the opportunities for official corruption, maintain a standard of honesty in public service, and promote morality in public administration. In *Valmonte v. Belmonte*, the Court remarked that as public figures, the Members of the former Batasang Pambansa enjoy a more limited right to privacy as compared to ordinary individuals, and their actions are subject to closer scrutiny. Taking this into consideration, the Court ruled that the right of the people to access information on matters of public concern prevails over the right to privacy of financial transactions.*

*Police power concerns government enactments which precisely interfere with personal liberty or property in order to promote the general welfare or the common good (*JMM Promotion and Management vs. Court off Appeals* 260 SCRA 319).*

Such instances of intrusion, can pass the challenge of unconstitutionality, only if:

1. The interests of the public generally, as distinguished from those of a particular class of individuals, require the exercise of police power. This means that the activity or property sought to be regulated affects public welfare.

2. The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

6. *Has there been any jurisprudence or complaints related to HIV testing and counseling? If yes, please briefly describe the content of the dispute and the outcome.*

Under the Philippine legal system, decisions of the Supreme Court interpreting provisions of existing laws are considered as jurisprudential precedent that will guide application of such provision/s in future cases. As such, they become part of the law of the land. A review of the published decisions of the Supreme Court of the Philippines indicates that the Court, as of date, has not yet passed upon a particular case involving a violation of the rights of an HIV positive individual, particularly in relation to HIV testing and counseling.

There have been anecdotal references to specific instances sourced from non governmental organizations providing support to PLWHAs about HIV-related discrimination. However, no such complaints have reached the scrutiny of the Supreme Court, largely for fear of public exposure of the identity of the HIV positive complainant and the potential risk of suffering from further stigma and discrimination⁵⁷.

In the context of stigma and discrimination attached to being HIV positive, it is possible that recourse to filing complaints that will be heard by the Philippine courts is not as encouraging as it may seem. Two immediate reasons that present a barrier to this option are: (1) An individual has to file the complaint under his real name for the, and, (2) court hearings are open to the public, unless by virtue of a court order upon motion of a party to the case, the public is excluded to protect the affected party from trauma and humiliation arising from public scrutiny, as in rape and annulment cases.

7. *Is there a National HIV and AIDS policy in the country? Please provide a copy or full reference of the document.*

The national policy on HIV and AIDS are contained in RA 8504⁵⁸ and its Implementing Rules and Regulations⁵⁹. All other policy pronouncements issued by the different government agencies relative to their responsibility in implementing the law and the national action plan addressing HIV/AIDS are reiterations of these declared state policies.

Periodically, the Philippine Government has issued AIDS Medium Term Plans (AMTPs) which embodies the specific policy directions and program thrusts and strategies for a given period based on data and information regarding the nature and progression of the epidemic gathered from the surveillance systems currently in place. The formulation of the AMTP IV in particular, was guided by an agreed upon Plan Content Outline and planning parameters approved by the Philippine National AIDS Council. An Ad-hoc Planning Task Force composed primarily of the chairs and co-chairs of the existing PNAC committees and representatives from various sectors was organized to serve as the core planning body. Series of national planning workshops attended by multi-sectoral representatives were undertaken including special meetings by the Local Response Committee. The AMTP IV was further validated with regional and local counterparts through regional cluster meetings held in Luzon, Visayas, and Mindanao. The 4th AMTP (2005 – 2010) can be accessed through the website of the Philippine National AIDS Council.

- 8. *Is there an HIV Testing Policy in the country? If yes, is the policy distributed widely? Please provide a copy or full reference of the document.***

As above discussed, the state policy on HIV Testing is embodied in RA 8504 where it clearly and unequivocally states that “compulsory HIV testing shall be considered unlawful unless otherwise provided in this Act”⁶⁰. This policy is reiterated in the Implementing Rules and Regulations of RA 8504.

- 9. *Is there a national Code of Medical Ethics for the conduct of HIV testing and counseling? Please provide a copy or full reference of the document.***

The Philippine National AIDS Council (PNAC), in 2002, published a document entitled “Ethical Guidelines in AIDS Investigations in the Philippines”. The document seeks to address the ethical concerns in the field of HIV/AIDS research between the interest of the individual with that of the society in the furtherance of HIV/AIDS prevention and control efforts.

This initiative to develop a set of guidelines was in prompted by an observation regarding the absence of ethical considerations in HIV/AIDS studies being conducted, as well as reports of unethical practices in HIV/AIDS management in the 1990`s as noted in the paper presented by

Ofelia Monzon M.D., then President of the AIDS Society of the Philippines, in the Second National Research Forum on AIDS in the Philippines, Nov. 17-18, 1995.

The Ethical Guidelines provided a framework for HIV/AIDS research which ensured that Informed Consent, Confidentiality, and Counseling (pre and post test) are rigorously observed.

Other than this, the provisions of RA 8504, and the Administrative Orders, Memorandum Circulars, and the Policy Guidelines issued by the Department of Health in the management of HIV/AIDS in different settings provide the guidance in the conduct of HIV testing.

10. Does training of health care staff include training on consent and confidentiality in context of HIV testing?

Under the implementing Rules of RA 8504, the Department of Health, through the Special HIV/AIDS Prevention and Control Service (SHAPCS) shall coordinate the training shall coordinate the training of medical technologists, pathologists and other health workers who will staff the HIV testing centers. Training courses and workshops on HIV testing shall be conducted at least twice a year. The content of such training courses/workshops are enumerated in Sec. 31 of the Implementing Rules and Regulations. While the policy and consent and confidentiality are subsumed under the topic, "Principles and Methods of HIV Testing", the extent to which these are discussed and elaborated will depend on the resource person assigned during particular trainings.

11. Describe the policy of HIV testing and counseling for the following populations (client-initiated voluntary counseling and testing "VCT", provider-initiated testing and counseling "PITC" (opt-in, opt-out), routine testing, or routinely offered testing?)

Sub-Population	Policy
Adolescents (10-19) and young people (15-24)	No specific policy on HIV testing for adolescents. RA 8504 applicable: VCT, and if the individual is below 18 years, written informed consent to be given by parent/s or guardians
Newborn, Infants	No specific policy on HIV testing of newborns and infants. Note, however, that there exists a law, RA 9288 or the "Newborn Screening Act of 2004" institutionalizing a national screening system for newborns whose purpose is to spare them from heritable conditions that can lead to mental retardation and death, if undetected and

	untreated.
Minors below the age of legal consent	Provision of RA 8504 applies. VCT, and written consent to be given by parents or guardians
Pregnant women and their partners	No specific policy on HIV testing for the pregnant woman or their partners. Provisions of RA 8504 on VCT, and written informed consent applicable.
Pre-marital couples	No specific policy or requirement on HIV testing. Provisions of RA 8504 applies. VCT and written informed consent required.
Injecting Drug Users and Drug Rehabilitation Centers	No specific policy requiring HIV testing. However, drug test is required in order to enroll in the government rehabilitation program.
Boys/Men who have sex with boys/men	No specific policy requiring HIV testing. Provisions of RA 8504 applies. VCT and written informed consent required.
Orphanages and Shelter Homes	No specific policy requiring HIV testing.
Prisons	No specific policy requiring HIV testing.
Sexual assault survivors	Implied policy to put into effect the penal provision providing for the aggravating circumstance of rape when the perpetrator knows that he is HIV positive and transmits the virus to the victim can be applied.
Rapists	By the terms of RA 8504, rapists can be compelled to undergo HIV testing and the results turned-over to the court
Pre-surgery, Emergency care, and Dental care patients	No specific policy requiring HIV testing as a condition for enjoying such health related services. VCT and written consent required.

Pregnant Women and Sexually Transmitted Diseases

Administrative Order No. 2 or the “National Policy Guidelines for the Prevention and Management of Sexually Transmitted Diseases” was issued by the Department of Health on February 1997 contained 11 policy guidelines which, among others, state that the AIDS/STD prevention and control program shall be implemented in all levels of STD service facilities; syndromatic management shall be applied when and where reliable laboratory diagnostic support is not available and requiring that referral sites with appropriate laboratory support shall be designated on a regional basis; that Social Hygiene Clinics shall be expanded to provide STD services not only for special populations but also for the general community; that the promotion of STD health-seeking behavior shall be included in the local and national HIV/STD plans; and, routine testing for syphilis among pregnant women shall be encouraged at all health facilities.

On August of the same year, the DOH issued Administrative Order No. 16-A or the "Guidelines for the Management of Asymptomatic Women with RTI (Reproductive Tract Infections)/STD" which, among others, required that all health care facilities and family planning clinics should routinely assess for RTI/STD in women; all women attendees of the health care system should undergo a thorough "risk assessment" to identify those with asymptomatic RTI/STD; all pregnant women should be routinely tested for syphilis; privacy and confidentiality of information and services should be assured at all times; and every effort should be made to persuade all STD patients to notify their partner (s) and to encourage them to seek counseling and treatment.

Note that there are no provisions on routinely testing or encouraging partners of pregnant women to undergo risk assessment for syphilis or other forms of STDs.

12. ***Do individuals belonging to one or more of the above populations have to pay for an HIV test? What is the approximate cost in USD? How about confirmatory test- is it free of charge? What is the cost?***

According to the National AIDS/ STD Prevention and Control Program of the Department of Health, the cost of an HIV test (Elisa or Rapid Test) ranges from Php 250 to Php 400 or US\$ 5.31 to US\$ 8.50. The cost of confirmatory testing using the Western Blot, in cases of a positive result, done by the National Reference Laboratory are tacked in into this fee. A phone survey done with medical laboratories and private hospitals indicated that the average cost for an HIV test is Php 300.00 or US \$ 6.38. Elisa or the Rapid test is preferred for initial testing and Western blot for confirmatory testing.

13. ***Briefly summarize whether the testing policy / approach in the country is in accordance with the UNAIDS/WHO position (2004, 2006) on the conduct of HIV testing and counseling, in particular its underpinning principles of the "3 Cs" (be confidential, accompanied by counseling, with informed consent). Please try to identify any current or potential infringements of existing testing policies and procedures on the principles of counseling, consent and confidentiality. Please refer to the above discussed populations to the extent that the information is available to you.***

There can be no doubt that the national HIV testing policy in the Philippines formally complies with the UNAIDS/WHO policy statement reasserting the importance of maintaining the three key elements for voluntary HIV testing: Informed Consent; Counseling; and, Confidentiality.

CONSENT

As discussed earlier, the requirement of prior written informed consent to HIV testing has been elevated into a mandatory legal requirement. While the law does not provide penal sanctions for violations regarding the prohibition against compulsory HIV testing or the failure to acquire written informed consent prior to testing, recourse to filing both administrative, as well as, civil actions against persons responsible are nevertheless available. We specifically refer to complaints that can be lodged with the Professional Regulatory Commission for administrative cases against medical practitioners, nurses, and civil actions for damages filed with the regular courts for violations of the rights of the individual as enumerated in the Civil Code.

The WHO/UNAIDS Guidance (2007) on Provider-Initiated Testing and Counseling (PITC) recommending an “opt-out” approach to PITC in generalized epidemics may not find application in the Philippines were the for the past decade the HIV epidemic was characterized as “low and slow”. In the country’s AMTP IV, this has now been characterized as crossing over to a “hidden and growing” phenomenon with the HIV prevalence rate has presently been estimated at 0.02%.

This is not to say that there have been no discussions on adopting a provider-initiated approach in HIV testing, particularly in select population groups, as another alternative approach to VCT. According to the supervising Health Program Officer of the National AIDS/STD Prevention and Control Program, medical specialists working on infectious diseases (STDs), with IDUs⁶¹, or those involved in HIV surveillance have expressed openness to a PITC approach to HIV testing. This, however, also has its own inherent difficulties as in the case of IDU’s. In the Philippines, the mere possession of dangerous drugs, including the possession of drug paraphernalia such as syringes and tooters, constitute violations of the Dangerous Drugs Law and the offenders have to face penal sanctions. Thus, we have a situation where police enforcement agencies look upon the drug problem from the point of view of enforcing the provisions of the Dangerous Drugs Law, while other departments, such as the Department of Health, looks at it from a health perspective.⁶²

Arguably, certain aspects of a PITC are being practiced by accredited clinics conducting HIV testing for Overseas Filipino Workers as they are offering medical examination packages to include HIV testing and these clinics have been allowed, under the rules implementing RA 8504, to

conduct pre and post test counseling in groups. Individual post-test counseling is nevertheless mandatory for OFWs with a HIV positive result.

Adopting an “opt-out” approach to PITC in the event of a generalized epidemic in the Philippines may require introducing amendments to the present HIV law as it requires prior written consent to HIV testing. As currently worded, consent cannot be presumed to have been given if the person to be tested does not “opt-out” after having been informed that an HIV test shall be conducted. As a general observation, in the Philippines, the patient – physician relationship has not yet reached a stage where the same involves a dialogue, not necessarily of equals, but one which can be characterized as not paternalistic. The status of professionals, such as physicians, has long been regarded as one accorded much respect that it will be difficult for most of those who avail of the services of the health system to say no to a persuasive advice.

Furthermore, considering that HIV testing involves an intrusion into the persons constitutional rights to privacy or personal autonomy, as well as, their right to be secure in their person, implied waivers are frowned upon and that a waiver to be valid, the same must be voluntary, clear, express, unequivocal, and informed. Thus, to presume consent unless the person opts-out, or says no to a routine offer of HIV testing by a health provider may be considered violative of such rights, as well as the provisions of RA 8504. A PITC with an “opt-in” approach may be the model that can stand side by side with the requirement of prior written informed consent required under RA 8504.

COUNSELING

Consistent with the guidance provided by WHO/UNAIDS, free Pre and Post Test Counseling is also required from all testing centers, hospitals, clinics, or laboratories performing HIV testing on individuals who avail of such services. It is through counseling that communications between a patient and physician about the nature, purpose, manner, implications of the test enables the patient to seek clarification as well as fully appreciate the personal impact of the authorization or refusal to undergo a specific medical intervention.

While the content of pre and post test counseling as provided under the rules are not as extensive as that suggested under the Guidelines, they nevertheless substantially comply with the same.

There is, however, a need to monitor compliance to this requirement and to determine whether it is in conformity to the standards set by the law and its rules, or its efficacy in modifying the risk behavior of the person tested.

While a standard format for the content of pre and post test counseling is provided for under the rules implementing the HIV law, the reality is that counseling to be must be adopted to address the needs of specific sub-population groups that are most at risk of infection. Quoting from the February 2006 Report on the Rapid Appraisal and Response: HIV Testing and Counseling prepared by Kathleen Casey of the Family Health International,

“Many of the health workers indicated that they had undertaken only limited training in counseling and testing, many indicated this training had been undertaken many years ago. Most had only received training in pre and post test counseling . . . that they had not received specific training in how to address the need of most-at-risk-populations such as MSM, IDU or SW. . . that the training they received had generally not included suicide risk assessment and management, specific strategies to support clients in disclosure of HIV status to partners or families or HIV counseling and testing in the management of occupational exposure. There is a clear need to add these components to an updated standardized national curriculum that is specifically oriented to HIV pre and post test counseling for most-at-risk-populations.”

CONFIDENTIALITY

The privileged nature and confidentiality of medical information has long been recognized in the Philippines as part of the constitutional right of the individual to privacy; as privileged communication under the Rules of Court: and as duties and obligations to patients under the specific provisions of the Code of Ethics for Medical Practitioners and for Nurses.

RA 8504 and its Implementing Rules, have expanded the coverage of this legal obligation to cover persons and institutions that may have custody of record, file or data, communication, and, information that may directly or indirectly lead to the disclosure of the identity or health status of any person undergoing HIV testing or is diagnosed to be HIV positive. As a consequence, the obligation of shared medical confidentiality covers the

following persons and institutions other than the sectors above mentioned:

- Health Instructors and co-workers,
- Employers,
- Recruitment Agencies, Insurance Companies,
- Data Encoders, and
- All other custodians of said record, file, or data.

The law further limits the release of the results of HIV testing only to the following:

- The person who was tested,
- Parent of a minor who was tested,
- Legal guardian of an insane person or orphan who was tested,
- The Person authorized to receive said result under AIDSWATCH, and
- A judge of the lower court, or justice of the Court of Appeals or the Supreme Court.

Strict compliance to the observance of shared medical confidentiality is reinforced by the provision of penal, as well as, administrative sanctions for instances involving violations thereof.

- 14. *Please indicate suggestions / recommendations, if any, for possible changes / amendments to the current law and or relevant policy as they relate to a) consent, b) confidentiality and c) counseling. Please consider recommendations in view of the above populations.***

A. CONSENT

The requirements for written informed consent prior to the conduct of HIV testing, read in relation to the general prohibition against mandatory testing, found within the provisions of RA 8504 and its Implementing Rules are sufficient legal basis for an individual or groups of individuals to refuse HIV testing as a pre-condition to access and continued enjoyment of their rights, services, privileges, and benefits whether the same be as a consequence of their relationship with both the private and government sector.

Compliance, however, to the provisions of the law and its rules will require continuous effort to ensure widespread knowledge about the law through revitalized national information campaigns about HIV/AIDS and

RA 8504 in general, and with focus on the prohibition on compulsory HIV testing particularly to health service providers that offer HIV testing services to the public.

Policy pronouncements and guidelines clearly reiterating the national policy proscribing compulsory HIV testing and requiring prior written informed consent have to be issued by frontline regulatory and service-oriented government departments and agencies. We note that a substantial portion of policy statements and guidelines have been issued by the Department of Health and its attached agencies. Parallel to these efforts is the initiative to put in place internal HIV/AIDS Programs catering to department officers and general personnel initially focusing on basic information and knowledge of HIV/AIDS, and graduating to specialized fora touching upon changing risk behavior and addressing discriminatory attitudes and practices towards those infected.

While the RA 8504 provides a general standard in the conduct of HIV testing, that is it must not be compulsory in nature and that prior written informed consent must be secured as a condition for the conduct of the test, there are nevertheless situations when refinements of that policy are necessary. There is a need to develop guidelines that govern the conduct of HIV testing of minors (children and adolescents) who are not accompanied by a parent or legal guardian or whose next of kin are not present; guidelines for the conduct of HIV testing of sexual assault survivors and those accused as perpetrators of sexual assault crimes, particularly in line with the implementation of the penal provisions on willful transmission of HIV; guidelines on testing of pregnant women who exhibit symptoms attendant to being HIV positive, including their partners; among others. The different government departments and agencies that have institutional responsibilities over particular aspects affecting these population groups in certain specific settings, together with representatives of civil society organizations with programs supportive of these services, may form the core group to discuss and develop these guidelines.

COUNSELING

Although free pre and post test counseling are mandated under RA 8504 and its rules, there are a host of issues surrounding this requirement if one is to review some reports of civil society organizations that have been working on the ground on HIV/AIDS prevention, control, care and support.

Currently there are about 500 accredited laboratories capable of providing HIV testing services; 75% of these laboratories are privately run serving the majority of OFWs undergoing HIV testing as a requirement for employment, as well as blood banks around the country. The remaining 25% are located at public hospitals and social hygiene clinics in 10 priority sites (formerly the ASEP sites).

“Actual provision of pre and post test counseling as required by law has not been fully complied with since this is seen as an added burden as it requires time and a trained staff”⁶³.

According to Dr. Rolando Villote, President of the Association of Medical Clinics for OFWs (AMCOW), there is simply no feasible way of incorporating counseling into their existing medical testing procedures. What they suggest is to provide information, education, and communication (IEC) materials on HIV and AIDS. Still they do not have such materials in their clinics. They are however open to distributing such materials if these are available for distribution from NGOs and the DOH.⁶⁴”

Considering that there are approximately 3,000 Filipinos leaving the country on a daily basis according to the statistics of the Philippine Overseas Employment Administration (POEA), this situation means that the country is losing the opportunity at arming OFWs with relevant information to protect themselves from HIV infection and reducing behavior that places them at risk of infection.

The fact that visa and/or contractual requirements compel OFWs to undergo HIV testing, does not mean that the legal requirements for counseling and medical confidentiality can also be relaxed. This situation underscores the inability of government to closely monitor compliance to the three C's in HIV testing.

The recommendations contained in the FHI Rapid Appraisal and Response Report, as to adjustments in the standard pre and post test counseling curriculum to fit specific needs of most-at-risk populations as well as periodic upgrading skills training for counselors, are critical in ensuring impact counseling.

CONFIDENTIALITY

As in the discussions above, legislating and providing penal and administrative sanctions to enforce strict practice of shared medical

confidentiality in the handling of data and information regarding the identity and the status of the person tested for HIV is not by itself a guarantee against breach thereof.

Health institutions must embark on initiatives that will reinforce this ethical and legal responsibility of individual health workers to the patients seeking medical services from their respective institutions. The concept of medical confidentiality is not new to the medical professionals as well as the nursing staff, as this has been part of their education and training. The duty to observe medical confidentiality is also part of the respective code of ethics of these health professionals. However, this may not be true in the case of other allied medical and administrative staff of these institutions. Thus, developing an institutional code of ethics and manuals of operations which incorporates strict adherence to medical confidentiality in all situations, and with emphasis on the handling and management of HIV related procedures, will reinforce this legal duty and protect the institution and personnel from unnecessary legal complications.

Board of Inquiries within government and private hospitals or large clinics to entertain complaints from patients regarding violations of any of the three C's may be the best way for the health institution to monitor compliance to its institutional code of ethics or manual of operations, aside from giving it the opportunity to identify areas of leakages that lead to the breach of these requirements.

ENDNOTES

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- ¹ See attached full text of RA 8504.
 - ² Section 2, RA8504
 - ³ Article III, RA 8504
 - ⁴ Article V, RA 8504
 - ⁵ Article VI, RA 8504
 - ⁶ Article VIII, RA 8504
 - ⁷ See full text of the Implementing Rules
 - ⁸ Sec. 51, RA 8504
 - ⁹ See attached full text
 - ¹⁰ See attached full text
 - ¹¹ See full txt
 - ¹² See full text
 - ¹³ See full txt

 - ¹⁴ See full txt
 - ¹⁵ See Full txt
 - ¹⁶ See full txt
 - ¹⁷ See text of Par. 4.4, Section 4, RA7919
 - ¹⁸ See full text of Art. 284, PD 442 and Sec. 8, Rule 1, Book VI, Omnibus Rules Implementing The Labor Code
 - ¹⁹ See full txt
 - ²⁰ See full txt
 - ²¹ Art. 234, E.O. No. 209
 - ²² Art. 236, E.O. 209
 - ²³ Sec.26, Rule 4, Implementing Rules
 - ²⁴ See
 - ²⁵ See Sec. 16, Article III, RA 8504
 - ²⁶ See Sec. 17, Article III, RA 8504
 - ²⁷ See Secs. 30, 31, 32, & 33, Article VI, RA 8504 and Secs. 41 to 44, IRR
 - ²⁸ See Sec. 26, Rule 4, Implementing Rules
 - ²⁹ See Sec. 30, RA 8504 and Sec. 41, Implementing Rules
 - ³⁰ Sec. 31 (a), RA 8504
 - ³¹ See Sec. 18, Art. III, RA 8504 and Sec. 29, Rule 4, Implementing Rules
 - ³² See Sec. 32, Art. VI, RA 8504 and Sec. 43, Implementing Rules
 - ³³ See Sec. 31 (b), RA 8504
 - ³⁴ Sec. 42, Implementing Rules
 - ³⁵ See Sec 33, RA 8504 and Sec. 44, Implementing Rules
 - ³⁶ See Sec 31 (c), RA 8504
 - ³⁷ Article II (Duties Towards Patients), par. 5, Code of Ethics of the Medical Profession in the Philippi
 - ³⁸ Ibid, Article VII, (par. 2)
 - ³⁹ Rule 130, Sec. 24 (XIII) Physicians and Clients, cited in Compendium on Evidence, 4th Ed., Sibal and Salazar
 - ⁴⁰ Sec. 20, Article III, RA 8504
 - ⁴¹ See Sec 31, Implementing Rules
 - ⁴² Sec. 31, Rule 4, Implementing Rules
 - ⁴³ Sec. 27 and 28, RA 8504
 - ⁴⁴ Primary health centers, Local Government Units, Regional Epidemiological surveillance units, & Field Health and Intelligence Service at the Central Office.

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- ⁴⁵ Monitoring the biomedical and behavioral components of HIV/AIDS/STD among vulnerable groups in selected sentinel sites geographically distributed throughout the Philippines
- ⁴⁶ Sec. 38, Implementing Rules
- ⁴⁷ Sec. 29, RA 8504 and Sec. 40, IRR
- ⁴⁸ Sec. 34, RA 8504 & Sec. 40 & 45, IRR
- ⁴⁹ Sec. 45, IRR
- ⁵⁰ State Prosecutor Rosalina Aquino.
- ⁵¹ A Situational Analysis of HIV/AIDS Related Discrimination in Metro Manila, Remedios AIDS Foundation, July 2003
- ⁵² *ibid*
- ⁵³ Pages 15 – 16, Health at Stake
- ⁵⁴ See Memo Circular No. 7 of POEA
- ⁵⁵ See full text of Article III, Philippine Constitution
- ⁵⁶ See full text of Article XIII, Philippine Constitution
- ⁵⁷ A Situational Analysis of HIV/AIDS related Discrimination, Remedios Aids Foundation.
- ⁵⁸ See Section 2, a to d, RA 8504
- ⁵⁹ See Section 3, a to f, Implementing Rules
- ⁶⁰ See Section 2 (b,1) of RA 8504 and Section 3 (b, 1) of the Implementing Rules.
- ⁶¹ Interview with Joel Atienza, Supervising Health Program Officer, National AIDS/STD Prevention and Control Program, Department of Health.
- ⁶² Interview with Dr. Jessie Fantone, Monitoring and Evaluation Officer, PNAC Secretariat
- ⁶³ Scaling Up Towards Universal Access by 2010: A Renewed Commitment to HIV and AIDS Prevention, Treatment, Care and Support Philippine Country Report 10 March 2006
- ⁶⁴ Health at Stake: Access to Health of Overseas Filipino Workers 2005 Report

**LIST OF LAWS, JURISPRUDENCE, POLICY STATEMENTS
GUIDELINES, NATIONAL REPORTS & STRATEGY PAPERS,
PUBLICATIONS & ARTICLES
REVIEWED**

A. Laws, Legal Treatises and Articles, Rules, Legal Digest, Code of Ethics :

1. 1987 Philippine Constitution, and specifically, Article III (Bill of Rights)
2. Republic Act No. 8504 or the "Philippine AIDS Prevention and Control Act of 1998"
3. Republic Act No. 7170, also known as the "Organ Donation Act"
4. Republic Act No. 7719, also known as the "National Blood Service Act"
5. Republic Act No. 3815, as amended, otherwise known as the "Revised Penal Code of the Philippines", specifically: Articles 264 (Administering Injurious Substances), Article 335 (Rape), and Article 337 (Qualified Seduction)
6. Republic Act No. 7659, otherwise known as the "Death Penalty Act", specifically Section 11, paragraph 5 (Rape, when the offender knows he is afflicted with Human Immuno-Deficiency Virus HIV, AIDS, or any other sexually transmitted disease and the virus is transmissible to the victim)
7. Executive Order No. 209, otherwise known as the "Family Code of the Philippines".
8. Republic Act 7919, also known as the "Alien Social Integration Act of 1995" (Fees)
9. Presidential Decree no. 442, also known as "The Labor Code of the Philippines", specifically, Book 6 (Post Employment), Title 1 (Termination of Employment) and Article 284 (Disease as Ground for Termination)
10. Republic Act No. 9288 or the "Newborn Screening Act of 2004"
11. Republic Act No. 9271 or the "Quarantine Act of 2004"
12. The Rules of Court on Civil Procedure, Rules 1 – 38
13. Compendium on Evidence, (Discussions on Privilege Communication, by Salazar and Sibal
14. Constitutional Law, (Discussions on the Bill of Rights) by Isagani Cruz
15. Constitutional Law, (Bill of Rights) by Joaquin Bernas
16. Supreme Court Reports Annotated

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17. Chan Robles Virtual Law Library, a legal resource website on Philippine law and jurisprudence
 18. Supreme Court of the Philippines Website
 19. Code of Ethics of the Medical Profession, Philippine Medical Association
 20. Code of Ethics for Registered Nurses, Philippines, Board of Nursing
 21. Code of Ethics, Philippine Board of Medical Technology

B. Jurisprudence:

1. Senator Blas Ople vs. Ruben Torres, et. al; GR No. 127685, July 23, 1998
2. Camilo Sabio, et.al, vs. Senator Richard Gordon, et.al;; GR No. 174340, October 17, 2006
3. Alejandro Estrada vs. Soledad Escritor;
4. Dr. Victoria Batiquin, et.al., vs. Court of Appeals, et.al; G.R. No. 118231, July 5, 1996
5. Carillo vs. People of the Philippines; GR No. 86890, January 21, 1994
6. Rhodora Ledesma vs. Court of Appeals; G.R. No. 113216. September 5, 1997

C. Administrative Order, Department Orders, Policy Statement and Guidelines:

1. Implementing Rules and Regulations of Republic Act No. 8504, PNAC
2. Declaring HIV a Notifiable Disease (1986), DOH
3. Administrative Order No. 18, series of 1995 "Guidelines for the Management of HIV/AIDS in Hospitals", DOH
4. Administrative Order No. 9, s. of 1997, "Amendment to Administrative Order No. 18", DOH
5. Administrative Order No. 2, s. of 1997, "National Policy Guidelines for the Prevention and Management of Sexually Transmitted Diseases", DOH
6. Administrative Order No. 16-A, s. of 1997, "Guidelines for the Management of Asymptomatic Women with RTI/STD", DOH
7. Guidelines for Infectious Disease Control in Hospitals (1997), DOH
8. Administrative Order No. 5, s. of 1998, "Implementing Guidelines in STD Care Management in the Different Levels of the Health Care System", DOH
9. Department Circular No. 38, s. of 1998, "Revised STD Treatment Guidelines for use by all Health Facilities Providing STD Services", DOH
10. Ethical Guidelines in Aids Investigations in the Philippines (2000) by the Philippine National AIDS Council, PNAC

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11. Administrative Order No. 34-A, s. of 2000, "Adolescent and Youth Health Policy", DOH
 12. Manual of Procedures for Hospitals, 2nd Edition, 1994, DOH
 13. Clinical Management of HIV Infection in the Philippines, 2002, DOH
 14. Youth Health and Development Program, 2002, DOH and UNDP
 15. Integrated Maternal and Child Health Manual, DOH
 16. Administrative Order No. 236, s. of 1996, Dept. of Labor and Employment (DOLE)
 17. National Workplace Policy on STD/HIV/AIDS, s. of 1997, DOLE
 18. Excerpts of the Draft Memorandum of Understanding to Implement Joint Action Programmes on Integrating HIV Prevention/Care/Support in the Pre-Departure, Post Arrival and Returnee Integration Programmes Among Asean Countries, Nov. 2002, DOLE,
 19. Memorandum Circular No. 2 "Establishment of Company Level Family Welfare Program and Providing Inspection Thereof", DOLE
 20. Memorandum Circular No. 1, s. of 2001, "Integrating HIV/AIDS Education at the Pre-Departure Orientation Seminars", Philippine Overseas Employment Administration (POEA)
 21. Memorandum Circular No. 07, s. of 2000, "Revising Medical Requirements of Workers Bound for Taiwan (HIV Serological Test Required), POEA
 22. UNAIDS/WHO Policy Statement on HIV Testing, June 2004
 23. WHO/UNAIDS Draft Guidance on Provider Initiated HIV Testin and Counseling in Health Facilities

D. National Strategy Papers, National and Departmental Reports:

1. 2003 HIV/AIDS Technical Report, Department of Health
2. Scaling Up Towards Universal Access by 2010: A Renewed Commitment to HIV and AIDS Prevention, Treatment, Care and Support, Philippine Country Report, 10 March 2006, PNAC
3. Follow-up to the Declaration of Commitment on HIV/AIDS – United Nations General Assembly Special Session (UNGASS): Country Report of the Philippines (January 2003 to November 2005), PNAC
4. 4th AIDS Medium Term Plan (2005 – 2010), Philippines, PNAC

E. Publications and Reports

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