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Julie Gerberding, M.D., M.P.H.  
Director, Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Mailstop D14  
Atlanta, GA 30333

Re: Presentation by Dr. Ed Thompson at ABA HIV/AIDS Conference

Dear Dr. Gerberding:

I write to express the concerns of the American Bar Association (ABA) and our AIDS Coordinating Committee regarding Dr. Ed Thompson's opening plenary remarks at the ABA conference in Portland, Oregon, on May 19, 2006, and to kindly request your views in response. While we appreciated Dr. Thompson's willingness to appear at the conference and respected the professionalism of his presentation, we are concerned that it may have undermined an ambitious ABA project to expand delivery of the HIV legal counseling the CDC called for in its 2001 *Revised Guidelines for HIV Counseling, Testing and Referral*.

Dr. Thompson was invited to address a special joint session of the ABA's Young Lawyers Division (YLD) and the Committee's HIV/AIDS Law & Practice Conference. The conference brings together HIV legal experts from around the country, while YLD's quarterly meeting involves members of the ABA's largest division. Since the Committee and YLD also have collaborated this year on a national public service project concerning HIV legal services, both groups decided to meet in joint session and to invite Dr. Thompson to address them.

The public service project is "Answering the Call," which is a call to provide essential legal services to persons living with HIV and AIDS. The heart of that call is the training of lawyers to provide the legal counseling the CDC called for in its *Revised Guidelines, 50 Morbidity and Mortality Weekly Report* No. RR-19 (Nov. 9, 2001) at page 37:

Clients who test positive should be referred to legal services as soon as possible after learning their test result for counseling on how to prevent discrimination in employment, housing, and public accommodation by only disclosing their status to those who have a legal need to know.

Since the CDC has documented that fear of stigma and discrimination is a major barrier to persons voluntarily coming forward to be tested, and it is hoped that such counseling will encourage more people to be tested, the ABA has viewed this guideline as a ground-breaking call to help public health slow the spread of HIV. Indeed, it may be argued that this guideline will become even more vital in light of the CDC's recent proposal to encourage routine voluntary testing. Dr. Bernard Branson of CDC's Division of HIV/AIDS Prevention discussed this proposal during his comprehensive presentation at the Law & Practice Conference session that followed the joint session, and attended other HIV conference programming.

The title of Dr. Thompson's talk was, "The Interconnections between the Public Health and Legal Communities in Combating HIV/AIDS," which was consistent with the oral and written communication we had with him concerning our invitation. Thus, we had expected Dr. Thompson to speak about the dynamic relationship between public health and the legal profession in addressing HIV/AIDS, including the CDC's HIV legal services guideline; the importance of health and human rights to this relationship; his office's Public Health Law Program and Public Health Legal Preparedness Project; or a combination thereof. While he did touch upon various legal powers traditionally exercised by public health, his discussion of HIV focused upon a single episode in which he was involved many years ago when, as a Mississippi public health official, he issued an isolation order to a

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transsexual accused of endangering others. (Enclosed for your information is longstanding ABA policy discouraging isolation of persons with HIV and emphasizing strict adherence to civil rights and due process guarantees if isolation is to be imposed.)

This focus upon isolation and control and a rare exercise of one of public health's most intrusive powers, to the exclusion of all discussion of the key understanding to emerge between law and public health with respect to HIV — that ensuring the dignity and human rights of people who might be infected is vital to obtaining the cooperation and trust upon which effective public health intervention must be based — was troubling to Dr. Thompson's audience. It was particularly troubling given that the audience included young attorneys interested in being informed and inspired, as well as HIV legal experts, many of whom have toiled for years to ensure just such an atmosphere of trust and cooperation.

I therefore welcome your views regarding the continuing and evolving relationship between the public health and legal communities in combating HIV/AIDS, the importance of the CDC legal counseling guideline in so doing, and, I hope, your support for the ABA's efforts to expand HIV legal counseling capacity nationwide. At the 25th anniversary of the first AIDS case reports, the ABA looks forward to further collaboration with the public health community in tackling this pandemic.

Sincerely,



Michael S. Greco

Enclosure

cc (w/enc.):

Kevin Fenton, M.D., Ph.D.  
Director, National Center for HIV, STD and TB Prevention  
Centers for Disease Control and Prevention

Hon. Richard T. Andrias, Chair  
ABA AIDS Coordinating Committee

Christina Plum, Chair  
ABA Young Lawyers Division

Gregory Pemberton, Chair  
ABA Health Law Section

ABA HIV/AIDS Law & Practice Conference Attendees

American Bar Association

**Policy on Use of “Personal Control Measures” in Addressing HIV/AIDS**

(Adopted in 1989; amended, 1990)

C.6. Personal control measures necessarily implicate the most fundamental constitutionally protected liberty interests and should never be imposed based on status or group characteristics.

C.7. Isolation for public health purposes is a particularly serious infringement of liberty and is not generally appropriate for controlling the spread of HIV infection. However, if such isolation of an individual is sought, it should be ordered by a court only if it has found by clear and convincing evidence that:

The individual is HIV-infected; poses a direct threat to public health as evidenced by a recent overt act endangering another person; and after notice, counseling and appropriate training will not restrict his/her own behavior to avoid a direct treat to public health; and

The proposed isolation is necessary to protect public health and is the least restrictive alternative.

In any proceeding in which the isolation of an individual is proposed or under review, stringent procedural protections should be afforded, including rights to:

Notice, representation by counsel, subpoena and present evidence, cross-examination, a verbatim transcript, and appeal;

Judicial review after 30 days and thereafter no less frequently than every six months; and  
Appropriate treatment, habilitation and education directed toward changing the behavior that resulted in isolation.

C.8. A court may grant an emergency non-renewable isolation order for a period of 72 hours or less upon application of a public health official who has filed with the appropriate court an affidavit establishing reasonable cause to believe that the facts and circumstances necessary for the imposition of isolation exist[ . . .]and that there is an imminent, direct threat to public health.