

## Duty of care to a sexual partner

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In *BT v Oei* [1999] NSWSC 1082, the defendant doctor was found to have a duty of care to a patient's sexual partner, even though the partner was not herself a patient of the doctor. The case arose in New South Wales and involved a man (AT) who reported a flu-like illness in late 1991 and developed acute hepatitis B in early 1992. A woman (BT), subsequently formed a sexual relationship with AT and became infected with HIV. BT sued the doctor, claiming that his failure to diagnose AT's HIV infection was negligent.

The following considerations were important to the finding of negligence:

- BT asserted, and the Court agreed, that the doctor should have advised AT to have an HIV test when AT first presented; and
- The provisions of the Public Health Act 1991 (NSW) require a doctor who believes a patient is HIV-infected to inform that patient of the danger he/she poses to others and to advise the measures he/she should take to protect others from cross-infection.

Having failed in these respects, Dr Oei was found negligent and in breach of the duty of care owed to his patient's partner.

**Update Note:**

Although the Public Health Act 1991 has been repealed, similar provisions apply at section 78 of the Public Health Act 2010 and regulation 40 of the Public Health Regulations 2012.

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