



HUMAN
RIGHTS
CAMPAIGN

June 8, 2010

Jerry A. Holmberg, PhD
Executive Secretary, Advisory Committee on Blood Safety and Availability
Office of Public Health and Science
Department of Health and Human Services
1101 Wootton Parkway, Suite 250
Rockville, MD 20852

RE: Comments to the Advisory Committee on Blood Safety and Availability regarding the donor deferral for men who have had sex with another man (MSM)

Dr. Holmberg and Members of the Committee:

On behalf of the Human Rights Campaign's more than 750,000 members and supporters nationwide, I write to thank you for reviewing the current policy of lifetime deferral of blood donation by gay and bisexual men and urge you to recommend a new policy that maintains the safety of the blood supply but allows the many healthy and willing gay and bisexual potential blood donors to contribute to our nation's continued need for blood donations.

Today's Science Calls for a Change in Policy

HRC deeply respects the duty of the Food and Drug Administration to protect the safety and security of the blood supply, but does not believe that the current policy is necessary to achieve that critical goal. The current MSM donor deferral, a broad policy of exclusion, may very well have been the most sensible policy in 1983, at a time when we knew much less about HIV and AIDS, including how the virus is transmitted and how to test for it. Tragically, before the ban, thousands of recipients of blood donations contracted HIV and subsequently died of AIDS. As a community that was, and continues to be, deeply affected by HIV and AIDS, we are keenly aware of the need to protect against the risk of accidental, transfusion-based transmission.

However, nearly three decades later, advances in our understanding of HIV transmission and our ability to test for the virus make clear that a change in policy regarding MSM donors is long overdue. Modern testing has reduced the window period, when the virus would not be detected

by routine screening of units of donated blood, to an average of 12 days.¹ We can now differentiate between sexual behaviors, including among gay and bisexual men, which place individuals at higher and lower risk for contracting HIV. Among other populations, donor deferral policies reflect this risk assessment to a degree, deferring for some period those who have had sexual contact with injection drug users, known HIV-positive partners or commercial sex workers. HRC urges you to consider a risk-based assessment that will similarly defer gay and bisexual men who engage in high-risk behaviors, while allowing those who are at low or no risk to contract HIV to donate.

Consensus is Building in Support of a New Policy

HRC and the community it represents are far from alone in calling for an end to this policy. For many years, we have worked in coalition with numerous lesbian, gay, bisexual and transgender (LGBT) groups, as well as HIV/AIDS organizations, representing constituencies in the realms of research, treatment, prevention and services, urging the FDA to revisit the MSM donor deferral. In recent years, leading organizations in the blood banking community, the American Red Cross, America's Blood Centers and AABB, have supported reducing the deferral for gay and bisexual men to twelve months.²

In addition, lawmakers in Washington and across the country have spoken out against the current ban on gay and bisexual blood donors. Last year, the Santa Clara County (California) Board of Supervisors voted unanimously to oppose the current policy.³ This year, both the New York City Council and the District of Columbia Council have adopted resolutions urging FDA to revisit the MSM deferral.⁴ For years, Members of Congress have called on the FDA to change the deferral policy and, in recent months, a group of Senators led by Senator John Kerry (D-MA) and a group of Members led by Congressman Mike Quigley (D-IL) have each sent letters to the FDA Commissioner reiterating this call for change.

Finally, students on college campuses across the nation, at blood drive after blood drive, are raising awareness of the lifetime deferral for gay and bisexual men, characterizing it as discriminatory and calling for it to be eliminated.⁵ Some colleges have opted to cancel blood drives altogether in response to student outcry.⁶ HRC is frequently contacted by student organizations angered by the FDA's policy and seeking ways to highlight it as unfair, while respecting the critical need for blood donations

¹ U.S. FOOD AND DRUG ADMIN., *FDA Approves First Nucleic Acid Test (NAT) System to Screen Whole Blood Donors for Infections with Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV)* (Feb. 28, 2002), <http://www.fda.gov/bbs/topics/ANSWERS/2002/ANS01140.html>.

² AABB, AMERICA'S BLOOD CTRS., & AMERICAN RED CROSS, *Behavior-Based Blood Donors Deferrals in the Era of Nucleic Acid Testing (NAT)* (Mar. 9, 2006), http://www.aabb.org/Content/Members_Area/Members_Area_Regulatory/Donor_Suitability/bpacdefernat030906.htm.

³ *California County Board of Supervisors Votes To Oppose FDA Policy Barring MSM From Donating Blood*, MED. NEWS TODAY, Feb. 29, 2008, <http://www.medicalnewstoday.com/articles98995.php>.

⁴ New York City Council, Resolution No. 80, adopted April 13, 2010. District of Columbia Council, Resolution No. 18-486, adopted June 1, 2010.

⁵ See, e.g., Adam R. Pulver, *Gay Blood Revisionism: A Critical Analysis of Advocacy and the "Gay Blood Ban,"* 17 *Law & Sexuality* 107, 119 (2008).

⁶ MED. NEWS TODAY, *supra* note 3 (detailing cancellation of blood drive at San Jose State University).

Current Policy Discourages Donors

Of course, the MSM donation deferral policy turns away otherwise healthy gay and bisexual donors, as many as 7 million men, according to recent estimate by the Williams Institute at the University of California - Los Angeles School of Law.⁷ The same study concluded that altering the deferral policy, ranging from a 5-year deferral since the last male sexual contact to no deferral at all, could increase blood donations from over 70,000 pints to over 200,000 pints a year. With frequent blood shortages, even a seemingly small increase, compared to donations overall, could substantially bolster our nation's blood supply.

However, another important, but more difficult to measure, consideration is the impact of the perception of the current policy as discriminatory on the willingness of individuals outside the LGBT community to donate blood, particularly young people. As noted above, the ban on gay and bisexual blood donors is a frequent topic of debate and protest on college campuses, where many young people have the opportunity to donate for the first time, and may develop a lifelong commitment to blood donation. With the addition of messages critical of the current policy from advocacy groups, blood banking organizations, local elected officials and Members of Congress, students and others interested in LGBT issues may be discouraged from donating blood, unwilling to participate in this important, altruistic act because they see gay and bisexual friends, classmates and colleagues denied the ability to donate.

Conclusion

The time has come for the broad policy banning gay and bisexual blood donors to end. We urge you to consider today's science, the discriminatory impact of the policy on gay and bisexual men, and the cost in terms of lost blood donations from LGBT people as well as the members of the general public who are critical of the ban.

The Human Rights Campaign appreciates having the opportunity to submit these comments as you consider revising the MSM donor deferral policy. Thank you for considering our position. If you have any questions regarding our comments, please do not hesitate to contact Brian Moulton on my staff at 202.572.8960.

Sincerely,



Joe Solmonese
President

⁷ Naomi Goldberg and Gary Gates, *Effects of Lifting Blood Donation Bans on Men Who Have Sex with Men*, Williams Institute (June 2010), http://www.law.ucla.edu/williamsinstitute/publications/FormattedMSM_Goldberg_Gates.pdf.