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Injection Drug Use and HIV/AIDS

Drug Use & Provision of Health & Social Services

What legal and ethical issues arise in circumstances in which drug use is permitted in the course of providing health care and social services – primary health care, community clinics, pharmacy services, residential care, palliative care, housing services – to drug users?

This is one of a series of 11 info sheets on injection drug use and HIV/AIDS: legal and ethical issues.

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Background

Tolerating drug use in the course of providing health care and social services departs from the principle of abstinence as the only acceptable premise, standard, or goal in providing services to drug users. That principle is deeply ingrained in drug policies and programs in North America. It has, however, been questioned by service providers who feel they cannot provide proper care, treatment, and support if they must insist on their clients being abstinent. For example, some hospices feel they should not close their doors to a client who is not (yet) ready to stop using. Some hospitals might prefer to allow their patients to continue using while receiving medical care, rather than let them suffer withdrawal symptoms that could interfere with their medical treatment.

Legal Issues

From a purely legal perspective, professionals who tolerate or permit illegal drug use on the premises may be prosecuted under the *Controlled Drugs and Substances Act* (CDSA) or face professional discipline such as fines or the suspension or revocation of their licences.

Criminal liability

1. Staff at health care or other social services may be liable for **possession** under the CDSA if they know that an illegal drug is present on their premises and if they have some measure of control over the drug. Staff who collect used syringes or drug paraphernalia that contain residue of illegal drugs may also be found guilty of possession.
2. Staff who store a patient/resident's illegal drugs and provide them at specific intervals could likely be convicted of **trafficking**. The term "traffic" is broadly defined in the CDSA to include selling, administering, giving, transferring, sending, or delivering an illegal substance. It is also a criminal offence to "offer" to do any of the above acts.
3. Staff permitting or tolerating drug use may be liable for aiding or abetting a person to commit a crime. Aiding is providing assistance in the commission of a crime, while abetting means being at the crime and encouraging the commission of the offence.
4. Staff may also be liable for criminal negligence. This may occur if, by tolerating or facilitating the possession of drugs, the staff member caused or contributed to the bodily harm or death of the patient. It must be proved that the accused did something or failed to do something that he or she had a legal duty to do. For example, staff at health-care facilities likely have a duty to protect the well-being of patients. It must also be proved that the conduct of the staff member was a "marked departure" from the standard of behaviour

expected of the "reasonably prudent person in the circumstances."

Civil Actions

Professional codes of conduct may prohibit health-care professionals from allowing patients to ingest or inject illegal drugs. Physicians, nurses, and other health-care providers may be subject to disciplinary measures by the bodies that govern their professions.

A facility or employee might also face civil liability for allowing or tolerating the possession of illegal drugs. For example, if a hospital allowed a patient to possess and use illegal drugs in the hospital, and the patient suffered harm, the hospital might be found liable for negligent care of the patient. The extent of the duty would vary with the type of institution. A hospital or treatment facility staffed by medical personnel would have a greater responsibility than would a residential facility that simply houses drug users.

Avoiding Liability

Although those who operate facilities could be subject to criminal charges or civil lawsuits, they may have legal defences available to them. A facility or employee facing civil liability or criminal prosecution might claim that allowing the use of illegal drugs was a *necessity* for the treatment of the patient and/or that, in the circumstances, it would be *negligent to prohibit* possession of a controlled substance by a patient, as this might interfere with essential medical treatment.

Furthermore, hospitals or other facilities might be able to arrange access to specific drugs under existing legislation, so that drugs that would otherwise be illegal can be allowed or even administered to patients. Health Canada's Special Access Program is an example of a program that could prevent criminal charges being brought against those working in facilities.

Finally, the CDSA contains a provision that allows the Minister of Health to exempt illegal drugs from the application of the Act or the regulations if it is in the public interest or if the drugs will be used for medical or scientific purposes. Similarly, the Governor in Council has the authority under the Act to pass a regulation allowing the distribution of illegal drugs for medical or scientific purposes.

Ethical Issues

The basic ethical issue is the imperative to care adequately for HIV-positive drug users. According to principles of ethics, behaviour should not be imposed on drug-dependent persons that exceeds their current level of ability; drug-dependent persons should be treated for their illnesses, fed, and provided with shelter – their dignity and self-worth must be nurtured and their drug needs tolerated so that they can begin to address their difficult circumstances; attempting to free a person from addiction is not the value to be pursued when that person, dependent on drugs for many years, is in the final stages of a terminal illness such as AIDS. In a palliative care setting, helping the dying to die with dignity is the highest ethical imperative.

Recommendations

1. In the long term, laws should be changed so as to enable provision of currently illegal drugs to drug users while they are in care, so as to remove a barrier to drug users accessing health care and other social services and to remove the threat of criminal liability for service providers who wish to provide care, treatment, and support without insisting on abstinence by patients who use currently illegal drugs.
2. In the short term, a variety of measures should be undertaken to ensure better care, treatment, and support of HIV-positive injection drug users. In particular, professional associations should develop ethical and practice guidelines for service providers in different areas of care involving HIV/AIDS and injection drug use – primary health care, community clinics, pharmacy services, residential care, palliative care, and housing services.

Additional Reading

McAmmond D. *Care, Treatment and Support for Injection Drug Users Living with HIV/AIDS: A Consultation Report*. Ottawa: Health Canada, March 1997.

The information in this series of info sheets is taken from *Injection Drug Use and HIV/AIDS: Legal and Ethical Issues*, prepared by the Canadian HIV/AIDS Legal Network. Copies of the paper and info sheets are available on the Network website at www.aidslaw.ca and through the Canadian HIV/AIDS Clearinghouse (tel: 613 725-3434, email: aids/sida@cpha.ca). Reproduction of the info sheet is encouraged, but copies may not be sold, and the Canadian HIV/AIDS Legal Network must be cited as the source of this information. For further information, contact the Network (tel: 514 397-6828; fax: 514 397-8570; email: info@aidslaw.ca). Ce feuillet d'information est également disponible en français.

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