A Legal Perspective on AIDS

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AIDS presents difficult and unprecedented legal problems. Because modern law requires that persons with disabilities or illnesses be integrated into the mainstream of society, past responses to those with communicable diseases are no longer acceptable. Laws dealing with AIDS patients will have to evolve gradually and build upon commonsense solutions to problems.

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The Therapist's Right to Know
The occupational therapist's or other health care professional's right to know that a patient has AIDS depends on the nature of the treatment and the accessibility of information on the patient. If the transmission of AIDS is possible during treatment, the health care provider has a legitimate need to know about the availability of precautionary measures. If accessibility to the patient's medical records is a problem, prudence mandates that precautionary measures, such as the wearing of gloves during treatment, be undertaken. Even if the treatment does not place the health care provider at risk, the information that a patient has AIDS may be needed to enable the treatment of the whole person. For example, an occupational therapist concerned with the adaptation of daily living skills may need to consider the debilitating physical and psychological effects of AIDS, yet he or she cannot respond optimally without knowing that the patient has this disease.

AIDS Testing Prior to Treatment
Testing for AIDS presents legal, moral, and ethical dilemmas. The simple solution would be to avoid these issues altogether, that is, to take precautionary measures and to test patients only with their consent. For example, the occupational therapist who applies a splint or the nurse who administers intravenous medication could follow the medically accepted guidelines for universal precautions when in contact with the patient, thereby obviating the need for testing. Some situations, however, such as during surgical procedures in which there is considerable contact with bodily fluids, may necessitate testing before treatment. The nature of the treatment, the cost and reliability of testing, the ability to avoid exposure during treatment, and the delay in treatment while awaiting test results will be considered when the need for tests is determined.

Refusal To Treat AIDS Patients
The Occupational Therapy Code of Ethics (1988) requires occupational therapy personnel to “demonstrate a concern for the welfare and dignity of the recipient of their services” (p. 795). To implement this principle, the code specifically provides that “the individual is responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease entity, social status, financial status, or religious affiliation” (p. 795). The code is intended as “a guide to promoting and maintaining the highest standards of ethical behavior” (p. 795). Although this code of ethics is not a law, it may have the same effect, depending on the state laws governing occupational therapists.

The Federal Rehabilitation, Comprehensive Services and Development Disabilities Act of 1978 prohibits the denial of benefits to or discrimination against handicapped persons under any program or activity receiving federal financial assistance. The act defines an “individual with handicap” as any person who

- (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment. (Section 706 [8][B])

In a case involving a state school board, the U.S. Supreme Court determined recently that a teacher with tuberculosis was handicapped within the meaning of the Rehabilitation Act (School Board of Nassau County v. Arline, 1987). Similarly, persons with AIDS may meet the requirements defined in the act. If AIDS patients are regarded as impaired, they too will be protected from the denial of benefits and from discrimination. Thus, at the time of this writing, it is still undecided whether it is unlawful to deny health care to a recipient of Medicare or Medicaid benefits or of other federally financed services solely because that person has AIDS. Although the Rehabilitation Act does not cover all patients, it will affect a substantial number. State statutes protecting handicapped persons from discrimination may also be applicable and will vary from state to state.

State and federal statues and regulations governing emergency medical treatment and tax benefits for certain nonprofit institutions also may limit hospitals' or other health care providers' right to refuse to treat persons with AIDS.

Duty to Warn Those At Risk
In the course of treatment, a health care provider may learn that a patient with AIDS is extremely bitter and thus will not take precautions against sexually transmitting the disease. This situation is fraught with ethical and legal uncertainties. Public health experts have recognized that confidentiality is an important factor in encouraging persons to seek testing and treatment for AIDS. A breach of this confidentiality will have a chilling effect on known or suspected AIDS patients.

In a landmark case decided in California in 1976, a court recognized that a psychotherapist with specific knowledge that a psychiatric patient was likely to harm an identifiable third party had a duty to warn the third party (Tarosoff v. Regents, 1976). The rationale of that case may extend to the health care provider who learns that an AIDS patient intends to engage in sexual relations, thereby placing the patient's identifiable partner at risk of contracting the disease. In weighing the importance of confidentiality against
the fatal risks of AIDS, the health care provider would in most cases choose to inform the partner. Before such a disclosure, however, the health care provider could attempt less intrusive solutions, such as referring the AIDS patient for counseling or consulting with others who are treating the patient. The debate concerning a duty to warn persons at risk no doubt will continue, and the resolution of this problem will vary with the circumstances of individual cases.

AIDS Legislation

As AIDS continues to spread, state and local governments will have to enact laws concerning this issue. Rhode Island recently passed the AIDS Testing, Confidentiality and Discrimination Act (1988), effective January 1, 1989, which permits the testing of a patient's blood when a health care worker has sustained a "significant exposure" (§23–6–14) to the blood or bodily fluids of that patient. This act also regulates testing and consent procedures, prohibits discrimination against infected persons, and allows physicians to warn uninformed third parties who are in clear and present danger of contracting AIDS from the infected person. The application of such a comprehensive act will help shape similar enactments in other states and municipalities. Until such legislation becomes common, however, AIDS-related legal problems will be resolved on a case-by-case basis, guided by cases and statutes that were most likely developed before the AIDS epidemic even existed.

Conclusion

Just as the care and treatment of persons with AIDS will continue to evolve, so too will the laws regarding AIDS. Currently, few clear answers exist for the legal dilemmas facing those who care for patients with AIDS. The attempt to integrate AIDS patients into the mainstream presents unique problems for health care professionals. The legal concepts that promote or even require such integration will serve little purpose and solve few problems if they defy common sense, and common sense has been and will continue to be fundamental to the resolution of the day-to-day problems arising from the issue of AIDS.

References

Tarasoff v. Regents of the University of California, 17 Cal. 3d. 425, 551 P.2d. 334 (1976).