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“I Need My Nurse!” Nurses and the Criminalization of HIV in North America

The criminal prosecution of persons living with HIV (PLWH) for HIV exposure, nondisclosure, and transmission is a structural policy practice that should be a major concern for nurses and other health care professionals. There are three major areas of law that influence a nurse's practice in a context of HIV criminalization: HIV-related criminal laws, public health laws (e.g., contagious disease reporting), and laws that establish practice authority (e.g., nurse practice acts). Many nurses may perceive that these laws are no longer at issue because of the biomedical advances that have transformed HIV into a manageable chronic illness. However, for PLWH, the reality is that, “It is a terrible irony that we [PLWH] have come to a place where the medications we fought for will allow us to live a relatively normal quality of life, and now we are going to go to jail for doing so” (Binder, 2012).

Currently, Canada and the United States are world leaders for prosecuting PLWH (Global Network of People Living with HIV/AIDS & HIV Justice Network, 2013). Nurses have tremendous responsibility in a context of HIV criminalization. They are uniquely situated within the health care system to be called upon by both patients and the legal system to provide information that can influence prosecutorial decisions and advocate for change, if not repeal, of HIV-specific criminal legislation. PLWH, as patients, rely on nurses' knowledge and competence to manage the challenges they face related to HIV through a therapeutic alliance founded on mutual respect and trust. Nurses can be called upon by the legal system to provide expert testimony, and their documentation has been and can be used as evidence in criminal prosecutions of PLWH. Nurses as advocates for changing legal processes can provide a medical expert affidavit on HIV transmission for HIV-specific court cases (Center for HIV Law &

Policy, 2013). Nurses are bound by the ethical principle of nonmaleficence, which translates to the legal duty to do no harm. In jurisdictions where HIV is criminalized, nurses must be aware of the legal and ethical issues that influence their practices with PLWH.

Despite these issues, nurses and other health care providers have been relatively silent regarding the criminal prosecution of PLWH. The research that has been done related to HIV criminalization has been done by legal advocates or groups advocating for the well-being of PLWH. This limits nurses' abilities to share their understandings of the influence of criminal prosecutions of PLWH and the effects it has on their clinical practices. HIV-specific criminal laws may create ethical dilemmas for nurses with limited understanding of the nuanced ethical, legal, and professional issues that emerge in these jurisdictions. As the United States embarks on a new age of health care delivery under the Affordable Care Act, more nurses and other health care providers with limited understanding of the medical complexities of HIV will be called upon to provide care for PLWH. This new challenge will be further complicated in jurisdictions where HIV-specific criminal laws exist. This may result in overly broad criminal prosecutions of PLWH (Joint United Nations Programme on HIV/AIDS, 2013) because nurses and other health care professionals are unaware of their ethical, legal, and professional obligations in a context of HIV.

Nurses who read this letter might say to themselves, “What can I do? I'm a nurse not a legal professional.” Nurses with expertise in HIV care can advocate for changing or repealing HIV-specific laws. They can educate themselves and their colleagues about the influence these laws have on their clinical practices. They can become involved

in the efforts of the Association of Nurses in AIDS Care and the Canadian Association of Nurses in AIDS Care to increase awareness of the issues that HIV-specific criminal laws create, and collaborate with legal advocacy groups such as the Center for HIV Law and Policy's Positive Justice Project (<http://www.hivlawandpolicy.org/public/initiatives/positivejusticeproject>), the SeroProject (<http://seroproject.com/>), or the Canadian HIV Legal Network (<http://www.aidslaw.ca/EN/>). Nurses and nurse researchers can collaborate with PLWH and legal scholars to carry out research that explores the influence HIV-specific laws have on the patient-provider relationship and the ability to achieve a mutually respectful therapeutic alliance. Without nurses responding to the call of our HIV-infected patients, there is little hope for PLWH in a North America with overly broad HIV-related criminal laws.

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