Illicit Substance Use in Acute Inpatient Mental Health Services

Introduction

The use, possession and trafficking of illicit substances in acute inpatient units of mental health services raises complex and sensitive issues. The Chief Psychiatrist has a statutory responsibility for the medical care and welfare of those receiving treatment for a mental illness. The periodic issuing of clinical practice guidelines is consistent with this responsibility.

Disclaimer

These guidelines are intended as a general aid for inpatient units dealing with issues associated with illicit substances. The guidelines are not intended to provide a comprehensive analysis of the law and are not designed to replace the exercise of individual professional judgement on a case-by-case basis. No person should act on the basis of the information contained in this document without seeking professional advice in each particular circumstance. Inpatient units should seek legal advice about developing local protocols and procedures dealing with these issues

Purpose

To provide approved mental health services with guidelines concerning the use of illicit substances on the ward by inpatients. These guidelines are intended to:

- provide an overview of relevant statutory provisions;
- be adaptable to different unit policies; and
- promote an overall philosophy of "harm minimisation".

It is suggested that approved mental health services develop specific policies, procedures and standards for their services which address the issues raised in these guidelines.

Rationale

Use of illicit substances is an increasing problem among those requiring treatment for a mental illness. The continued use of illicit substances while an inpatient complicates the management of that patient and may have a detrimental effect on other patients. Clinical staff have a duty of care to all patients and staff, that is, a duty to act reasonably to protect them from foreseeable harm. The illicit nature of drug use, possession and trafficking may place an additional burden on staff. In these circumstances staff may have a duty to remove illicit substances from patients and organise their safe disposal. However, staff should always be mindful that the focus of care should be directed towards providing a therapeutic rather than custodial environment.

Key Principles

- To provide a safe environment, in the least restrictive manner, for each patient in the service
- To involve the patient and carers in decisions relating to the provision of treatment and care
- To protect the patient from the effects of his or her mental disorder
- To recognise a duty of care to all patients
- To adopt an overall philosophy of "harm minimisation" in relation to illicit substance use by patients
- To adopt an approach which emphasises prevention, education, engagement, and respect for patients
- To ensure discharge planning for patients includes information regarding the risk of recommencing drug use, and information on management options
- To ensure that actions taken by staff in relation to illicit substance use by inpatients or their visitors are appropriate and clearly documented

Implications For Mental Health Service Staff

All clinical staff should receive training and education on the effect of illicit substance use and its interaction with psychiatric treatment, and be able to recognise intoxication and withdrawal from substances commonly encountered.

Clinical staff should be aware of illicit substance use in the inpatient unit and take appropriate action as required.

Clinical staff should be aware of other services available to those whose use of substances impairs the treatment of their mental illness, and who seek intervention for illicit substance use.

Educational information on illicit substances with a health promotion focus should be available and accessible on the unit to all patients and carers.

Discharge planning should include appropriate referral and effort directed towards engagement with drug treatment services. The risks associated with discharge should be considered and discussed with patients prior to discharge.

Policy and procedures should be developed by all services in relation to the above.

Relevant Policy

In Victoria use of illicit substances is an offence. A harm minimisation focus has been adopted in the event of use. Mental health policy emphasises treatment provision in the least restrictive environment. Under the provisions of the Mental Health Act 1986 (Vic) a person is not considered to be mentally ill only because of the use of drugs or alcohol (s8(2)(k)), but the co-existence of drug use with mental illness, or illness caused by drug use does not preclude treatment as an informal or involuntary patient.

Current Statutory Provisions

Legislation in relation to substance use arises in a number of contexts. It is not the purpose of the guidelines to state conclusively the statutory provisions of which staff should be aware. Staff should however, be aware of the potential liability of themselves and the service. Statutes of particular relevance to this area are the Drugs, Poisons and Controlled Substances Act 1981, the Mental Health Act 1986, and the Alcoholic and Drug Dependent Persons Act 1968.

Relevant Terminology

The offences of trafficking, use and possession of illicit substances are governed by the Drugs, Poisons and Controlled Substances Act. The essential elements of these offences are as follows:

Trafficking

Trafficking includes the preparation, manufacture, sale, exchange, agreement to sell, offering for sale or possession for sale of a drug of dependence. Depending on the amounts involved, it may be defined as a 'commercial' quantity, or a 'trafficable'quantity.
A commercial quantity of marijuana is 25kg, amphetamine 2kg and heroin 250g. A traffickable amount of marijuana is 250g, amphetamine 6g and heroin 3g.

Use

"Using" a drug of dependence means smoking, otherwise inhaling or introducing the drug into the body and includes attempting to use. Penalties to which the person may be liable vary with the amount and type of drug, but may include requirement to complete a drug education program.

Using marijuana attracts a $500 fine, whilst amphetamine or heroin use has a $3000 fine or 1 year imprisonment or both.

A small quantity of marijuana is defined as 50g, whilst amphetamine and heroin is 1.0g.

Possession

"Possession" of a drug of dependence means knowingly having a drug under one's custody or control with an intention to exclude others. This can be understood as establishing ownership. A person who has possession is guilty of an offence. The penalty depends on the amount and type of substance.

Marijuana - less than 50g and not in relation to trafficking $500 fine

Other drugs $3000 or 1 year imprisonment.

Implications of legislation and policy

Ownership and confiscation of illicit substances

Services and staff are not legally required to report the use, possession or trafficking of illicit substances to the police, but should be mindful of their duty of care. In relation to illicit substances, a duty of care is owed to take reasonable steps to protect patients from harm caused by the use, possession or trafficking of illicit substances in an inpatient unit. Good clinical care would suggest that not only should harm be prevented, but that a positive duty exists to attempt to minimise future harm through education, referral to appropriate services, and prevention of drug use.

What is reasonable will depend on the circumstances. Relevant factors may include: staff awareness of use or previous use, the degree to which such use destabilises the mental illness, and the vulnerability of the patient and other patients on the unit. Involuntary patients have a greater reliance on the mental health service and can be expected to have higher levels of vulnerability. The more serious the potential harm that may flow from an action or failure to act, the higher the standard of care that will be expected.

Consistent with this duty, staff must take reasonable steps to investigate suspected use or possession of illicit substances, to confiscate illicit substances, and to dispose of such substances appropriately. Confiscation of such substances is in keeping with the suspected illicit nature of the substance.

Search of a patient or their personal belongings

However, particular care must be exercised where it is necessary to search a patient or their personal belongings in order to investigate suspected drug use or possession. Wherever possible a search of the patient or their belongings should only be conducted with the patient's consent. A search of an informal patient without their consent should only be undertaken by inpatient staff where there is an imminent threat of serious harm. In all other circumstances where staff believe that an informal patient should be searched the police should be requested to conduct the search. The police have specific powers to search for drugs of dependence in certain circumstances.

A search of an involuntary patient without consent should only be conducted where there is a reasonable suspicion that substances or objects that may cause significant harm will be found. The extent of any search should be congruent with the likelihood and gravity of the possible harm and should be the minimum necessary to address the possible harm. For example, a search of a patient's belongings is less intrusive than a personal search. Patients must not be routinely searched. Staff must not carry out internal body searches on any patients without consent. Staff should consider the balance between intrusion which may constitute trespass and risk of harm if action is not taken.

All patients and carers/visitors should be appraised of any policy that includes removal and disposal of substances from patients which are suspected of being illicit. Such notification should be clearly visible and communicated to patients and carers/visitors on arrival at the inpatient unit. Any confiscation should occur with clear discussion and explanation of the action to the patient concerned.

Disposal of illicit substances

It is important that services develop a liaison with local police, and protocols on when matters should be reported to police. In the interim period between confiscation and disposal, substances should be placed in the hospital safe and should be in the possession of individual staff members for as short a time as possible. If confiscated substances are handed to the police there should be clear documentation of what is given to whom, when, and by whom. In the event that police do not wish to receive any substance, arrangements should be made with the hospital pharmacist. Similar documentation should occur. Mental health services should develop their own internal protocol on record keeping and appropriate conveyance of suspected substances to police or pharmacist. Both police and pharmacists have specified procedures and powers for the receipt and destruction of prohibited substances.

It is not appropriate that staff confiscate a prohibited substance and dispose of the drug themselves or return the substance to the original owner

Procedure in relation to visitors to the unit

It is important to engage visitors or carers in discussion regarding the potential effect of illicit drug use by the mentally ill person and to provide information regarding such effects and modes of intervention. Input via friends and family may provide an effective means of educating and engaging patients in relation to illicit drug use.

As a hospital is a relatively public place, there is an implied permission to come onto the premises for particular purposes at particular times. Such implied permission does not include permission to enter for the purposes of trafficking in an illicit substance. Permission to enter may be subject to particular conditions, and may be revoked if the visitor behaves inappropriately. All services should consider developing, in consultation with their legal advisors, pamphlets or other signage that indicates such an understanding. If a visitor fails to comply and refuses to leave the premises, security personnel or police can be requested to remove him or her. Prior to any exclusion, thorough documentation on the reasons for exclusion, including any documentation of specific incidents, should be completed.

Any restriction of entry of a visitor's belongings also requires that the visitor be provided with a clear explanation of the reason for such exclusion, and a safe place in which to store the visitor's belongings. It is suggested that if staff believe there is a reason to search a visitor's bags, that they should not touch the contents, but request that the visitor remove them for inspection. Searching should be with the express consent of the visitor. If a visitor refuses to consent to an inspection of his or her belongings, the visitor can be refused entry to the inpatient unit, and if necessary, asked to leave the facility.

In consideration of any action that may prevent a visitor or their belongings entry to the unit, the service should consider the magnitude of the risk to the patient, and their responsibility in preventing harm to patients and staff. There should be a balance between the harm that is expected to be prevented, and the level of intrusion or exclusion contemplated.

Duty of care to the substance-using patient

An inpatient unit does not owe a lesser duty of care towards patients who have an adverse effect on other patients. However the effect of one patient on others may mean they require additional levels of supervision, or restriction of movement. Illicit drug use, of itself, can never be a reason for exclusion from care. Services should act according to a philosophy of harm minimisation, always endeavouring to engage the patient and promote well being. A mentally ill person who uses illicit drugs can still benefit from treatment. If the only means of providing effective treatment is to do so in a restricted environment, then it is likely that this would be more appropriate than excluding the patient from necessary treatment. Careful consideration of the potential risks and benefits should be given before deciding on discharge directly from a high dependency unit.

Drug Treatment Services

Listed below are examples of drug treatment services available within Victoria. Services should develop and maintain a list of relevant services in their area with appropriate contact and referral procedures. Where available, dual diagnosis workers may be the most appropriate person to co-ordinate such referral and provide relevant information. Dual diagnosis workers also have a key role in developing collaborative relationships with drug treatment services in their local area.

Within Victoria specialist drug treatment services provide secondary and tertiary services.

These include:

- Counselling, consultancy and continuing care
- Outpatient, home-based, residential, and rural withdrawal facilities
- Residential rehabilitation
- Peer support
- Specialist methadone services
- Alcohol and drug supported accommodation
- Koori community alcohol and drug services

There are two advisory services, which provide a 24 hour service. These are

DIRECT Line – 9416 1818 or 1800 136 385

Provides a 24 hour telephone referral service to anyone in the community in need of information about drug and alcohol treatment services.

DACAS (Drug and Alcohol Clinical Advisory Service) – 9416 3611 or 1800 812 804

Provides a 24 hour telephone service to health professionals with advice on the clinical management of drug and alcohol issues.

Self Assessment Tool

The following indicators are provided to assist services in the internal quality monitoring of practices, and form the basis for the Chief Psychiatrist's Clinical Review of mental health services.

- The service has written guidelines on the management of illicit substances in inpatient units to assist staff in day to day practice.
- Each patient's illicit substance use is appropriately assessed and considered in the clinical management of the patient, and in discharge planning and recommendations.
- The clinical record shows evidence of patient and, where appropriate, family involvement in decisions and discussions regarding the management of the patient's substance use whilst in the unit.
- Services develop documentation standards for practices relating to searches of patients and/or their belongings with particular attention to risk assessment, consent, scope and reason for the search, persons conducting the search, and for the disposal of any illicit substances confiscated.

- Relevant legislation, educational material, and information regarding available drug treatment services and the processes of referral are readily available to clinicians in the inpatient unit.
- Educational information for patients and carers about substance use, and available services are prominently displayed in the unit.
- The service has protocols with relevant drug treatment services to promote effective collaboration and timely patient access to specialist services.
- The service has a clear policy of liaison with the local area police.

For further information regarding these guidelines contact the Office of the Chief Psychiatrist on 9616 8124.