

## Physician Activism and Civil Disobedience

### **Physicians need to exhaust every possible alternative to bring about political changes before resorting to breaking the law as an act of civil disobedience.**

Commentary by Tom Tomlinson, PhD, and Barry DeCoster, MA

Dr. Garrison is a family physician who has been practicing at a health center in a high-poverty urban neighborhood for 20 years. She finds her work at the health center challenging and often frustrating, but she thinks it is important because the community is plagued by serious health and social problems.

In the last 5 years, for example, Dr. Garrison and her colleagues have observed a steady increase in communicable diseases such as hepatitis and human immunodeficiency virus (HIV). The county public health department has also recognized this trend and has attributed this increase largely to high rates of intravenous drug use in the community.

Dr. Garrison's clinical experience supports the findings of the health department. In addition to her work at the health center, each week she conducts patient outreach visits at social service organizations and community centers. She also goes on street outreach to provide health care to the homeless. In each setting, Dr. Garrison has been told of—and in some cases even witnessed—IV drug users sharing needles.

Each time Dr. Garrison sees or hears about needle-sharing, she sees an opportunity for education. She has told her patients about the risks involved and provided them with information about treatment centers for drug addiction. Despite her efforts, Dr. Garrison sees no progress; more of her patients and their friends are contracting HIV and hepatitis.

In a meeting at the county health department to address this public health problem, she learns of an approach that might be effective in the neighborhood. Evaluations of some programs that provide IV drug users with clean needles and syringes, she is told, have had promising results in reducing the spread of communicable disease in some communities. Intrigued, she reads and assesses some of available literature. She finds that indeed, providing IV drug users with clean needles and syringes can be an effective means for combating the spread of hepatitis and HIV.

Stunned and inspired, Dr. Garrison thinks a needle exchange program would be effective in the neighborhood where she practices. She wonders, however, whether the program is legal. In researching the effectiveness of needle exchange programs, she had learned that they are illegal in many communities.

Dr. Garrison calls one of her friends on the city council to talk about whether local ordinances forbid such programs and, in doing so, learns that both local and state laws prohibit the distribution of needles. Her initial enthusiasm turns to anger, and she makes an appointment to discuss the issue with her state representative.

Dr. Garrison's state representative is sympathetic to her cause but tells her that the legislature's priorities right now are to manage the budget deficit and revive the state's economy. Besides, he says, many state legislators think that needle exchange programs encourage drug use and that there are better and more appropriate ways to reduce the spread of disease.

Frustrated with the legislator's response, Dr. Garrison decides it is time to take matters into her own hands and create a

needle exchange program on her own time and with her own money. She knows that in doing so she is engaging in an illegal act that could endanger her career and reputation. She believes that this risk is worth taking, however, because providing her patients and others in the community with clean needles could help reduce the transmission of disease. She also hopes that the program and publicity it receives will draw more attention to the problem and will prompt local and state policymakers to address the issue.

## Commentary 1

by Tom Tomlinson, PhD

Dr. Garrison's frustration is understandable. According to a recent review of the literature, the evidence is clear that needle exchange programs significantly reduce the incidence of HIV and hepatitis among IV drug users without increasing the rate of drug abuse [1]. Indeed, as the authors report, both the US Department of Health and Human Services and the US Surgeon General have reached this same conclusion. Based on this evidence, successful needle exchange programs have been instituted in the majority of states. Unfortunately, Dr. Garrison's state is not one of them. Dr. Garrison has good reason to believe that a needle exchange program would benefit her patients, but the law will not permit her to follow her well-founded medical judgment.

The question is whether this potential medical benefit warrants her breaking the law. A comprehensive discussion of the ethics of civil disobedience is beyond the scope of this commentary, but a few key points merit attention [2]. First, any such act bears a burden of justification, especially when the law in question is one which has been legitimately enacted within a democratic and just social order. I will presume for the sake of argument that this is the case with the law in Dr. Garrison's state. Consequently, Dr. Garrison must be prepared to offer a moral defense of her decision.

What form that defense takes, and what plausibility it has, will depend on what her purposes are. I can imagine 3. First, she may be breaking the law in order to change it. Second, she may be breaking the law in order to better care for her patients. Third, she may be breaking the law as a personal protest against the law's infringement on her professional judgment. Of course, her motives may be complex; perhaps she has all 3 goals vaguely in mind. Nevertheless, they are clearly separable. One can embrace 1 of them without aiming at the others.

Still, there is 1 common element to their moral justification. Each must start with an argument that the law in question is not morally defensible. This is fairly straightforward if the law's justification is purely a matter of its public health consequences. Once it has been established that the law impedes effective reductions in the spread of HIV without any compensating benefits in reducing drug use, appeal to the consequences favors repeal of the law. This is not the end of the matter, however. The state legislature may object that even if needle exchange programs do not "encourage" illegal drug use in the sense of increasing its incidence, they might still be perceived to "condone" it. It might be these symbolic implications that concern policymakers, not just the measurable public health consequences. The reading of such symbols may mark a cultural divide between Dr. Garrison and perhaps many of the constituents the legislature represents. This could be the same divide that would put the 2 parties at odds over public policies such as the dissemination of condoms or birth control information in public schools. In justifying her action, Dr. Garrison will need to explain why reason favors her interpretation and weighting of the symbols. This will be a more complex argument, and to the extent that people of good will still disagree on the conclusion it will be harder for Dr. Garrison to justify her civil disobedience.

Let us assume for the sake of argument that Dr. Garrison has succeeded in her moral criticism of the law and consider what else she would need to establish to justify breaking it.

What if her goal is to have the law repealed? The problem with this purpose is that there are other means still untried for accomplishing that goal. In order to make her ethical case, Dr. Garrison needs political allies. Without them, a lone protest may only galvanize opposition and reduce the chances for any change in the law. In acting by herself, she invites being labeled a self-righteous rebel, the sort of person whose cause is easily dismissed. However worthy her goal, the means cannot be justified if they are likely to backfire. Self-defeating behavior rarely makes good ethics. Talking to one's representative is only a start in garnering support. Mounting a public political campaign, perhaps with the help of the state medical society and backed by the epidemiological evidence, might be successful. In doing so, she

could point to the many other states that permit needle exchanges. "Me too" works wonders on the legislative mind.

What if her goal is to help her patients? Here too, it may be that Dr. Garrison has not thought far enough ahead. Her help for them will last only so long as her needle exchange program is allowed to continue. What will happen to their care when she is arrested or has her license suspended? Her patients will have lost not only the benefits of the needle exchange but the services of a physician who is meeting a much wider range of health care needs. She may be desperate to do something, her desperation driven by the depth of her concern and idealism. Certainly medicine needs more idealists like Dr. Garrison. Idealism must be hard-headed and practical in its tactics, however, or else it runs the risk of degenerating into self-righteous gestures.

Which brings us to the third possibility: she will break the law in order to register her personal protest. This, I believe, is the least worthy reason. This rationale would not be analogous to an act of conscientious refusal, in which a person refuses to obey a law which will force her to engage in actions she finds morally repugnant. Dr. Garrison is not like the religious pacifist who refuses to report for the draft, for example. The law prohibiting needle exchange programs does not require her to act in ways she finds morally objectionable. Rather, it prohibits her from acting in ways she finds morally preferable. She does not need to disobey it to protect her conscience, which can still be expressed in myriad legal ways. A strong statement of protest, emphasized by self-sacrifice, may feel very satisfying to Dr. Garrison. When it poses the risks described earlier, however, both to her patients' care and to the prospects for legal change, it is an unprofessional indulgence which overlooks her larger duties to her patients and public health.

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## References

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## Commentary 2

by Barry DeCoster, MA

Given the epidemiologic evidence supporting needle exchange programs, it is reasonable to assume that by respecting the law (ie, by *not* providing clean needles), Dr. Garrison would be acting *against* her patients' best interests. It is easy to sympathize with Dr. Garrison's desire to lower local HIV transmission rates, but it appears that political rather than health and epidemiologic considerations may prevent her from carrying out her plans. Here, Dr. Garrison's duties as a citizen and as a clinician come into conflict. Even if the law against needle distribution is unfair or morally unjust, the key moral consideration is whether Dr. Garrison is justified in breaking the law so she may better treat her patients.

The broader question at hand is, how should physicians act when the law prohibits what they view as necessary treatment? One resource she might consult for guidance is the American Medical Association's (AMA) Principles of Medical Ethics. Acknowledging that physicians may face such dilemmas, the AMA suggests in its third principle: "a physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient" [1].

Consistent with AMA guidance, Dr. Garrison initially sought to have the law changed. Her state representative's response, though, leaves little hope that this law will change quickly, if ever. This leaves her in a morally unsatisfying

position. Should Dr. Garrison intentionally violate a seemingly inflexible law that is morally questionable? When attempting to answer this question, it may prove to be instructive to consider when, if ever, clinicians might rightly engage in civil disobedience.

It may be appropriate under some circumstances for clinicians to break the law, but justifying such illegal actions demands a strong moral rationale. Historical examples of clinicians engaging in civil disobedience include providing birth control and abortion services before either was made legal. Even in these cases, had clinicians acted without strong ethical reasoning as backing, they would have acted simply out of disregard for the law rather than in line with a stronger and more defensible moral purpose.

Acts of civil disobedience are distinguishable from other illegal actions—and thus can possibly be considered morally permissible or even commendable—if they are performed "publicly, nonviolently, and submissively in protest of a discrepancy between moral standards and some law, policy, or state of affairs" [2]. While we can add others, these criteria provide a set of minimum requirements for acts of civil disobedience. For the sake of argument, I'll assume that Dr. Garrison has met these conditions.

Beyond these 3 criteria for civil disobedience, I would argue one has the obligation to seek political change of a law through legal avenues before breaking the law can be justified. Without this requirement, illegal actions may undermine public support of and trust in our legal process rather than motivate positive changes, which I take to be an additional requirement of civil disobedience. This call for legal means of political change is echoed within the third principle of the AMA code as well.

I worry that Dr. Garrison moved too quickly into considering breaking the law. While she may have attempted political dialogue through conversations with her state representative, Dr. Garrison has not yet met the additional requirement for civil disobedience: she has not yet demonstrated a serious and continued commitment to legal reform before resorting to breaking the law.

What approaches might Dr. Garrison have considered as legal enactments of political change, especially regarding needle distribution? Surely she could have contacted other state and local politicians rather than terminating her efforts after a single meeting. Dr. Garrison might eventually persuade policymakers of the public health benefits of needle exchange programs. Similarly, it appears Dr. Garrison has not yet garnered the support of her health care colleagues at her own clinic. Dr. Garrison also has failed to engage her patients on this matter. This oversight further marginalizes their voices rather than promoting their agency as patients and citizens, thus perpetuating the misconception that IV drug users' opinions are not worthy of attention. If Dr. Garrison succeeds in organizing these additional voices, state and local politicians may be encouraged to listen more attentively.

Dr. Garrison does not appear to have pursued other commonly employed public relations strategies for encouraging public debate and effecting public policy change. She might begin, for example, with the simple but sometimes powerful act of writing a letter to the editor of the local newspaper. Recruiting reporters from local print and television media might also improve the visibility of Dr. Garrison's political efforts.

Finally, it is unclear whether Dr. Garrison has made any attempt to forge partnerships with other similarly placed health centers in the state around this issue. Have other organizations found options that Garrison should know about? Can they, as a larger group, engage the state government to more effectively initiate legislative changes? If Dr. Garrison has not attempted to make connections with other groups and individuals, she may actually undermine her cause. If she is punished for breaking the law, this may impede the work of other groups seeking legal reform supporting needle exchange programs. Ultimately, she may unintentionally lose public support for needle distribution programs rather than generate beneficial positive backing.

Dr. Garrison need not exhaust each and every possible alternative in order to justify her breaking the law. In this case, however, Dr. Garrison may have considered breaking the law without sufficient effort to seek legal means to enact meaningful and beneficial political change. I applaud her efforts to pursue innovative, effective treatments to improve patient health. Her engagement in state and local politics highlights her desire to shape her character as a thoughtful citizen and clinician. Despite these positive aspects, Dr. Garrison may not yet have adequate ethical grounds for

breaking the law, even if for a good cause. Although clinicians may face situations where civil disobedience is actually warranted, Dr. Garrison has not yet provided sufficient justification.

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## References

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