Predatory Patient Recruitment: Waste, Fraud, and Abuse

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Discrimination, shame, and stigma adversely affect how many of those in the throes of addiction see themselves. Laws, regulations, and social customs influence how society responds to those deemed "drunks" and "drug addicts." It is well understood that substance use disorders (SUDs) can cause substantial psychosocial decrements of function, such as family discord, domestic violence, child abuse and neglect, poor job performance, loss of housing, health problems including psychological problems, and a host of other phenomena that erode the functioning of an affected individual. Thus, because of these complexities, those experiencing alcohol and drug use disorders are especially vulnerable. The Centers for Disease Control and Prevention (CDC) has declared opioid misuse to be an epidemic and the attendant increase in opioid overdose deaths has further heightened the public's awareness of the perils of prescription opioid and heroin use. Unfortunately, the vulnerability of those with substance use disorders also creates an opportunity for exploitation.

How We Got Here: History of SUD Treatment & Surrounding Legislation

The exploitation of those with SUDs stems from efforts to get treatment as a result of demands from the criminal justice system's diversion programs or sentence mitigation programs, or as a result of friends, family, or employers. Historically, access to treatment was a rate limiting step in the provision of care. However, in the past nine years, conditions have changed.

With the influence of the Affordable Care Act (ACA), the substance use disorder treatment field has become a billion-dollar industry. The ACA made mental health and addictions services essential health benefits required to be covered by health insurance plans. In addition, the Mental Health Parity and Equity Act (MHPEA) also required mental health and addictions services to be treated more equitably by insurers. The combination of the MHPEA and ACA extended overall health coverage to more people, expanded the scope of coverage to include mental health and addiction benefits, and improved the coverage provided through those benefits. In addition, federal spending on opioid use disorders has experienced a surge in funding through the 21st Century Cures Act, which authorized the spending of a billion dollars spread out over two years for medication assisted treatment (MAT).

An unsavory side effect of increased awareness and concern and increased financing has been the entry into the SUD treatment field of practitioners who are willing to engage in predatory practices, including illegal and unethical activities. Those with SUDs have become a commodity, a means to the end of quick profits or higher profits, rather than an end in and of themselves. The business of SUD treatment has catapulted ahead of the treatment of those with SUDs. When business becomes the purpose of substance use disorder interventions, the ethics of clinicians and providers become tested.

Ethical Considerations & Resulting Care

The growth of the business of SUD treatment has resulted in questionable behavior associated with the business of substance use disorder treatment and recovery. Patient solicitation strategies that involve robo-calls, promises of cures, inappropriate advertisements, referral bounties, travel incentives, and kickbacks are problematic. If treatment programs increase their emphasis on these types of strategies to enhance patient recruitment, particularly patients in other jurisdictions, resources must be shifted from patient management and counseling.

As explored by a New York Times article in August of 2016, treatment centers from around the country were engaged in the poaching of patients from treatment centers in Staten Island, NY, using the solicitation of patient referrals, often with the offer of thousands of dollars.[1] The treatment centers seeking referrals used patient recruiters in an effort to fill their beds and to cash in on the increased funding made available by MHPEA, the ACA, and now the 21st Century Cures Act.

Notably, this poaching-like referral system does not involve mere referrals from non-SUD oriented programs or from programs that do not have the level of sophistication that a higher-level treatment program might have, nor does it involve decisions to alter care based on the needs of the person under care. Issues of appropriate specialty care, such as care for women with children, senior citizens, LGBT clients, clients with special diagnostic needs, or clients with special psycho social needs, are not subsumed under a discussion of predatory behavior or fraud and abuse. There is no question that some people may need an orthodox referral, some people may need to be transferred from one facility to another, and some people may need a different level of care than can be provided by a single provider.

The problem occurs when profit alone drives clinical decision-making, and the patient becomes the victim of inappropriate care, inadequate care, or even unnecessary care. The problem with unorthodox SUD treatment programs extends from recruitment from the streets to detoxification, from detoxification to acute treatment centers, from acute treatment to longer term treatment, and from longer term treatment to residential treatment and recovery programs. As a result, there has been an increase in both federal and state investigations into the practice of SUD treatment programs of all types.

Viewed in the best light, treatment providers are simply trying to stay in business by maintaining what they determine to be a viable census, whether it is the number of beds filled or clients served in order to stay in business. Viewed from another angle, however, it might appear that "heads and beds" are more important than appropriate care and quality of care. Motive may matter, but that is often hard to determine. Unfortunately for those seeking treatment, the media has had no shortage of nefarious providers who engage in what could be called predatory patient recruitment to highlight.

Bad Practices: Acts Undertaken by SUD Programs

The media has profiled and continues to profile allegations of improper activities associated with SUD programs. One article noted that, "to get addicts to enroll, treatment center operators pay case-management fees that they say require sober home operators to complete specific, critical duties. Prosecutors allege the duties mask the true intent behind the payments — to provide the treatment center with a steady stream of insured addicts."[2] This article revealed a case of a sober living home operator who was arrested for allegedly accepting kickbacks from a treatment program to enroll insured addicts in their treatment program.

Yet another scheme that exploited the availability of funds to treat those with SUDs targeted high school and middle school students. A program that was setup to help youth in recovery became a cash cow by billing for services provided to students who did not have a substance use disorder, billing for counseling sessions that were not conducted, and falsifying treatment plans, group counseling sign-in sheets, and progress notes.[3] The Department of Justice issued a press release that stated, "For counselors and supervisors to risk stigmatizing students as substance abusers, as alleged in this case, just to enrich themselves at taxpayer expense is outrageous." The tenor of the statement underscores society's views of those with SUDs. The author of the quote acknowledged not only fraud and abuse, but the stigma of being labeled a person with an SUD as part of the outrageousness of the behavior of the counselors involved in the scheme. It is this jaded view of addiction which imposes on those who serve those who suffer from SUDs a duty of beneficence and stewardship.

Another example of questionable behavior associated with profit rather than progress can be found in the State of Washington, where it was alleged that several counselors at a program were accepting bribes from clients to fake treatment records that were sent to courts on behalf of their clients.[4] Clearly, trust is an essential component of treatment. Once clients conclude that the ethics of a counselor or a program are compromised, treatment and recovery becomes a con game, where duplicity and manipulation are the prevailing attitudes rather than honesty and candor.

Predatory practices are not limited to those offering services to the people in treatment for or recovering from SUDs; nor should it be

concluded that those suffering from SUDs are more deserving of protection than any other vulnerable population. However, those seeking treatment, in treatment, and in recovery are receiving less government protection than other vulnerable populations. For example, in Los Angeles, an owner of a sober living facilities was arrested for sexual abuse, sexual exploitation, and furnishing controlled substances to female patients.[5] Predators and those engaged in criminal enterprises see the SUD field and its population as fertile ground for the taking.

Government Involvement

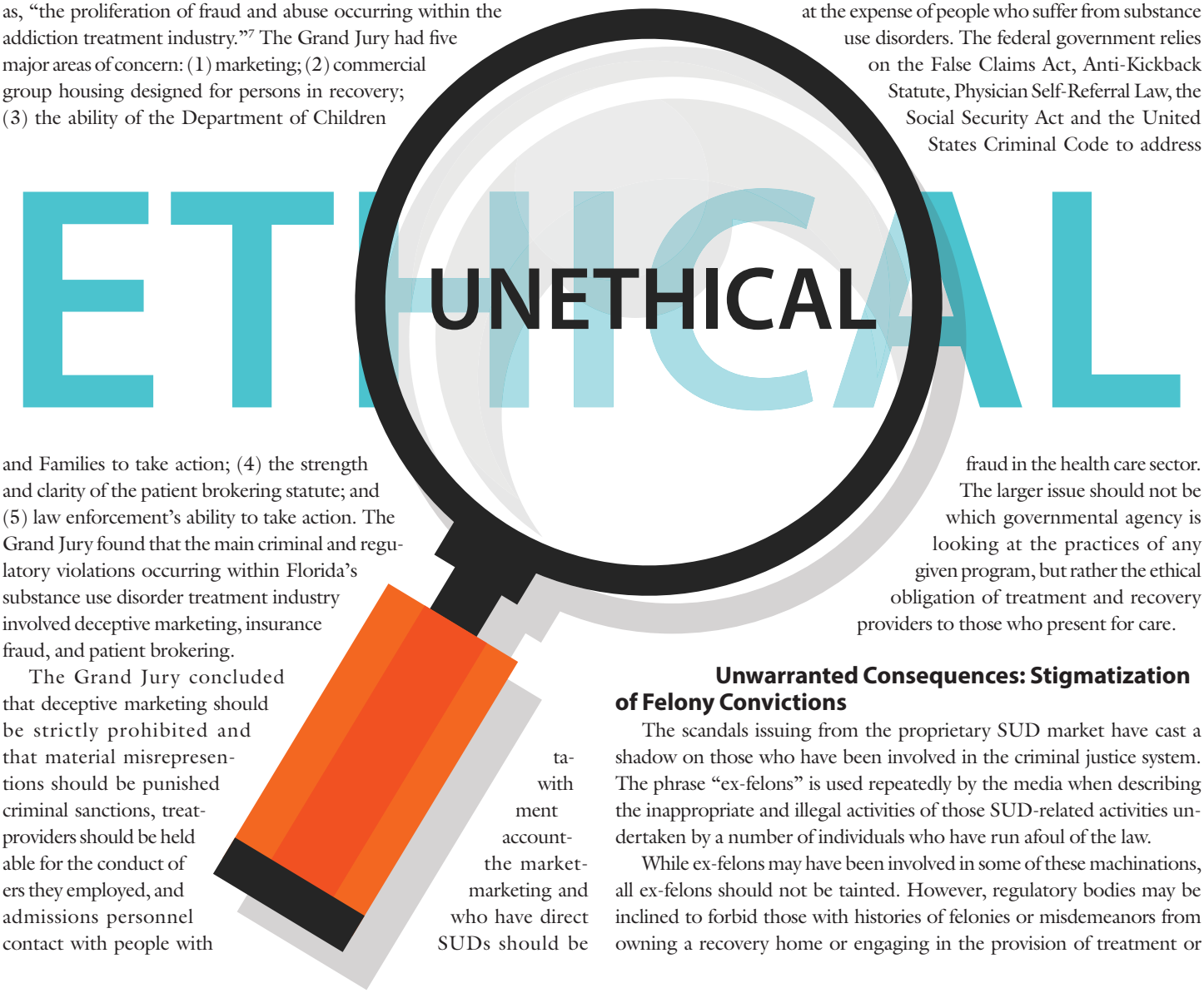
The questionable behaviors exhibited by SUD treatment facilities have not gone unnoticed by local and state governments. In California, the owners of sober living facilities were charged with felony counts of grand theft, identity theft, and conspiring to defraud patients and insurers out of more than $176 million; the complaint alleges that "vulnerable people addicted to drugs and alcohol" were lured to sober living facilities with a variety of marketing schemes.[6]

California is not the only state grappling with the issue of patient brokering, predatory referrals, and fraud and abuse. In December 2016, the a Grand Jury in Palm Beach, Florida issued a report addressing what it saw as, "the proliferation of fraud and abuse occurring within the addiction treatment industry."[7] The Grand Jury had five major areas of concern: (1) marketing; (2) commercial group housing designed for persons in recovery; (3) the ability of the Department of Children and Families to take action; (4) the strength and clarity of the patient brokering statute; and (5) law enforcement's ability to take action. The Grand Jury found that the main criminal and regulatory violations occurring within Florida's substance use disorder treatment industry involved deceptive marketing, insurance fraud, and patient brokering.

The Grand Jury concluded that deceptive marketing should be strictly prohibited and that material misrepresentations should be punished with criminal sanctions, treatment providers should be held accountable for the conduct of the marketers they employed, and marketing and admissions personnel who have direct contact with people with SUDs should be licensed or certified to ensure that they possess minimum education, training, and experience. In addition, the Grand Jury also recommended licensing for certain types of commercial recovery housing, prohibiting treatment providers from referring patients to any uncertified recovery residences, and prohibiting treatment providers from accepting referrals from uncertified recovery residences.

In 1993, Texas set limits on conditioning employee relationships on patient revenue tied to the number of patient admissions or the number or frequency of telephone calls or other contacts with referral sources to solicit patients for the treatment facility. This same Texas law also spells outs standards for a qualified referral service.[8]

With federal authorities like the fraud units of the Federal Bureau of Investigation (FBI) and Centers for Medicare & Medicaid Services (CMS), and state and local authorities looking into the predatory practices of detoxification units, treatment programs, residential programs and sober houses/recovery homes, it is important for the substance use disorder treatment and recovery communities to recognize that much is at stake. With a new administration in Washington, DC, and with the Affordable Care Act under scrutiny for change, disruptive processes are in the offing. Fraud and abuse are areas where quick money can be made, but at the expense of people who suffer from substance use disorders. The federal government relies on the False Claims Act, Anti-Kickback Statute, Physician Self-Referral Law, the Social Security Act and the United States Criminal Code to address fraud in the health care sector. The larger issue should not be which governmental agency is looking at the practices of any given program, but rather the ethical obligation of treatment and recovery providers to those who present for care.



Unwarranted Consequences: Stigmatization of Felony Convictions

The scandals issuing from the proprietary SUD market have cast a shadow on those who have been involved in the criminal justice system. The phrase "ex-felons" is used repeatedly by the media when describing the inappropriate and illegal activities of those SUD-related activities undertaken by a number of individuals who have run afoul of the law.

While ex-felons may have been involved in some of these machinations, all ex-felons should not be tainted. However, regulatory bodies may be inclined to forbid those with histories of felonies or misdemeanors from owning a recovery home or engaging in the provision of treatment or

recovery activities. This would be a mistake because it further stigmatizes those who are trying to rebuild their lives. Nevertheless, the optics of the situation do create a conundrum for patient advocates and regulatory bodies. Licensing, audits, and hotlines can be used to monitor both treatment programs and recovery homes. Those with non-violent felonies should be treated differently than those with convictions of violence. Those convicted of financial crimes are obviously in a vulnerable position, given the temptations associated with the promise of quick cash from insurance and from clients. Those convicted of crimes of trust may have to have more time to establish their commitment to honesty.

Ethical Guidance by NAADAC and Other Organizations

NAADAC, as an organization, has committed its members to an ethical framework in its NAADAC/NCC AP Code of Ethics that includes nine principles, each with subsets.[9] Principle I addresses a spectrum of issues associated with the counseling relationship, from client welfare to even virtual relationships. Principle I-41 addresses the issue of uninvited solicitation of potential clients. Principle III-5 states that, "Addiction Professionals shall not participate in, condone, or be associated with any form of dishonesty, fraud, or deceit." NAADAC also recommends 17 other ethical standards when making ethical decisions — these include the core bioethics principles of autonomy, beneficence, and justice.

NAADAC is not the only organization committed to the ethical practice of treatment and recovery. The American Society of Addiction Medicine (ASAM) supports a body of ethical statements that begin with providing competent medical service with compassion and respect for human dignity.[10] ASAM's statements also includes caveats against conflict of interest and an advantage of power over the patient outside of the treatment relationship. Nevertheless, the ASAM approach asserts that some dual role relationships with patients may not be frankly unethical, simply fraught with potential dangers and conflicts.

Moving from clinicians to providers, the National Association of Addiction Treatment Providers (NAATP) also has a code of ethics.[11] NAATP's code specifically addresses the issue of marketing. It includes provisions about prohibiting financial rewards for patient referrals, deceptive or misleading advertising or marketing practices, and exploiting clients' right to privacy for the purpose of promoting or marketing their programs.

Some addiction treatment organizations, apart from NAATP, have embraced an Addiction Treatment Marketing Organization (ATMO) code of conduct. Thirteen organizations have signed this code of conduct.[12] ATMO describes some common forms of unethical marketing practices as: (1) lead selling/buying or incentivized referrals; (2) misrepresentation of services; (3) misleading information; (4) discussing clients without explicit consent (HIPAA and/or 42 CFR Part 2 violations); (5) inappropriate use of clients for promotional purposes; and (6) ignorance of third-party consultant practices/plausible deniability. The thirteen organizations promulgated nine guidelines that they believe will hold their marketing to a high ethical standard; the only downside is that only thirteen organizations have signed this Code of Conduct.[13]

The problem with these professional codes of ethics is enforceability. Because they are largely voluntary, they are virtually unenforceable. To the extent that the organizations that sponsor them simply post them on a website, these codes of ethics may be acknowledged, but ignored. Clinicians and providers need to be reminded of their ethical obligations to do no harm on a regular basis. When professional organizations fail, then governmental bodies step in and impose laws and regulations in place of reason and a respect for patients over profits.

While it is not clear what will happen to the ACA under the new political regime, it is clear that governments and insurance companies are not shy about questioning the behavior of clinicians and providers in the field of addictions. Predatory recruitment practices, deceptive marketing, abuse of patients, and insurance fraud only undermine the credibility of the SUD treatment and recovery fields. As reasonable people committed to the welfare of our clients, we all need to promote and insist upon the ethical treatment of those who need and seek help for their substance use disorders.

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