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C O N T E N T S

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Symposium Articles

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SYMPOSIUM

Covert  
Medication

Guest Edited by  
Rosalind Abdool

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Cover image ©Getty Images

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**INTRODUCTION**  
*Rosalind Abdool*

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**Proof in the Pudding: The Value of a Rights Based Approach to Understanding the Covert Administration of Psychotropic Medication to Adult Inpatients Determined to Be Decisionally-Incapable in Ontario's Psychiatric Settings**  
*C. Tess Sheldon*

This paper explores a grey area of psychiatric practice and, as with other challenging practices, the law is called upon to navigate conflicting legal issues. In particular, this paper explores the covert administration of medication: the concealment of medication in food or drink so that it will be consumed undetected. Rights-based approaches support nuanced understanding of the practices. Few policies, protocols or guidelines govern the practice in Ontario's psychiatric settings. While covert medication is understood to have "something to do" with rights, there is confusion about how those rights play out on the ground. Institutional silences underlie and reinforce the practice. Most pressing, the covert administration of medication warrants an overt discussion, including of its impact on the rights-experience of persons in psychiatric settings.

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**The Covert Administration of Medications: Legal and Ethical Complexities for Health Care Professionals**  
*L. Martina Munden*

The practice of covertly administering medications to patients without their consent is often discussed in the framework of legal questions around the right of patients to consent and refuse medical treatment. However, this practice also raises significant questions surrounding the professional duties and obligations of health care professionals as it relates to the decision-making process of whether to engage in the covert administration of medications. In this paper, I present an overview of the origin of those duties and obligations, and discuss how those duties and obligations when seen from different perspectives may either justify or prohibit the practice. Further, I

discuss whether the duties and obligations of health care professionals as they are currently framed are suited to address the complexities of this issue both from the health care professional and patient perspectives. This analysis is conducted in the context of duties and obligations that arise from not only legal framework but also from the ethical requirements from professional codes of ethics.

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**Deception in Caregiving: Unpacking Several Ethical Considerations in Covert Medication**  
*Rosalind Abdool*

From a clinical ethics perspective, I explore several traditional arguments that deem deception as morally unacceptable. For example, it is often argued that deception robs people of their autonomy (Frankfurt 2005). Deception also unfairly manipulates others and is a breach of important trust-relations (Williams 2009, Scanlon 1998). In these kinds of cases, I argue that the same reasons commonly used against deception can provide strong reasons why deception can be extremely beneficial for patients who lack mental capacity. For example, deception can enhance, rather than impair, autonomy in certain cases. I argue that deception ought to only be used after considering several key morally relevant factors and provide a practical and morally justifiable framework for exploring these issues.

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**Covering It Up? Questions of Safety, Stigmatization, and Fairness in Covert Medication Administration**  
*Christy Simpson*

This paper examines the practice of covert medication administration from an organizational ethics perspective. This includes consideration of vulnerability and stigmatization, safety, and fairness (justice) in terms of the culture of health care organizations and the relevance of policies and processes in relation to covert medication administration. As much of the discussion about covert medication administration focuses on patients and health care providers, this analysis aims to help expand the analysis of this practice.

## Independent Articles

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### Public Participation in Drafting of the 21st Century Cures Act

*Thomas J. Hwang, Rachel E. Sachs, and Aaron S. Kesselheim*

The 21st Century Cures Act is a major act of legislation that contains numerous changes to drug and device regulation. The House of Representatives passed the Act after considerable interest group lobbying, but the bill and the key changes made during its drafting remain controversial. Using publicly disclosed records of written comments on the bill, we reviewed the key areas of lobbying activity and the compromises made in the final text. We focused on legislative provisions relating to management of the National Institutes of Health, incentives for medical product development, and approval standards for new drugs and devices. By the end of the first comment period, the Committee received 118 comments. Most respondents were patient organizations, professional societies, and pharmaceutical and device companies. Overall, the majority of public comments were positive, although public health and consumer organizations were underrepresented in the number of submitted comments. As the legislative process continued, the draft bill underwent several changes relating to NIH funding, market exclusivity provisions, and scrutiny of regulatory evidentiary standards. Understanding the key statutory provisions and how they have evolved could help patients, researchers, and advocates make more informed comments on the bill and future health care legislation.

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### U.S. State Ignition Interlock Laws for Alcohol Impaired Driving Prevention: A 50 State Survey and Analysis

*Juliana Shulman-Laniel, Jon S. Vernick, Beth McGinty, Shannon Frattaroli, and Lainie Rutkow*

**Objectives:** Over the past two decades, all U.S. states have incorporated alcohol ignition interlock technology into sentencing laws for individuals convicted of driving while intoxicated (DWI). This article provides the first 50-state summary of these laws to include changes in the laws over time and their effective dates. This information is critical for policy makers to make informed decisions and for researchers to conduct quantitative evaluation of the laws.

**Methods:** Standard legal research and legislative history techniques were used, including full-text searches in the Westlaw legal database and identification of state session laws. Because ignition interlock device (IID) laws often change over time, we identified the date of each law's initial enactment as well as the effective date of each law in its current form.

**Results:** Beginning with California and Washington in 1987, all 50 states have enacted IID laws as a sentencing option for DWI offenders. Initially, most of these laws were discretionary. Today, however, 48 states mandate IID installation for at least some types of DWI offenders to maintain lawful driving privileges. Of these, 27 mandate an IID for all offenders; seven mandate an IID for repeat offenders only; and 21 for some combination of specific groups of DWI offenders, including repeat offenders, offenders with a blood alcohol content above a legislatively-specified level, and aggravated offenders

(including those who harm someone else or who are convicted of a DWI with a child in the vehicle).

**Conclusion:** States have wrestled with a number of IID policy issues, including for whom to mandate IIDs and whether to suspend a license for DWI prior to reinstating driving privileges with or without an IID. By understanding how state interlock laws differ, policy makers and researchers can ultimately better ascertain the impact of these laws.

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### Concussion Management Plans' Compliance with NCAA Requirements: Preliminary Evidence Suggesting Possible Improvement

*Christine M. Baugh, Emily Kroshus, Kaitlyn I. Perry, and Alexandra P. Bourlas*

This study examined the extent to which concussion management plans at National Collegiate Athletic Association (NCAA) member schools were in line with NCAA Concussion Policy and best practice recommendations in absence of any process to ensure compliance. Most schools' concussion management plans were in compliance with 3 (60%) or 4 (25.6%) of the NCAA's 4 required components. Annual athlete education and acknowledgement was the requirement least often included, representing an area for improvement. Further, schools tended to more often include best practices that were more medically-oriented (e.g., including baseline examination), compared to best practices that were less medical in nature (e.g., avoiding flagrant head hits).

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### A Study to Elicit Behavioral Health Patients' and Providers' Opinions on Health Records Consent

*Maria Adela Grando, Anita Murcko, Srividya Mahankali, Michael Saks, Michael Zent, Darwyn Chern, Christy Dye, Richard Sharp, Laura Young, Patricia Davis, Megan Hiestand, and Neda Hassanzadeh*

A main objective of this study is to assess the opinions of 50 behavioral health patients on selective control over their behavioral and physical health information. We explored patients' preferences regarding current consent models, what health information should be shared for care and research and whether these preferences vary based on the sensitivity of health information and/or the type of provider involved. The other objective of this study was to solicit opinions of 8 behavioral health providers on patient-driven granular control of health information and potential impact on care.

Electronic surveys were implemented at an outpatient Behavioral Health facility that provides care for behavioral health patients with non-serious mental illnesses. The Patient Survey included questions regarding patients' demographics and about their concerns and preferences for data sharing for care and research. The Provider Survey included questions about their view on the current consent process and perceptions on barriers and facilitators to implement patient-controlled granular consent models.

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**Symposium articles** are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

**Independent articles** are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

**Columns** are written or edited by leaders in their fields and appear in each issue of *JLME*.

*Next Issue:*

**Controversies in Clinical Research Ethics**

A Symposium  
Guest Edited  
by Robert M.  
Sade

This novel study provides valuable preliminary data that can help guide future studies to better understand privacy choices of this underrepresented patient group.

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**Bridging Health Disparity Gaps through the Use of Medical Legal Partnerships in Patient Care: A Systematic Review**

*Omar Martinez, Jeffrey Boles, Miguel Muñoz-Laboy, Ethan C. Levine, Chukwuemeka Ayamele, Rebecca Eisenberg, Justin Manusov, and Jeffrey Draine*

Over the past two decades, we have seen an increase in the use of medical-legal partnerships (MLPs) in health-care and/or legal settings to address health disparities affecting vulnerable populations. MLPs increase medical teams' capacity to address social and environmental threats to patients' health, such as unsafe housing conditions, through partnership with legal professionals. Following the Preferred Reporting Items for Systematic Review and Meta-Analyses guidelines, we systematically reviewed observational studies published from January 1993-January 2016 to investigate the capacity of MLPs to address legal and health disparities. We identified 13 articles for qualitative analysis from an initial pool of 355 records. The resulting pool of 13 articles revealed more information regarding the capacity of MLPs to address legal outcomes than their capacity to address health outcomes; only 4 studies directly addressed the impact of MLP intervention on patient wellbeing and/or patient utilization of healthcare services. We call for further evaluation/longitudinal studies that specifically address MLPs' short and long term effects upon patient health disparities. Finally, given the demonstrated capacity of MLPs to address unmet legal needs, and their evident potential in regards to improving health outcomes, we present the MLP model as a framework to address HIV-related legal and health disparities.

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**Structural Challenges of Precision Medicine**

*Mark A. Rothstein*

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**PUBLIC HEALTH AND THE LAW**  
**Driving Under the Influence of Marijuana Laws and the Public's Health**

*David Turnbull and James G. Hodge, Jr.*

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**CALENDAR**