

Treatment Court Teams



Work as a team Understand Confidentiality Mandates
Mind your boundaries Keep your ethics

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- Points of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Objectives

- Highlight the importance and benefit of working cooperatively with drug court partners
- Identify strategies for developing team relationships
- Learn the pitfalls of boundary problems
- Ethics are NEVER changed.
- Quick review of Confidentiality Laws

Confidentiality

The joys of medical information.

Confidentiality mandates

- In problem solving courts, we work with treatment providers and make referral to treatment. That triggers the protections of 42 USC, and HIPAA.
- We can get waivers of confidentiality statutes. It should be the first thing we do!
- Sample waivers can be located in the Judicial Bench Book from NDCI.
- **Note there has been new guidance from the feds on this issue. Consult you treatment providers. Final guidelines have been released this summer. YAAY!**

Advice:

- Your treatment professionals are well versed in this cross train with them
- Designate a team member to monitor this topic- often it is defense counsel who monitors the law on behalf of the client.

Someone pay attention to these issues every week!

Confidentiality/Privacy

42 CFR Part 2 – The alcohol and substance abuse treatment confidentiality rule.

HIPAA – New federal rules covering all health related information.

Confidentiality laws & HIPAA

- This is simply a bunch of laws that can be read, understood, and waived.
- There is no REAL clarity
- In some places it conflicts with the Constitution
- Nobody was contemplating Treatment Courts
- Really not the real challenge for counsel in the “big picture”.
- They do not prohibit disclosure, they set forth the conditions for disclosure.

42 U.S. Code 290dd

42 CFR Part 2

- First issued 1975, revised 1987, new guidelines updated a couple of areas (2017) (2020 Final)
- Designed to help deal with the stigma of addiction.
- Requires notification of confidentiality, consent forms, prohibition of redisclosure
- “I’m sorry I cannot acknowledge whether someone is or isn’t in our treatment program”.

What 42 CFR Covers:

- “Any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation or research which is directly or indirectly assisted by any department or agency of the United States.”

HIPAA

- H e a l t h I n s u r a n c e P o r t a b i l i t y a n d A c c o u n t a b i l i t y A c t o f 1 9 9 6
- 45 CFR Parts 160 and 164, Subparts A and E
- Designed to ensure maintenance of health insurance coverage when you change jobs.
- Administrative simplification – Healthcare processes becoming very complex – look to standardize information – make it easier.
- Protect confidentiality and security of patient information

Privacy Standards

- Places restrictions on the use and/or disclosure of “Protected Health Information” –PHI
- Effective 4/14/03
- Essentially applies “42 CFR p.2-like” requirements to all health care.

Protected Health Information (PHI)

- Any health information:
 - *Oral , paper, or electronic*
- Including identifying demographic information
- Relating to:
 - Physical or mental health (treatment) of individual,
 - Provision of health care to an individual (operations)
 - Payment for provision of health care to individual

Security Standards

- Security of information against non-approved access
- Electronic creation, transmission, and storage of information a significant concern – hackers
- Requirements for logging of access, automatic log offs, encryption of information sent by internet.
- Regulations took effect in 4/05

Minimum Necessary Standard

- When using/disclosing PHI, only the minimum necessary information should be shared.
- The disclosure should cover only the authorized information
- Individuals, family, visitors, etc. who do not have a need to know PHI should not have access to it.

HIPAA v. 42 CFR Part 2

- **The laws cover a lot of the same material.**
- **Some points of difference – more specific or more recent rule usually applies.**
- **For the CD Treatment providers, in most cases the rules of 42 CFR Part 2 are more stringent**
- **In several cases HIPAA wins.**

Do These Laws Apply to
Problem-Solving Court
Practitioners?

How Do We Know They
Apply?

HIPAA doesn't apply to courts

- Contrary to myth, HIPAA covered entities do not include the courts, court personnel, accrediting agencies like JCAHO and law enforcement personnel including police or probation officers.
 - GAINS CENTER, “Dispelling the Myths...” Feb. 2007

Persons who are protected as “Patients”

- A person is a “patient” if they have sought or received a treatment programs services.
- If someone fails to appear for an initial appointment, that information is protected because they have “sought” treatment.

Defining the Program

1. A unit or office of the problem-solving court itself provide diagnosis, treatment or makes referrals to CD treatment.
 - Is a “Program” under 42 CFR Part 2.
 - Is a “Covered Entity” if it transmits PHI electronically.
 - Requires a valid multi-party consent to disclose information to the problem-solving court team.

Defining the Program

2. The program is independent of the problem-solving court.
 - Requires valid multiparty consents for re-disclosure of information to the problem-solving court team.

General Rule of Disclosure

- “Treatment Programs may only release information or records that will directly or indirectly identify a problem-solving court participant as a substance abuser:
 - With a knowing and written consent from the participant, AND
 - limited exceptions

How do You Obtain
Written Consent from
Your Participants?

Elements of a Consent

1. Name of person or organization that may make the disclosure;
2. Name or title of person (or organization) to whom disclosure may be made;
3. Participant's name;
4. Purpose of the disclosure;
5. How much and what kind of information may be disclosed;
6. Participant's signature;
7. Date on which the consent was signed;
8. Date, event, or condition upon which the consent will expire
(Consent cannot be revoked unless in a civil or juvenile court setting)

And under HIPAA

- Must be in plain language
- Can be signed by a personal representative (then, must contain a description of the representative's authority to act on patient's behalf)
- Patients must be given copy of written form
- Programs must keep copy of form for six years from expiration date
- Program must ensure that consent complies with applicable requirements of 45 CFR section 164.508

Consents

- A proper consent can authorize all parties involved in the problem-solving court to share information necessary to monitor treatment progress and compliance.
- To be effective the consent form should be signed at the earliest possible time.
- Judge, coordinator, probation, etc., should get consent and fax it to treatment before 1st appointment.

Requiring Consents

- HIPAA prohibits a program from conditioning treatment on a patient signing a consent, but
- The judge (problem-solving court) can condition participation in the court program on the defendant signing the consent form.

Consent Guidelines

- Criminal Justice System (CJS) consents
 - Determine whether assessment and treatment participation is an official condition that the person must meet.
 - CJS consents have special rules under 42 CFR part 2 – irrevocable until expiration.
 - HIPAA requires all consent be revocable.

Satisfying 42 CFR and HIPAA

- HIPAA requires all consents to be revocable, but
- HIPAA also allows for the use of an administrative order for information disclosure. Therefore,
- Programs that provide both substance abuse and mental health treatment services can pair their 42 CFR consent with a HIPAA administrative order and/or build HIPAA language into their consent

Option 1- Court Order & Irrevocable Consent

- Use of Court Order (court or administrative body) – Satisfies HIPAA
 - “Standing order”
 - “Limited HIPAA Order”
 - Irrevocable consent – 42 CFR Part 2

Option 2 – Revocable Consents

- “Unlikely” the individual will revoke consent if it means they will be in violation of terms of sentence.
- Saves Court work – no orders
- If revoked, programs will have to inform court that a 42 CFR Part 2 court order is needed.
- Consent needs to describe specifically how disclosed info will be used.

Use and Redisclosure

- Under 42 CFR § 2.35, information from a CJS release may be redisclosed and used only in connection to their official duties with respect to the particular criminal proceeding.
- The information may not be used in other proceedings, for other purposes or with respect to other individuals. (42 CFR § 2.12(d)(1))

WHAT HAPPENS IN VEGAS.....

When can we
disclose
information?

Mandatory disclosure -no consent

- State child or elder abuse laws
- A valid court order
- State laws relating to cause of death
- Duty to protect others, to warn of imminent, serious harm

Permitted disclosures -no consent

- Medical emergency
- Crimes on the premises
- Crimes against staff
- Administration / qualified service programs working with treatment facility (must have business associate agreement under HIPAA—see 67 Federal Register 53264 for sample contract language—published by HHS office for Civil Rights)
- Outside auditors, central registries and researchers
- No re-disclosures unless permitted
- All disclosures must be documented

Subpoenas v. Court Orders

- Part 2 allows information to be released by subpoena if patient has signed consent permitting release
- If no consent, then see 42 CFR Part 2, Subpart E for procedures the court must follow, findings, and limits
- HIPAA allows information release under subpoena with assurance patient has been given notice (or reasonable efforts made to give notice) with the opportunity to object

Can a Judge share treatment information in open court?

- The Judge may decide that sharing information about progress/difficulty in treatment is a “legitimate part of the court’s official duties and responsibilities with respect to the criminal proceedings”.
- Remember the Minimum Necessary Information standard and rule of minimization.

Confidentiality
exception:
BRADY Issues !



Ethics and Boundaries

Examples:

- As a prosecutor, I cannot:
 - Allow a defendant to suffer a due process violation.
 - Reveal the existence of a search warrant
 - Allow a Brady violation
- As a defense attorney, I cannot:
 - Allow a perpetration of a fraud upon the Court
 - Reveal information subject to privilege.

- As a Judge, I cannot:
 - Defer decisions to the team
 - Conduct ex parte conversations or Court
 - Discuss individual legal matters before me.
 - **Ignore the law or Constitution.**
- As a treatment provider, I cannot:
 - Reveal information subject to confidentiality laws that are not necessary
 - Ignore safety of others

- As a probation officer, I cannot:
 - Reveal LE activity coming up
 - Ignore public safety mandates incumbent on my profession.
 - Yield my authority to violate probation
- As law enforcement, I cannot:
 - Reveal confidential LE activity.
 - Reveal what I learn in Treatment Court to others.

As a peer recovery specialist, I cannot:

- Cross the professional boundaries of a treatment provider or my professional code of ethics.
- Claim professional qualifications I don't have.
- Discuss matters about clients with others.
- No sexual or personal relationships, no lending or borrowing, or bartering.
- No personal gain via services, fees, or other remuneration outside of job.
- Virginia has a code of ethics for Peer Recovery Specialists; cross train on it.
- <http://www.mcbap.com/ethics/peer-recovery-code-ethics/>
- https://kdads.ks.gov/docs/default-source/CSP/CSP-Documents/bhs-documents/licensing/substance-use/code_of_ethics_peer_mentors_pm_training081412.pdf?sfvrsn=ce5c37ee_6

This isn't that easy, is it?

Maintaining Boundaries

*Drug Court Professionals
and Ethics*

Is there a problem with...

- Loaning a current participant money ??
- co-signing a loan on a car for a client?
- Co-signing a mortgage with a client?
- Sleeping with people under your care?
- Having them live with you?
- Hire them to baby sit for you?

Professional confusion...

- Treatment professionals trying to be probation officers
- Probation officers trying to be treatment, when they are not licensed?
- A bench officer who acts as the DA?
- A bench officer who acts as the defense?

Or a confidentiality AND judgment problem?

- How about a district attorney who discounts treatment advice because his wife is a nurse and tells him different?

- Agreeing to be a probation officer for clients when probation team members will not serve them.

(District attorney)

- Defense counsel acting as a probation officer-but lacks the authority of the Court.

How about:

- Abuse of power?
- Criminal conduct?

This seems bad.....

- A former Lawrence County Treatment Court program supervisor is in the county jail for alleged misconduct during her involvement with running the county drug court operations. The Lawrence County District Attorney's office has filed charges against Jennifer Lynn Leasha, 39, of 125 Hillcrest Acres in North Beaver Township for allegedly sexually soliciting drug court offenders, and for allegedly trying to get one of them to commit a burglary and kill her estranged husband.
- www.ncnewsonline.com/news/former-drug-court-official-charged/article_046da970-b21d-11e9-b5b7-cb4409e47458.html

Gross abuse of power by LE

- <http://www.wsmv.com/story/34654368/woman-admits-relationship-with-deputy-while-inmate> sheriff deputy and drug court participant
- <http://www.wftv.com/news/local/2-volusia-county-deputies-off-job-over-drug-court-sex-scandal/625727529> sheriff deputies and drug court participant

Two victims: Oklahoma case

- Appellant befriended drug court participant, J.M. On February 7, 2006, Appellant repeatedly telephoned J.M. and requested that she travel from Custer County to his hotel room in Oklahoma City. J.M. acquiesced when Appellant demanded that she meet him or he would vote for her termination from drug court. When she arrived at the hotel, Appellant provided J.M. with alcohol, engaged in sexual intercourse with her, and performed oral sodomy on her person. Thereafter, Appellant engaged in sexual intercourse with J.M. at her home, at the home of a friend of the Appellant's, at a motel, and at Appellant's home while his wife was on vacation. At Appellant's home, Appellant gave J.M. alcohol, engaged in several instances of intercourse, and performed oral sodomy upon J.M. Appellant and J.M. travelled to Oklahoma City for Drug Court Day at the State Capitol. Appellant repeatedly demanded and engaged in instances of sexual intercourse with J.M. in his hotel room.

- During this time frame, Appellant intervened in J.M.'s urinalysis testing at the Custer County Jail. Appellant instructed his employees to permit J.M. to test in the courthouse bathroom which was nicer than the jail restroom. On at least two separate occasions, Appellant intervened and stopped the jail employees from reporting J.M. for a positive test, took J.M. for a mouth swab test, and had the jail employees discard the positive urinalysis test.
- On January 3, 2007, Appellant assisted the drug court compliance officer with an investigation into drug court participant, B.B. Appellant discovered that B.B. was in violation of the Drug Court's rules. He contacted the Drug Court Judge and pursuant to her order took B.B. into custody. The compliance officer assisted and investigated other drug court participants while Appellant drove B.B. to the jail. Through repeated comments on her future, Appellant painted the grim picture of jail, termination from Drug Court, and imprisonment for B.B. Appellant told B.B. that he could save her from prison and make her stay in the jail more comfortable. He pulled off the road near two barns and told B.B. that he would help her if she would help him. Appellant directed B.B. to perform oral sodomy on his person and engaged in sexual intercourse with B.B. The records within the sheriff's department reflected that it took Appellant approximately 44 minutes to transport B.B. the 5 mile distance from her home to the jail.

- In May, 2007, J.M. informed Appellant that she could not do it anymore. Appellant informed her: "Well, you know what that means." (Tr. V, 1210, 1453-54). Subsequently, J.M. tested positive on her urinalysis test at the Custer County Jail. She tried to get Appellant to intervene both before and after the test, however, he ignored her requests. J.M. was placed in the Custer County Jail and sanctioned to one year inpatient treatment by the Drug Court. As she left the courtroom, she screamed: "I've effed [sic] the sheriff all this time, you can't do this to me." (Tr. V, 1211, 1490-92).
- J.M.'s cousin, C.T., contacted Appellant and informed him that J.M. had DNA evidence proving their sexual relationship. Appellant offered to help C.T.'s brother get out of prison if she would obtain the evidence from J.M. and bring it to him.
- <https://law.justia.com/cases/oklahoma/court-of-appeals-criminal/2010/461458.html>

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, December 14, 2012

Former Lincoln County, Missouri, Sheriff's Office Detective
Sentenced on Sexual Abuse Charges-"Tracker"

2018 UPDATE: multi million dollar judgment, interesting turn on
who was the responsible party: court, or Sheriff? Respondeat
Superior?

- MORRISTOWN - A Drug Court participant who admittedly was tipped off to surprise drug screenings and given drug testing kits by a Sussex County Sheriff's officer in exchange for having a sexual relationship with him was given a second chance Wednesday to stay in the program and avoid a prison sentence.

Drug testing labs....

- Two Arrested for Falsifying Drug Tests in Exchange for Sexual Favors (2017-Texas)

Judges

- **Former Judge Casey Moreland arrested by FBI on obstruction of justice charges**
- **Ex-judge Casey Moreland accused of taking money from drug court program he started 3/1/18**

Ex parte conversations?

- Between participants and judges?
- Between the DA and participants?

Codependent Courtrooms???

- Teams or judges who manipulate the system to benefit select clients for personal reasons.
- Teams or judges who “feed “ illness rather than address it.

Some folks in recovery want to be treatment professionals without training! Ditto lawyers. Ditto probation.

- "Just because you've had your appendix out doesn't qualify you to take out mine."

"Ethics for Addiction Professionals". Second edition, 1994. LeClair Bissell, M.D., C.A.C.; James E. Royce, S.J., Ph.D.

Dual relationships

- Drug Court clients present significant challenges to the issue of professional and ethical boundaries.

Why?

- They are with us longer
- We have a comprehensive look at their entire life
- Part of motivating change is developing a more intense relationship
- We admire their courage and work

Thus...

- Mind your boundaries and your ethics.
- You may do harm, and you may lose your license, job, or your freedom.
- Team does not mean your ethics change. Period.

In a drug court model, rather than abandoning their roles, the involved disciplines expand them. The disciplines collaborate on a single mission to create a more effective and efficient system

Drug Court Roles (Team concept)

- Judge- delegates some authority to the team. Monitors participant progress. Motivates and engages participants in Court.
- Prosecutor- expands advocacy to include treatment. Recognizes the team. Protects due process & public safety.
- Defense- advocates for successful participation. Participates in and contributes to team efforts to hold participant accountable. Protects client. Raises due process as needed.

- Probation
 - provides monitoring, supervision and case management services
 - provides case related information to all members of the team for purposes other than a revocation
 - in the case management role becomes the bridge to all other team members
- Treatment-both SA and MH
 - Equal place at the table
 - Critical information for team
 - MAT

Best Practices

- Include law enforcement on the team
- **Train and cross train constantly**
- Follow the research, and follow the Adult Best Practices Volume 1 & 2, as well as the 10 Key Components.
- Read and follow the Judicial Benchbook.
- Adult Drug Court Best Practices Standards, Vol.2, Multidisciplinary Teams.

Respect Boundaries

- You are a member of your profession, not another.
- Mind your ethics and stay out of theirs.
- Respect each other-LISTEN
- It is the strength of the team and the blending of professions that works.

Each team member operates in three distinct spheres

- Court
 - Staffing
 - Case management, problem solving, and client relations.
-
- Each function has a separate set of skills
 - Each function still works within the Key Components.

Gotta love Lawyers!

In the Courtroom

- Protect the record
 - Remember the appeals courts!
- Protect due process
 - This is a COURT, not a program
- Enhance the relationship between the Court and the participant
- Remember the rule of minimization.
- NO FIGHTING !
- The Courtroom is a classroom: every word matters.

Pre-Court Staffing

- Preparing the execution of the calendar
- FOCUS ON BEHAVIOR MODIFICATION AND THERAPEUTIC RESPONSES.
- This is where you report how you have addressed/solved legal issues.
- “can you live with this for two weeks?”
- Here is where the last minute adjustments happen
- Here is where the last minute details change everything.

Prep for the Staffing!

Reports matter.

- Work together to address legal issues up front
- Unless there is a serious legal issue of
 - Constitutional due process dimensions
 - Program integrity
 - Public safety

Counsel's job is to make the law meet the needs of the treatment team.

Be prepared

- You don't have time to waste
- Settle legal matters before staffing.
- Determine facts up front
- Work out responses consistent with research. All 3 (4) responses should be worked out before Court.
- What are the these responses?

Understand the other roles

- Lawyers are there for legal reasons. Protect the record. Protect the Constitution. Motivate positively.
- DA's are there to assert public safety concerns (with probation, Court and LE)
- The people who are doing direct services are the ones who know what is going on. **Their recommendations are paramount.**

- Unless public safety or due process is compromised, follow their lead.
- If you can live with the consensus, do so.
- Fighting does not occur in open court.
- Making a record must happen but should happen in a manner consistent with the Court design.
- The worst possible thing? The team is wrong and in two weeks, you can fix it.

A personal story:

“ Because you can argue better
does not make you right”

The Bench

- Cannot delegate decisions
- Should be the predominant voice in the room in Court.
- Should spend three minutes with each person...good or bad.
- Should focus on teachable moments.
- Clear patient focus and engagement.
- Should engage and instill hope.

Supervision

- Is responsible for knowing what is happening outside the court and treatment arenas.
- Home visits are paramount.
- Assessments, and sequential case management based on the assessments.
- Testing results, and working with treatment.
- Delivering MRT.
- Intensive case management, sequenced correctly.
- Constant communication with treatment.

Treatment

- Must assess, and should provide the team with a diagnosis. And, update.
- Should assess at regular intervals at least every 120 days to measure progress.
- Should provide clinical services in the beginning to assess ability to manage group.
- Should conduct group using manualized treatment with fidelity to the model.
- Should provide information regarding what the participant is working on, and how they are doing.
- Must follow confidentiality standards, but provide sufficient information to help with the message.

Defense Counsel

- Technically probably the hardest job on the team.
- Must negotiate difficult ethical issues
- Has a duty to the client that is different than all others.
- When the defense is silent, you know you need to pay attention.

Each profession MUST

- Stay within their ethical mandates.
- There are things that each profession cannot do, team or not.
- Learn that, respect that.
- Help each other out and honor boundaries.

Protect your clients, protect your court, protect yourself and your profession.

MAT: MIND YOUR BOUNDARIES!

- **ARE YOU A MEDICAL DOCTOR?**
- If not, don't make medical decisions regarding medically assisted treatment.
 - It is a CRIME to practice medicine without a license.
 - It will subject you to personal liability.
 - It is professional misconduct
 - It is harmful.

The magic

Is the team following the research, working together and keeping our eye on the ball.

The ball= the success of our clients.

Ethics in Drug Court:

Thorny issues

1. *Ex Parte* Communications and Staffing
2. Judicial Fraternization/Impartiality
3. Role of the Defense Counsel

Ex parte Communication

- Ex parte communication must be specifically waived or asserted (Model Code Judicial Conduct, Canon 3B(7))
 - Who is present at staffing?
 - Is it ok to attend team meetings w/out client?
 - How many levels of hearsay in staffing?
 - Are 42 CFR waivers executed for everyone present?
-
- Brown v. State, MD Ct of Appeal 5-18-09

Ex parte staffing

- Permissible to have *ex parte* communications at staffing with appropriate waivers and outside of drug court
- Best practice to inform defense counsel of content and nature of communications
- NY has specific administrative orders permitting such communication

ABA Rule 2.9(5)

- No ex parte communications except:

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

ABA Rule 2.9

- Comment [4]

A judge may initiate, permit, or consider ex parte communications ...when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

State judicial ethics amendments

- Idaho, Maryland, Montana, Minnesota, New York, Indiana and Arkansas
- Amended their Codes to specifically address and permit *ex parte* communications in problem-solving courts including staffings
- Perhaps a better approach would be amending the Rules of Prof. Resp. for counsel requiring them to be present at staffing and progress reports
- **JUDICIAL ETHICS CHANGES DO NOT CHANGE COUNSEL ETHICAL MANDATES!**

Out-of-court contact with participants



DTC picnic



Bowling night

The Judge and Drug Court Participants

Judge attends group activities, softball games, bowling night, holiday party, spring picnic, Disneyland trip, with drug court participants.

**Don't do anything more than a
cameo appearance!**

Judicial discipline

- *Matter of Blackman*, 591A.2d1339 (N.J. 1991)
“[J]udges who attends a public or social event will be perceived as endorsing or supporting not only the event itself but also persons associated with the event.”
- *In re Jones*, 581 N.W.2d 876 (Neb. 1998)
Canon 1 and Canon 2 violation to meet individually with probationers.

Defense counsel



Defense's duty

- “Duty of representation” of client
- *C.f.*, reasonable diligence and competence in ABA Model Rule 1.3; “devotion and courage” in advocacy in ABA (“Defense Function Guidelines”)
- To competently represent client in DTC must familiarize self with tx, procedures, bases for sanctions or termination, etc. (ABA Model Rule 1.1)

What is the difference between confidentiality laws, evidentiary privileges and ethical duties?

- **Confidentiality laws** are statutes and regulations that prohibit specified disclosures (usually subject to specified exceptions). Improper disclosures of information covered by confidentiality laws can lead to criminal prosecutions and civil lawsuits.
- Unlike confidentiality laws, **evidentiary privileges** generally do not constrain those who choose to disclose information. Instead, privileges protect against compelled disclosure.
- Like confidentiality laws, **ethical duties** prohibit the disclosure of information. Ethical duties, which are ordinarily embodied in professional canon, apply to communications between professionals and those they serve.

Respect Role of Defense

- National Legal Aid and Defender Association:

Nothing in the problem solving court policies or procedures should compromise counsel's ethical responsibility to...challenge evidence or findings and the right to recommend alternative treatments or sanctions.

Best Practices

- Ensure that DA and Defense Counsel attend staffing and review hearings
- Advocate change in Canons
- Judges: avoid public activities (non-judicial) with participants, except for cameo appearance
- Respect ethical obligations of defense counsel

Reality Check for Lawyers

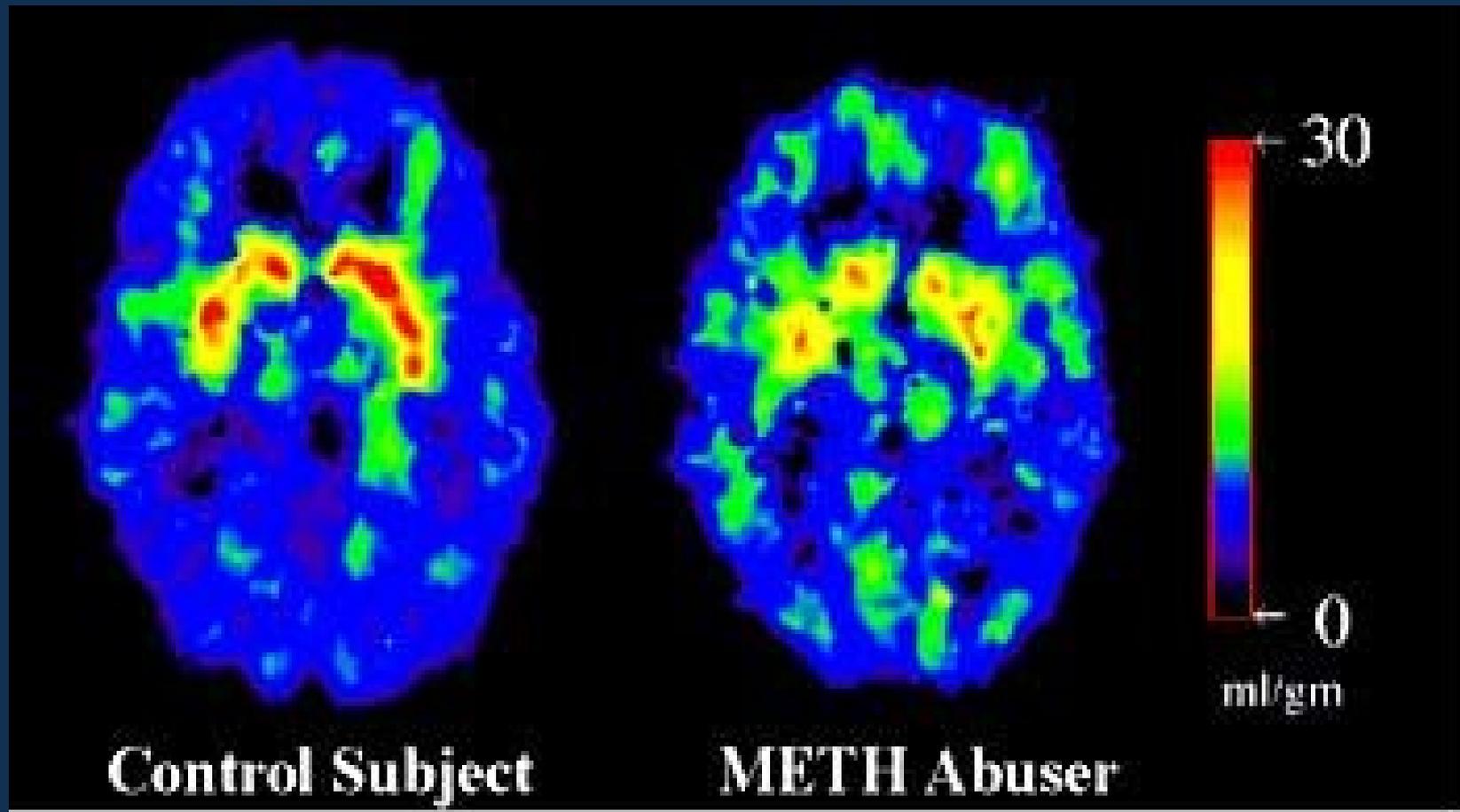
- Counsel can be a great boon to drug courts
- Counsel can be a great impediment
- Our role is NOT limited to the strict application of due process. Our role is to protect the Constitution and maximize outcomes.
- A Pyrrhic Victory is no victory.
- Applying this model to lightweights is no benefit to the public.

Attorney roles:

1. Protect the Constitution
 2. Maximize outcomes
- Facilitate the treatment team and the plan when it meets #1 and #2
 - Only counsel can find the legal way to get treatment and probation's goals implemented.

Understanding addiction and the psychopharmacology of drugs. Addiction is truly a disease of the brain.

It is treatable.



Best Practices

- Ensure that DA and Defense Counsel attend staffings and review hearings
- Judges: avoid public activities (non-judicial) with participants, except for cameo appearance
- Respect ethical obligations of defense counsel
- Use evidence based, validated interventions with participants, with fidelity to the model.
 - Screen and treat multiple disorders
 - Address SA, MH, Trauma and Criminal thinking before they leave you.
- Assessment driven decision-making. ONLY. No “gut”.

Bottom line:

- Ethics never change. Your ethics outside a treatment court are the same within the treatment court. Because you work with a team, does not change your professional ethics.
- It is the existence of a cross trained team that makes the difference in treatment courts, all communicating and working together, doing our own jobs that makes the difference.

Who wins when the team is not
focused or fights?

The disease