

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

August 9-10, 2004

RESOLVED, That the American Bar Association urges federal, state, territorial and local governments to implement the following principles adopted by a national policy panel in a 2003 report published by Join Together entitled, "Ending Discrimination Against People with Alcohol and Drug Problems," addressing discrimination against people seeking treatment or recovery from alcohol or other drug diseases:

1. Addiction to alcohol or other drugs is a treatable chronic disease that should be viewed and addressed as a public health issue; and
2. People seeking treatment or recovery from alcohol or other drug diseases should not be subject to legally imposed bans or other barriers based solely on their addiction. Such bans should be identified and removed.

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and local governments to eliminate policies that sanction discrimination as a deterrent or punishment by implementing the following recommendations concerning public benefits included in "Ending Discrimination Against People with Alcohol and Drug Problems:"

1. People with drug convictions but no evidence of current drug use should not be denied or hindered in obtaining student loans, other grants, scholarships, or access to government training programs;
2. Persons with non-violent drug convictions but no evidence of current drug use should not be banned from receiving government cash assistance and food stamps; and
3. Public housing agencies and providers of Section 8 and other federally assisted housing should use the discretion given to them in public housing laws to help people get treatment, rather than permanently barring them and their families from subsidized housing, provided that the person seeking or in treatment poses no threat to the safety of other persons, including family members.

REPORT

I. BACKGROUND

According to the 2002 National Survey on Drug Use and Health, an annual survey of the civilian, noninstitutionalized population of the United States aged 12 years or older, an estimated 22 million Americans in 2002 were classified as being substance dependent or abusers (9.4 percent of the total population aged 12 or older). Of these, 3.2 million were classified with dependence upon or abuse of both alcohol and illicit drugs, 3.9 million were dependent upon or abused illicit drugs but not alcohol, and 14.9 million were dependent upon or abused alcohol, but not illicit drugs.¹

In 2002, the estimated number of persons aged 12 or older needing treatment for an alcohol or illicit drug problem was 22.8 million (9.7 percent of the total population). Of these, 2.3 million persons (one percent of the total population aged 12 or older and 10.3 percent of those who needed treatment) received treatment at a specialty substance abuse facility in the past 12 months.²

Fear of discrimination creates an impediment to treatment for those in need. The results of an October 2001 national survey of people in recovery and their family members conducted by Peter D. Hart and Associates, entitled “The Faces of Recovery,” revealed that the second greatest obstacle to people seeking treatment, after denying they have a problem, is their fear or shame or social embarrassment they associated with their condition.³

More than 30 percent of people seeking treatment cited lack of insurance, the cost of treatment, or the scarcity of treatment programs; nearly 20 percent indicated fear of job loss or discrimination at work; and, almost 40 percent responded they were very or fairly concerned that other people would learn of their problem.⁴ In the same survey, one quarter of people in recovery reported that they had been denied a job or promotion or had trouble obtaining insurance as a result of their addiction; four in ten said they had experienced shame or social embarrassment because they were in recovery.⁵

Discrimination creates barriers to treatment and recovery and perpetuates substance abuse, family violence, school dropout rates, crime, injuries and the spread of HIV and other infectious diseases among those in recovery and their families, friends and associates. As a further indicator of the societal ramifications of addiction, the economic cost of substance abuse

¹ Substance Abuse and Mental Health Services Administration. (2003). Overview of Findings From the 2002 National Survey on Drug Use and Health (Office of Applied Studies, NHSDA Series H-21, DHHS Publication No. SMA 03-3774). Rockville, Maryland.

² Ibid. A specialty substance abuse facility is defined as drug or alcohol rehabilitation facilities (inpatient or outpatient), hospitals (inpatient only), and mental health centers.

³ Peter D. Hart and Associates. “The Face of Recovery.” October 2001.

⁴ Ibid.

⁵ Ibid.

to the U. S. economy is estimated at \$276 billion (as of 1995)⁶, according to a 2001 report published by the Robert Wood Johnson Foundation.⁷ This cost includes the loss of productivity caused by premature death and the inability to perform usual activities, as well as costs related to crime, destruction of property and other losses.⁸

In 2002-2003, the ABA Standing Committee on Substance Abuse launched an outside-funded initiative entitled “Substance Abuse, Addiction and Discrimination” to examine discrimination against individuals in recovery. The purpose of the initiative was to examine areas of discrimination against people seeking treatment or recovery from alcohol or other drug disease.

II. DEVELOPMENT OF THE NATIONAL POLICY PANEL REPORT ON ENDING DISCRIMINATION AGAINST PEOPLE WITH ALCOHOL AND DRUG PROBLEMS

Join Together, founded in 1991 by a grant from The Robert Wood Johnson Foundation to the Boston University School of Public Health, supports community-based efforts to reduce substance abuse. In the spring of 2002, Join Together, as assisted by the Standing Committee, formed a national policy panel to address discrimination against people seeking treatment or recovery from alcohol or other drug disease. The panel, chaired by Kurt L. Schmoke, Esq., a former Mayor of Baltimore and currently Dean of Howard University School of Law, included leaders from law, medicine, business and journalism. This initiative was prompted, in part, by the results of the Peter D. Hart and Associates survey. The panelists developed the principles and recommendations included in the 2003 report, “Ending Discrimination Against People with Alcohol and Drug Problems.”

The panelists agreed upon two guiding principles and ten policy recommendations that address discrimination. The Standing Committee is recommending that the two guiding principles and three of the ten policy recommendations be adopted by the House of Delegates as Association policy. The Standing Committee and its cosponsors may wish to consider others of these policy recommendations for possible future action by the House of Delegates.

III. DISCUSSION OF THE RECOMMENDED ACTIONS

The first principle acknowledges that addiction to alcohol or other drugs is a treatable chronic disease that should be viewed and addressed as a public health issue. Today, there is greater recognition and acceptance of the fact that addiction is a chronic illness than ever before. Though alcohol or other drug use is voluntary, research has demonstrated that chronic use causes biological, psychological, and behavioral changes including demonstrable alteration of brain chemistry. As a result of these changes, an individual may be unable to end his or her use of alcohol and drugs. The resulting addiction is a compulsion to seek and use alcohol and other

⁶ Of the total estimated economic cost of \$414 billion, \$138 billion is attributable to the costs of substance abuse related to cigarette smoking.

⁷ *Substance Abuse: The Nation's Number One Health Problem*. Princeton, New Jersey: The Robert Wood Johnson Foundation, February 2001.

⁸ *Ibid.*

drugs. Effective care can produce control of this chronic illness, similar to the successful treatment of such other chronic illnesses as diabetes, hypertension, and asthma.

The second principle established by the policy panel urges that people seeking treatment or recovery from alcohol or other drug disease not be subject to legally imposed bans or other barriers based solely on their addiction, and further urges that such bans be identified and removed. Such barriers include difficulty in obtaining health insurance, appropriate medical care, employment, public benefits, education, and housing. The panel participants agreed that people should not be punished repeatedly for the same offense.

This principle is not intended to preclude a court from considering substance abuse history in matters of family law and rights and responsibilities pertaining to children. However, the Standing Committee does not believe that this should be the sole consideration nor should it serve as an absolute ban to the consideration of one's rights in this area.

Policy Recommendations

People with drug convictions but no evidence of current drug use should not be denied or hindered in obtaining student loans, other grants, scholarships, or access to government training programs.

The Higher Education Act (“HEA”) ⁹ established various federal financial aid programs, including Perkins Loans, Pell Grants, Supplemental Educational Opportunity Grants, PLUS Loans and Work-Study Programs. The 1998 reauthorization of HEA included the Drug-Free Student Aid provision, which stipulated that college students with one drug possession offense are ineligible for federal college aid for one year, post-conviction. A second drug possession or first drug sale conviction means two years of ineligibility. Further drug possession convictions bar aid indefinitely unless the offender undergoes drug rehabilitation. ¹⁰ However, the provision does not allocate any money for the cost of such treatment thereby placing the offender in an untenable position – a convicted felon without the means to change the offending behavior. A student unable to afford college tuition is likely unable to afford the cost of private treatment which is quite expensive. No other class of offender, including those convicted of rape and other violent crimes, face similar tuition eligibility restrictions.

Since the law's inception, over 92,000 people have been denied aid – 35,098 of those for the 2002-2003 school year. Many thousands of others simply chose not to apply. ¹¹

Yale University, Western Washington University, Swarthmore College and Hampshire College have begun to help students negatively affected by the policy. For example, Yale reimburses students for financial aid if they are rendered ineligible because of HEA (only if they lost eligibility by possessing, not selling, illegal drugs). Yale also requires students who receive replacement aid to complete a treatment program.

⁹ 20 U.S.C. 1001 et seq.

¹⁰ P.L. 105-244 (20 U.S.C. 1091(r)(1))

¹¹ Personal communication, Drug Reform Coordination Network, February 2003

The Standing Committee acknowledges that there are numerous forms or methods available to determine if a person is currently using drugs so that assistance under this policy would not be applicable. The Committee takes no position on what methods or forms should be used or preferred. The point is that neither an indiscretion nor a past criminal conviction should play a role in denying a person an opportunity for education and training that will enable that person to obtain a job and earn an honest living.

Persons with non-violent drug convictions but no evidence of current drug use should not be banned from receiving government cash assistance and food stamps.

Under Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹² (also referred to as the Welfare Reform Act), persons convicted of a state or federal felony offense for selling or using drugs are subject to a lifetime ban on receiving government cash assistance and food stamps. Convictions for other crimes, including even murder, do not result in the loss of benefits.

The drug provision of the Welfare Reform Act applies to all states unless a state legislature elects to either modify or opt out of the provision. As of February 2004, 33 states and the District of Columbia have eliminated or modified the lifetime ban. However, 17 states continue to enforce the drug provision in full. Modifications include, for example, ineligibility for welfare benefits limited to persons convicted of a particular drug offense, such as manufacturing or distributing illegal drugs. Other states maintain welfare eligibility provided that a person is participating in a state approved drug treatment program. The growing trend among states to modify or opt out of the ban (as of December 2001, 42 states enforced the ban in full or in part, and only eight states and the District of Columbia opted out) indicates greater recognition that a complete lifetime welfare ban is unsound public policy.¹³

Although the ban applies to any individual convicted of a felony drug offense, women (representing the majority of primary caregivers and welfare recipients) have been especially disenfranchised by the drug provisions. Section 115 affects an estimated 92,000 women and 135,000 children.¹⁴ Though it is potentially counterproductive to provide cash assistance to people with alcohol or other drug disease, some women begin drug treatment in prison and want to continue when they leave. However, these women have little formal education and financial resources. Without the public benefits they are barred from receiving, they typically are unable to continue in treatment.

Once again, the Standing Committee takes no position as to the form or method to be used to determine if a person is currently using drugs so to fall outside the parameters of this policy position. Rather, the policy focuses on large part on people who have begun drug treatment in jail and want to continue their drug treatment once they leave jail. The Standing Committee believes that people with active alcohol or other drug disease should receive benefits in the context of a treatment program that helps them manage their income.

¹² P.L. 104-193 (42 U.S.C. 862a)

¹³ The Sentencing Project. *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*. February 2002. State modifications updated by The Sentencing Project in February 2004.

¹⁴ *Ibid*.

Public housing agencies and providers of Section 8¹⁵ and other federally assisted housing should use the discretion given to them to help people get treatment, rather than permanently barring them and their families from housing.

The Anti-Drug Abuse Act of 1988,¹⁶ as amended in 1996, requires that all public housing leases contain a provision that “any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.” Eviction does not depend on actual guilt or a criminal conviction; an accusation may be sufficient to evict a family.

Mrs. Pearlie Rucker, a 63-year old grandmother who had lived in public housing in Oakland, California with her mentally disabled daughter since 1985, was evicted in 1998 along with her extended family. The Oakland Housing Authority acted when Mrs. Rucker’s daughter was found in possession of illegal drugs three blocks from Mrs. Rucker’s apartment and off Housing Authority property. Mrs. Rucker sued the Housing Authority and prevailed in the District Court and before the Ninth Circuit Court of Appeals.¹⁷ In March 2002, the Supreme Court unanimously overturned the Ninth Circuit, however, ruling that federal law “requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knows, or should have known, of the drug-related activity.”¹⁸

The law provides housing authorities with discretion before eviction, including giving authorities the ability to allow people to stay in public housing if they successfully complete a treatment program. Too frequently, though, that discretion is not exercised. Typically, people are summarily evicted or denied housing without individual consideration. It is arguably easier to exclude those who cause problems than to provide them with services. In exercising this discretion, public housing authorities should take into consideration domestic violence concerns.

IV. RELATED ABA POLICY

The American Bar Association has several policies that address long-term solutions to the drug problem and attendant discrimination.

At the 1975 Midyear Meeting, the ABA reaffirmed its support for the Uniform Alcoholism and Intoxication Treatment Act drafted by the National Conference of Commissioners on Uniform State Laws and urged states that have not already done so to utilize the newly available federal funding (P. L. No. 93-282) to implement its provisions. The ABA also generally reaffirmed its support for the principle of decriminalization of alcoholism.

At the 1990 Annual Meeting, the House of Delegates approved a policy recognizing that the drug problem plaguing the nation has a deleterious effect on the lives of poor people in

¹⁵ 42 U.S.C. 1437 et seq.

¹⁶ P.L. 100-690, Sec. 5101 (42 U.S.C. 11901(3))

¹⁷ 237 F.3d 1113 (9th Cir., 2000)

¹⁸ 535 U.S. 125 (2002)

public housing projects and that actions to evict persons from their homes must comport with accepted principles of due process. The policy supports compliance with the due process protections of the United States Constitution in actions to seize public housing units under state and federal civil forfeiture and eviction laws, including, at a minimum, notice and an opportunity to be heard for household members prior to their eviction.

At the 1994 Midyear Meeting, the House of Delegates approved a policy supporting development of a comprehensive, systemic approach to addressing the needs of defendants with drug and alcohol problems through multidisciplinary strategies that include coordination among the criminal justice, health, social service and education systems, and the community; urge the courts to adopt certain treatment-oriented, diversionary drug court programs as one component of a comprehensive approach. The policy urges bar associations to facilitate the development of such programs that result in dismissal of drug-related charges upon the completion of drug rehabilitation.

At the 1995 Annual Meeting, the House of Delegates endorsed the U. S. Sentencing Commission's proposal to amend federal sentencing guidelines to eliminate differences in sentences based on drug quantity for offenses involving crack versus powder cocaine, and assign greater weight in drug offense sentencing to other factors that may be involved in the offense, such as weapons used, violence, or injury to another person.

At the 1995 Annual Meeting, the House of Delegates approved a policy urging bar associations to join the American Bar Association in developing and encouraging initiatives aimed at preventing inhalant abuse.

At the 1997 Annual Meeting, the House of Delegates approved policy supporting the removal of legal barriers to the establishment and operation of approved needle exchange programs that include drug counseling and drug treatment referrals in order to further scientifically-based public health objectives to reduce HIV infection and other blood-borne diseases and in support of the American Bar Association's long-standing opposition to substance abuse.

At the 2003 Midyear Meeting, the House of Delegates approved policy to support federal, state, local and territorial legislation that prohibits discrimination in housing against victims of domestic violence and urges all relevant federal, state, local and territorial administrative agencies to adopt and vigorously enforce regulations to combat such discrimination.

V. CONCLUSION

People with alcohol or other drug dependency disease face public and private policies and prejudices that restrict their access to appropriate health care, employment and public benefits, thus discouraging them from seeking treatment, robbing them of hope for recovery and costing the U. S. economy billions of dollars.

Bans enforced without considering individual circumstances often have unintended, counterproductive consequences. Decisions should be based on an individual's present, not past, circumstances so that individuals who are in treatment or recovery from drug or alcohol disease can have equal opportunities to live successful lives.

The recommendation is consistent with several of the American Bar Association's missions and goals, including Goal I (To promote improvements in the American System of Justice) and Goal III (To provide ongoing leadership in improving the law to serve the changing needs of society). Adoption of the report with recommendations will enhance the American Bar Association's ability to encourage federal, state, territorial and local governments to change laws and policies that discriminate against individuals in recovery from chemical dependency.

Respectfully submitted,

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Chair
Standing Committee on Substance Abuse
August 2004