



## QUESTIONS AND ANSWERS ABOUT THE SUPREME JUDICIAL COURT'S LANDMARK NEEDLE ACCESS RULING

*AIDS Support Group of Cape Cod v. Town of Barnstable (June 14, 2017)*

### What was the Court's ruling?

On June 14, 2017, the Massachusetts Supreme Judicial Court ruled that needle access and distribution programs such as those run by HIV service groups, community health initiatives or other social service providers **are legal without restriction under state law, and are not limited to programs implemented by the Department of Public Health and approved by local boards of health.**

**The Court affirmed the law in Massachusetts that any individual or organization may possess and distribute needles because the Legislature in 2006 removed all prohibitions to such activities.**

### Why is this ruling important?

This ruling means that AIDS Support Group of Cape Cod (ASGCC) will be able to keep its life-saving needle access program running. But its positive impact will extend far beyond Barnstable - to every corner of the Commonwealth.

This case comes at a critical moment in the current opioid epidemic. The Court's decision **affirms a powerful tool in** our ability to fight the epidemics of HIV and Hepatitis C transmission among people who inject drugs, and to prevent fatal drug overdoses.

**Ensuring access to sterile hypodermic needles is the only effective public health strategy to prevent transmission of HIV and Hepatitis C among people who inject drugs.** Programs that provide sterile needles also provide people with Narcan to prevent fatal drug overdoses, as well as offering comprehensive drug user health services including referrals to substance abuse treatment.

**The ruling will mean that service providers and organizations alike - whether an individual provider, a mobile van, or a fixed site program - no longer have to look over their shoulders and fear that they will be shut down when they are providing clean needles to save lives.**

It is critical to programs statewide to have the law clearly interpreted. All over the Commonwealth, people are struggling with addiction and the risk of HIV infection, Hepatitis C infection, and overdose.

The MA Department of Public Health recently reported that opioids were the confirmed cause of 1,465 deaths and suspected in another 514 deaths in 2016.

### What is the public health case for syringe distribution?

There is consensus in the medical and public health communities that providing access to sterile needles prevents the spread of these diseases and does not contribute to increasing drug abuse.

The U.S. Secretary for Health and Human Services and the Surgeon General have declared that there is “conclusive scientific evidence” that such programs decrease infection, increase the number of people referred to and retained in drug abuse treatment, do not increase crime, and play a key role in engaging disenfranchised people in meaningful prevention interventions and medical care.

Medical and public health organizations including Partners Healthcare, UMass Memorial Healthcare, the Massachusetts Infectious Disease Society, Blue Cross Blue Shield of Massachusetts, and Harvard Pilgrim Healthcare, among many others, submitted an amicus brief to the SJC in support of ASGCC and unrestricted needle access programs.

### **How did this case begin?**

AIDS Services of Cape Cod (ASGCC) provides clients at its Hyannis location with access to sterile needles as part of comprehensive drug user health services. In September 2015, ASGCC received a “cease and desist” order from the Barnstable director of public health, saying that ASGCC needed to end the needle distribution program the group ran in Hyannis, because the program was in violation of the law.

### **Was the program violating the law?**

No.

In 2006 the Legislature passed “An Act Relative to HIV and Hepatitis C Prevention.” The law repealed the classification of hypodermic needles as drug paraphernalia, and repealed all of the previous restrictions on their possession, distribution and exchange. It also for the first time authorized pharmacies to sell hypodermic needles to individuals over 18 without a prescription.

The Legislature’s intent was to stem the spread of HIV and Hepatitis C through the use of shared needles by injection drug users.

Massachusetts has a separate law authorizing the Department of Health (DPH) to operate its own needle distribution programs. These programs require the approval of the local board of health in the city or town in which they are implemented. However, there is nothing in this law that indicates that it applies to non-DPH entities or that the Legislature contemplated that distribution of needles would be unlawful by anyone other than DPH. This restrictive reading finds no support in our statutes and is contrary to the Legislature’s 2006 repeal of all prohibitions on the distribution of hypodermic needles.

The Town claimed that only DPH was authorized to distribute sterile needles. That assertion does not stand in the face of the sweeping changes to the law that the Legislature made in 2006 and would have drastically curtailed access to sterile needles in Massachusetts.

**The MA Supreme Judicial Court’s ruling vindicated the intent of the legislature in decriminalizing and deregulating the possession and distribution of hypodermic needles and syringes in 2006.**

### **Is there any other law that applies?**

No.

There is no restriction in Massachusetts law on any person buying an unlimited number of syringes and distributing them to others. Not one word in the law prevents this activity.

### **What does the ASGCC program look like?**

Starting with intake, ASGCC assesses the client's risk behaviors and provides education about the dangers of needle sharing. ASGCC then provides the client with services including HIV testing, assistance with health insurance, linkage to medical care, and referrals to housing, mental health services and substance abuse treatment. The client is offered access to sterile needles, as well as to Narcan, which is used to reverse drug overdoses.

### **What happens to the needles after they are used?**

ASGCC provides clients with bio-hazard sharps containers and counsels them about the safe disposal of needles. Clients return needles in the containers to ASGCC. During one 12-month period, ASGCC distributed 112,604 syringes and collected 115,209, for a return rate of 102%.

### **What has been the path of this lawsuit?**

In November 2015, ASGCC filed suit against the town of Barnstable in Barnstable Superior Court. The trial judge issued a temporary restraining order against the town, reversing the town's closure of ASGCC's needle distribution program, and in December 2015, after a hearing in which the court heard from ten witnesses, entered a preliminary injunction.

The trial court reported the case to the Appeals Court so that this question of law of statewide importance could be decided: whether Massachusetts law permits the non-sale distribution of hypodermic needles and syringes by any private party or entity or whether such access is limited to only those programs implemented by the Department of Public Health.

ASGCC asked the Supreme Judicial Court (SJC) to determine that the town's cease and desist orders were invalid and that the town be permanently enjoined from issuing any further cease-and-desist orders, and to affirm that Massachusetts law permits, without condition or restriction, the non-sale distribution of hypodermic needles and syringes by any private individual or entity.

The SJC granted ASGCC's request for direct appellate review. The case was heard on February 14, 2017. A ruling was issued by the SJC on June 14, 2017 in favor of ASGCC and affirming that Massachusetts law permits, without condition or restriction, the non-sale distribution of hypodermic needles and syringes by any private individual or entity.

### **Who are the lawyers in the case?**

ASGCC is represented by Bennett Klein of GLBTQ Legal Advocates & Defenders and Andrew Musgrave of AIDS Action Committee.