

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

SUPERIOR COURT  
C.A. NO. \_\_\_\_\_

<b>AIDS SUPPORT GROUP OF CAPE COD,</b>	)
<b>Plaintiff</b>	)
	)
v.	)
	)
<b>TOWN OF BARNSTABLE, BOARD OF</b>	)
<b>HEALTH OF THE TOWN OF BARNSTABLE,</b>	)
<b>and THOMAS MCKEAN, in his official</b>	)
<b>capacity as Director of Public Health</b>	)
<b>of the Town of Barnstable,</b>	)
<b>Defendants</b>	)
	)

**AFFIDAVIT OF MAX SANDUSKY**

I, Max Sandusky, state as follows:

1. I have been the Director of Prevention & Screening Services at AIDS Support Group of Cape Cod (ASGCC) since 2008. Prior to that, I was the Program Manager of the agency’s Men’s Health Project from 2005-2008. I am responsible for the successful implementation and supervision of all of ASGCC’s prevention and education programs, including programs to reduce the risk of HIV/AIDS and hepatitis C virus (HCV) in the injection drug user population. In addition, I have served since 2007 on the Massachusetts Integrated Prevention & Care Committee of the Massachusetts Department of Public Health which advises the Department’s Office of HIV/AIDS on HIV prevention and care policy.

2. During my ten years at ASGCC I have had regular direct contact with our clients, including injection drug users. I am familiar with the modes of transmission of HIV and hepatitis C virus, as well as the standard and effective public health practices to prevent transmission of these diseases, through training from the Massachusetts Department of Public Health, an online

course of study in harm reduction through Brown University in 2010, my interactions with colleagues in the field throughout Massachusetts and nationally, and my direct knowledge of what has worked with hundreds of clients.

3. ASGCC, founded in 1983 as the Provincetown AIDS Support Group, is one of the first AIDS organizations established in the United States. The agency's mission is to foster health, independence and dignity for people living with HIV/AIDS and viral hepatitis by providing care, support and housing. ASGCC also works to reduce the spread of HIV and other sexually transmitted and blood-borne infections. Our services include medical case management, peer support, housing, nutritional programs, testing for HIV, HCV and sexually transmitted infections, and programs to reduce the spread of HIV and HCV. ASGCC's services span all of Cape Cod and the Islands. We have offices and program sites in Provincetown and Hyannis.

4. ASGCC's Hyannis program began in 2001 as a result of the merger of the Provincetown AIDS Support Group, Upper Cape AIDS Network, and Cape AIDS Resource Exchange Services. The agency began operating at our current location at 428 South Street in 2007.

5. The epidemics of HIV and HCV are a medical and public health crisis in Massachusetts and the country. Both HIV and HCV are blood-borne infections, including through sharing of used, dirty needles by intravenous drug users. We have test information for all clients for whom we make a program referral. During the months July, August, and September, 2015, 70% of such clients were positive for HCV.

6. The current opioid crisis has dramatically increased the spread of these infections in Massachusetts, especially on Cape Cod. Barnstable County currently has the highest rate of HCV

among 15-25 year-olds in Massachusetts. I have seen the devastation that these preventable diseases have wreaked on countless individuals and families.

7. ASGCC employs the standard, accepted and effective approach to reducing HIV and HCV among injection drug users, which is known as “harm reduction.” Harm reduction is a set of strategies aimed at reducing the negative consequence of substance abuse, including disease transmission and overdose, while encouraging and facilitating entry into substance abuse treatment. Providing access to clean syringes to avoid transmission of HIV and HCV is an essential aspect of harm reduction.

8. In 1995 ASGCC, then Provincetown AIDS Support Group, began outreach to engage intravenous drug users on Cape Cod and engage them in harm reduction services.

9. The majority of our intravenous drug using clients who seek harm reduction services are homeless or unstably housed (meaning that they are at imminent risk of homelessness). Our services to a client who is an intravenous drug user focus on drug user health. New client engagement starts with an intake process. We take a behavioral history and assess the client’s risk behaviors, including a history of drug use and sexual risk factors. We determine if the client has been tested for HIV, HCV and sexually transmitted infections. We inquire about vaccinations. And we educate the client about how to prevent disease transmission, including about the danger of sharing needles and the need to use condoms.

10. After this intake and assessment, we provide harm reduction services. We provide testing for HIV, HCV and sexually transmitted infections if a client does not know his or her status. We help clients obtain health insurance if they are uninsured. We link them with health care. And, among others, we provide referrals for housing, mental health services, and substance abuse treatment.

11. Addiction is a treatable biomedical and psychological disease. Preventing substance abuse and facilitating entry of those with addictions into treatment are critical goals. Curing addiction is a challenging societal problem. Many drug users are not in treatment due to a variety of reasons, including availability of programs and the readiness of the individual.

12. In the past fiscal year ending June 30, 2015, we made 41 supported referrals to substance abuse treatment programs. In the first quarter of Fiscal Year 2016 (July, August, September, 2015) we made 19 supported referrals to substance abuse treatment programs.

13. The essential goal of harm reduction is to keep the client alive and free of life-threatening diseases until he or she is ready and able to enter into treatment.

14. ASGCC has been offering intravenous drug using clients at our Hyannis site access to clean needles and syringes since 2009. The number of syringes we provide to clients at any one time is based on the need to ensure that the client uses a clean needle each time he or she injects. In order to determine that number, we ask clients what drugs they are using, how often they use, where they live, and when they can return to the Hyannis site. A client may need from 3-4 or 10-12 syringes per day to ensure that a clean one is used each time.

15. ASGCC does not sell, nor has ASGCC ever sold, hypodermic needles or syringes.

16. The number of clients seeking clean syringes at our Hyannis site has increased over time with the dramatic increase in the opioid epidemic, especially on Cape Cod. New client registration for clean needles in Hyannis was 18 in 2010; 34 in 2011, 34 in 2012; 72 in 2013; and 183 in 2014.

17. We also provide clients with Narcan (Nalaxone) and train them how to use it. Narcan is an opioid antagonist and is used for reversal of opioid overdoses. It is administered by nasal spray. During Fiscal Year 2015 ending June 30, 2015, we enrolled 488 individuals in our Narcan

program. There were 216 reported overdose reversals. An additional 66 overdose reversals were reported during July, August, and September 2015. Since the inception of our Narcan program in 2007, we have enrolled 2,092 individuals; there have been 411 reported overdose reversals. Given that there were approximately 1,200 deaths from opioid overdoses in Massachusetts in 2014, the number of overdoses reversed through our program alone underscores the importance of access to Narcan in combatting death through drug overdose in Massachusetts.

18. In addition to clean needles, we also provide our clients with access to supplies that will ensure their health while they are using. These include tourniquets that are essential to ensuring proper vein location in order to avoid infections from abscesses, as well as sterile water, alcohol wipes, clean cotton, and cookers that are color coded so that individuals do not share them.

19. We also offer safe disposal of used syringes and injection equipment by providing clients with free bio-hazard sharps containers. We counsel all clients about the importance of proper disposal. We offer a variety of sharps containers, including a small personal size that can be kept in one's pocket, or larger containers that can hold 200-300 syringes. During Fiscal Year 2015 ending June 30, 2015, we distributed 937 bio-hazard sharps containers. We also suggest the use of hard rigid plastic containers, such as a laundry detergent bottle, if clients do not have a bio-hazard container.

20. In Fiscal Year 2015 ending June 30, 2015, ASGCC collected on return more syringes than we distributed at our Hyannis location. During that period, we distributed 112,604 syringes and collected on return 115,209, for a return rate of 102%.

21. The availability of clean syringes is the draw for our clients to seek out our services. It is the access point for the entry of clients into our health and prevention services that allows us

then to provide them with a broader range of health and safety measures, including Narcan and proper disposal supplies.

22. Based on my ten years of experience in direct services and program management for intravenous drug users, it is my assessment that a person addicted to drugs will go to any lengths to inject and will not be deterred by lack of access to clean needles.

23. We generally see 20-30 injection drug user clients per day at our Hyannis site. Since the Town of Barnstable issued a Cease and Desist Order prohibiting us from offering clean needles, we see approximately 2-3 injection drug user clients per day.

24. Most of ASGCC's clients in Hyannis lack the financial means to purchase syringes at a pharmacy on a regular basis. ASGCC operates a Department of Public Health-nominated pilot needle exchange program in Provincetown under Massachusetts General Law Chapter 111, Section 215. It is my assessment that our intravenous drug using clients in Hyannis will not travel to Provincetown to obtain clean needles.

25. Without access to clean needles through our Hyannis site, intravenous drug users will use dirty needles putting them at risk of HIV and HCV infection. I recently observed a client at our Hyannis location attempt to retrieve a needle from a kiosk of dirty, used syringes in order to have a means to inject. In addition, clients who no longer come for clean needles will not obtain Narcan and will be at greater risk for death by overdose.

26. No official from the Town of Barnstable approached anyone at ASGCC to discuss any issues about our syringe access program prior to the Cease and Desist Order.

27. On November 3, 2015, I attended a meeting of the Board of Health of the Town of Barnstable which was called to discuss a letter that our counsel sent detailing why the Cease and Desist Order violates Massachusetts law. ASGCC was represented at the meeting by our counsel.

They had indicated to Town counsel prior to the meeting that ASGCC would sue the next day if the Cease and Desist Order were not lifted.

28. At that meeting, town officials raised for the first time with us certain problems that they wished to see addressed, including concerns about discarded syringes and parking at our site.

29. At the conclusion of the meeting, the Board did not lift the Cease and Desist Order. Instead, the Board orally agreed to suspend the Cease and Desist Order for one week, until the Board of Health meeting on November 10, 2015, to see whether ASGCC and the Town could make progress towards an agreement. There was no assurance that the one-week suspension of the Cease and Desist Order would be extended on November 10, 2015.

30. ASGCC and the Town have not reached an agreement.

31. It has always been ASGCC's intention to be responsive to Town concerns. Even though we have not reached an agreement with the Town, ASGCC has immediately put into effect policies and practices that address Town concerns. These policies are attached as Exhibit 1.

32. In our discussions with the Town, the Town made demands that are unreasonable, inconsistent with the public health disease prevention goals of providing access to clean syringes, and contrary to the policies and practices of the Department of Public Health. Based on these demands, there is no reason to believe that the Board of Health will terminate the Cease and Desist Order on November 10, 2015.

33. Based on my experience working with our clients over a ten-year period, it is virtually a certainty that there has been HCV transmission as a result of the Cease and Desist Order, and that increasing disease transmission will occur if it continues to be enforced.

SIGNED UNDER THE PENALTIES OF PERJURY THIS \_\_\_\_ DAY OF \_\_\_\_\_,  
2015.

\_\_\_\_\_  
MAX SANDUSKY





## **Policies Implemented at Hyannis Site Effective November 9, 2015**

### **1. Parking**

ASGCC staff will no longer be permitted to park on site in order to allow all available spaces to be used for client parking and to alleviate congestion.

### **2. Neighborhood Clean-up**

ASGCC will reaffirm to all staff the policy that each time a client receives syringes, the client shall be provided with portable sharps containers large enough to allow for the safe disposal of those syringes.

ASGCC staff shall reemphasize to clients the importance of proper syringe disposal.

ASGCC will conduct sweeps of abutting properties to retrieve improperly discarded syringes each weekday, excepting holidays, before 9:30 a.m.

ASGCC will offer to pay for the installation of sharps receptacles in town operated comfort stations.

ASGCC will work with the Town to establish a mutually agreeable plan to conduct sweeps of selected areas of town to retrieve improperly discarded syringes.

ASGCC staff will be available to respond to calls to pick up improperly discarded syringes within the vicinity of the program office.