

# The Paraphilias and Depo-Provera: Some Medical, Ethical and Legal Considerations

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**Paraphilic disorders are Axis I psychiatric afflictions. They are not acquired by volitional decision, but are manifested by the association of erotic arousal with unacceptable behavior or stimulæ (e.g., children). Because paraphilic behavior occurs in the service of a biological drive, use of medication to suppress sexual appetite may constitute an adjunct in treatment. Medroxyprogesterone can be used to decrease unacceptable erotic urges and fantasies, with the intent of increasing self-control. Such treatment should not be forced upon an unwilling person. Conversely, persons should not be denied access to treatment by laws which deter seeking help, or because of incarceration, parole, or probation.**

The average man does not refrain from having sex with five-year-old children or with eighty-five-year-old adults simply because to act in such a fashion would be in conflict with his personal moral convictions. Rather, most men do not feel any substantial degree of erotic attraction to persons in those age ranges. Each of us as individuals is generally privately aware of the gender and age range of partner that we find to be appealing in a sexual way. The individual afflicted with a pedophilic sexual orientation, one of the paraphilic disorders, may experience no erotic attractions whatsoever to adults, and yet may have to recurrently resist succumbing to strong erotic attractions to children.<sup>1,2</sup> Surely none of us in this society would

choose, if we had the choice (which we do not), to pass through life attracted sexually towards children.

That we do differ from one another in terms of the sexual desires we experience is simply a fact, just as it is a fact that respiration and cancer are two different biological phenomena. When a phenomenon causes disability or suffering, as can occur both in the case of cancer and in the case of pedophilia, the medical profession may choose to label that condition a disease or disorder in order to try to learn more about what causes it and how to change it. Thus, labeling a condition a disease or disorder always involves to some extent a value judgement.<sup>3</sup> There can be little doubt that the person attracted exclusively to children sexually has a very different orientation from the adult attracted exclusively to other adults, and the medical profession

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has determined that it is important to try to learn more about these differences.

The person with the exclusive, or fixated, pedophilic orientation is not that way because he was a bad youngster who chose to be different. In one sense it makes very little difference whether his sexual orientation is the product predominantly of biology or of early life experiences. Once he has developed a sexual orientation directed towards children, that becomes a fact of mental life which cannot simply be psychologically erased.

A belief endemic to our society is the axiom that anyone can do whatever he wants simply through the application of will power. However, when it comes to behaviors which are enacted in the service of biologically based drives, there is considerable evidence placing in doubt the universal validity of such an assumption. There is now growing medical evidence that some persons may experience difficulty in controlling eating behavior because they are in a sense fighting nature and biological forces within themselves.<sup>4</sup> Patrick Carnes,<sup>5</sup> in his book entitled *Sexual Addiction*, points out that for some persons the biologically based sexual drive may cause similar problems.

If it is true then that persons do not voluntarily decide the nature of the sexual desires that they experience, and if it is also true that the biologically based sexual drive is sufficiently powerful that some persons may experience great difficulty in resisting unacceptable erotic temptations, then persons afflicted with paraphilic disorders such as pedophilia

may both deserve and require professional assistance.

To make the moral statement that they become involved sexually with children because they are bad, and that we know they are bad because they do become sexually involved, is simply to apply a label which masquerades as an explanation. If one enters prison because of an inability to cope successfully with a sexual orientation directed towards children, in most cases there is little reason to believe that prison alone will alter that situation.

### **The Rationale for Treatment with Depo-Provera Plus Counseling**

In past centuries alcoholism was considered to be simply a moral issue. The alcoholic was the "bum in the gutter," or if a woman, viewed perhaps in an even more derogatory light. Today we have the Betty Ford Clinic. Medically, it is now appreciated that some decent individuals may require professional assistance in order to learn how to live their lives without succumbing to cravings for alcohol. Tragically, when treatment fails, some harm themselves and others as well.

For the person with a pedophilic sexual orientation, the young child can be analagous to a bottle of alcohol, and treatment involves group counseling and the development of a support system.<sup>6</sup> Some individuals with paraphilic disorders, in spite of such treatment however, report that they continue to experience intense sexual temptations that they fear they may have difficulty resisting. In such cases individuals

should not be denied the opportunity to receive Depo-Provera as a "sexual appetite suppressant," in order to allow them to determine for themselves whether or not they find it helpful. Depo-Provera can sometimes help by lowering the intensity of inappropriate sexual cravings and the frequency of unacceptable erotic preoccupations.<sup>7-9</sup>

Depo-Provera is given by means of weekly injections and thus documentation that it has been administered can be easily achieved. There is absolutely no doubt that Depo-Provera substantially lowers serum testosterone as this can be confirmed by means of a simple blood test. There is a large volume of medical information demonstrating that variations in testosterone level are often associated with alterations in sexual libido.<sup>10</sup> An approved use of Depo-Testosterone, for example, is to increase sexual libido in persons experiencing low sexual drive because of inadequate production of endogenous testosterone.

Depo-Provera can be administered as a "sexual appetite suppressant" by any licensed physician without special permission under FDA guidelines relating to the use of an approved drug for a nonlabeled indication.<sup>11</sup> This would be analagous to using Tegretol, a drug whose label lists it as an anticonvulsant, to treat manic depressive illness; and such use is not ordinarily considered experimental. Depo-Provera is now in widespread use around the country as an adjunct in treating paraphilic disorders and is even used in over 20 centers nationally to treat adolescents, a population to whom it must be given with

special caution.<sup>12</sup> It has now been used in conjunction with the treatment of paraphilic disorders for over 20 years, and a great deal is known about its mechanisms of action, perhaps more so than is true in the case of most other psychotropic medications. When used to treat paraphiliacs in prison in the state of Maryland, the cost is paid for by the Maryland Department of Corrections. Inmates are not ordinarily permitted to engage in research to test new medications. Rather, it is available as an accepted form of treatment. The Johns Hopkins Hospital Committee on Clinical Investigations does not consider its use at that institution experimental. It is difficult to see why a drug would still be considered experimental when it is used widely around the country to treat persons with paraphilic disorders, has been researched for over 20 years, and has a rationale and data base for its use based upon a large volume of medical literature. There is, of course (as is true of all psychiatric medications), still more to be learned about it and the disorders it is used to treat.

Depo-Provera, when used in the treatment of paraphilic disorders, can be considered a psychotropic medication. That is, it is employed in order to produce a change in mental state. There are only three legitimate uses for psychotropic medications: (1) to decrease suffering, as with antidepressants; (2) to restore function, as with antipsychotics; and (3) to increase self-control, as with Depo-Provera. Depo-Provera can often relieve the person with a paraphilic disorder from recurrent cravings for, and

ruminations about, unacceptable forms of sexual activity in the same way that food can often relieve cravings and preoccupations about eating. In the author's judgment, it is difficult to see how helping a willing patient to be better able to free his mind from obsessional cravings and ruminations about unacceptable forms of sexual behavior, could be considered an improper form of "mind control."

Sometimes a voluntary patient, one who realizes he may not be able to control himself appropriately in the absence of treatment with Depo-Provera, may have to make a difficult choice. That is, he may either have to take Depo-Provera to enable him to exercise sufficient self-control as to be able to stay out of prison, or not take it and run the risk of being incarcerated as a result of succumbing to unacceptable sexual temptations. At the present time, about 70 individuals, mostly men, are taking Depo-Provera as part of their treatment program at The Johns Hopkins Hospital. Although many are attending treatment as a condition of parole or probation, all except two receive Depo-Provera entirely on their own without court order. In two cases, individuals who had been assessed as appropriate candidates for Depo-Provera treatment prior to sentencing, were mandated (with a clearly stated interest on their part in doing so) to continue taking it as a condition of probation until such time as it was no longer considered medically necessary. The author would be opposed to the imposition of Depo-Provera treatment upon an unwilling individual, as oc-

curred in the Roger Gauntlet case, in the absence of medical testimony that such treatment was appropriate, and in the absence of prior agreement from the prospective patient that he was interested in receiving it.<sup>13</sup>

On the other hand, there is clearly precedent for mandating that individuals receive medication treatment in instances where it has been documented that not doing so poses a clear risk to the well-being of others. This was true years ago regarding small pox vaccinations and is still true today regarding the mandated inoculations required of school children. In the future, if it were to become clear that given individuals could live safely within the community while taking Depo-Provera but could not in its absence, then society might well determine that such persons need either to take it or be quarantined. The individual in question would then be free to make that decision, hopefully appreciating that his options had been to some extent legitimately limited because of the unacceptable risk that he might pose to others. The author does not believe that the evidence of guaranteed increased safety to the community in using Depo-Provera to treat a given paraphiliac is at this point in time sufficiently compelling to justify mandating it as treatment in the case of an unwilling individual.

### **Protection Against Abuse**

Because Depo-Provera can be a powerful form of medication treatment there is, of course, a need to protect against abuse. Just as one should not attempt to

force antipsychotic medications upon a nonpsychotic individual, physicians should never attempt to force Depo-Provera treatment upon an unwilling person. It is important to note in this regard, however, that many safeguards already exist. (1) Almost all major research institutions, as well as federally supported research grants, require that any research involving human subjects first be approved by an ethics committee. Thus, if Depo-Provera were to be used for research, in addition to its treatment use, such a safeguard would be in place. (2) Almost all major medical institutions currently have quality assurance peer review programs in place to help guard against improper medical practices. (3) Civil suits against those providing inadequate or improper care are always an option.

Just as it would be wrong to try to impose treatment upon an unwilling individual, it would be equally wrong in the author's judgment to deny interested persons access to treatment when it is appropriate. In prison many persons with paraphilic disorders may suffer because of recurrent cravings and obsessional preoccupations about unacceptable forms of sexual activity. To arbitrarily deny such persons access to medication which might relieve their suffering can perhaps be thought of as a form of cruel and unusual punishment. In addition, one should not be denied access to otherwise obtainable medical treatment simply because one has been incarcerated or is on parole or probation. Why should denial of medical treatment be made a part of either pun-

ishment or of parole or probation? Finally, why should persons in prison be denied the opportunity to begin receiving medication treatment of the sort which might increase their ability to control themselves more appropriately upon release?

Federal Court Judge Frank Kaufman ruled that the Department of Corrections in the state of Maryland could not refuse to allow inmate Lawrence Paoli, a paraphilic rapist, to receive Depo-Provera treatment which had been deemed medically appropriate. He has been receiving such treatment in Maryland prisons, as have a number of other inmates in that state, for several years.<sup>14</sup> In Connecticut, where incarcerated individuals have flat sentences without parole, inmate Matthew McDonald, who is scheduled to be released into the community within the next few years, petitioned the courts to allow him to begin receiving Depo-Provera treatment prior to release in the hope that this would better prepare him to control himself properly when his term expired.<sup>15</sup> Although it is somewhat difficult for the author to see how allowing him to try out this form of treatment could be anything other than in the best interest not only of Mr. McDonald, but of society in general, the Connecticut Department of Corrections initially refused. Only after the case went to court and the Department of Corrections failed to present expert testimony in support of the notion that some constructive purpose would be served by denying such treatment did the Department of Corrections renege, deciding instead to begin a treat-

ment program within Somers Correctional Institution through which Mr. McDonald could receive Depo-Provera in conjunction with other forms of therapy.

There are, in the author's judgment, other ways in which some states may be denying persons access to Depo-Provera treatment as well as to other forms of treatment appropriate to paraphilic disorders. Some states, for example, mandate that individuals seeking professional help who acknowledge that they have had sexual involvements with a child be reported. In the author's view, under these circumstances the state is compelling an individual to self-incriminate for the purpose of possible criminal prosecution in order to be able to seek out and receive needed medical care.<sup>16</sup> This may raise important Fifth Amendment issues. The state of Maryland, in which the Johns Hopkins Hospital is located, does not require such reporting in the case of an individual who voluntarily seeks treatment (mandating reporting by professionals only in those cases where sexual abuse is suspected as the result of having examined a child). Several persons have come to Johns Hopkins Hospital from adjacent states in order to receive treatment without having to self-incriminate. One such person was an attorney, another a priest, and another a father in a home where an adoption had not yet been finalized. All came seeking help, including the use of Depo-Provera. Each made it clear that he would probably not have had he (and in the case of two of them, their families) not first been reassured that they were

not running the risk of self-incrimination.

In the author's view, in those states where such reporting is required, persons should first be given full informed consent warning them of the very serious risks posed to their freedom, reputation, and privacy by seeking out medical help in such a fashion. If persons are fully informed that by seeking help in that way they could end up incarcerated for many years (as has occurred in a number of instances) it is difficult to imagine why they should be expected to speak freely. Who amongst us would tell the police officer who stops us for speeding about other occasions on which we had done so knowing full well that we would be punished for our honesty. George Washington would likely never have admitted to cutting down the cherry tree were he to have faced the kinds of potential penalties facing most "sex offenders" today. It is the author's belief based upon many years of clinical experience that some reporting laws may deter persons who might otherwise come forward to seek help from doing so and that this situation is in no one's best interest. Victims and potential victims are not helped when those who might pose a risk to them are deterred from seeking out treatment which might lower that risk.

It is the author's belief that our laws should mandate the availability of treatment appropriate to the paraphilic disorders (including Depo-Provera) rather than deterring those who might wish to seek such help from coming forward. If they were freer to come forward, we

could then likely hold more accountable under such circumstances those who fail to do so. It is not an epileptic's fault if he is out of control and seizing. It is his responsibility to seek out medication treatment that will help him stay in control, especially if he wants to drive an automobile and not be a risk to other people. Similarly, it may not be the paraphilic patient's fault that he is experiencing difficulty controlling himself. It is his responsibility to seek out medical assistance, including medication treatment with Depo-Provera if needed, to help him stay in control. He cannot be expected to do so in a society which he senses intends to inflict upon him grave harm.

### Conclusion

Depo-Provera has become an accepted adjunct in the treatment of paraphilic disorders. When given to a fully informed, voluntary patient its use poses relatively few legal and ethical issues. Safeguards will need to be put in place, however, if society wishes at some point to mandate that certain individuals receive such treatment in order to be safe and free within the community. There also should be safeguards guaranteeing that interested persons who might benefit from such treatment not be denied access to it either by virtue of incarceration, parole or probation, or by statutes which require them to self-incriminate or which might otherwise deter them from coming forward.

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