

CLINICAL GUIDELINES: THEIR INFLUENCE ON HIV-RELATED LEGAL PROCEEDINGS

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Background:

Clinical guidelines form an increasingly central practice of clinical governance.

As clinical guidelines have proliferated, researchers have examined their content and relationship to evidence, have tested methods of guideline development, have debated the practical and political aspects of guideline use, have measured compliance and have observed 'work-arounds' and improvisation surrounding their use.

There is more limited research on the use of clinical guidelines in the legal context. This study examines the use of clinical guidelines in the context of legal proceedings relating to HIV and sexual health. In particular, it focuses on the ways that clinical guidelines are used as evidence in these proceedings.

Methods:

A structured review of recent use of clinical guidelines in Australian legal proceedings relating to HIV and sexual health.

Results:

The use of clinical guidelines is very common in legal proceedings relating to HIV and sexual health. Their use is diverse, driven largely by the specific legal questions that are in dispute. Rather than representing fixed clinical definitions, legal concepts such as "reasonable precautions" or "harm" take their meaning from clinical guidelines, which means that guidelines can influence the law itself.

Conclusion:

Legal processes — often thought of as misaligned with HIV and sexual health-related clinical practice — adopt the values and standards of medical practice expressed by clinical guidelines.

Disclosure of Interest Statement:

This research is funded in part by a National Health and Medical Research Council (NHMRC) Early Career Fellowship Grant (Grant ID: 1156520). The contents are solely the responsibility of the individual author and does not reflect the views of NHMRC.