

FAILURE TO FULFILL DUTIES

A look at case law, one prison's failure to provide release medications, and what can be done to improve release program administration



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INTRODUCTION

In 1999, Timothy Wakefield was released from San Quentin Prison. Wakefield suffers from Organic Delusional Disorder, a condition that makes patients not receiving treatment prone to violent outbursts. While incarcerated, San Quentin's staff psychiatrist prescribed Wakefield a psychotropic medication called Navene. The medication was delivered to Wakefield throughout his incarceration.

According to court records, prior to Wakefield's release, the prison's staff psychiatrist prescribed a two-week supply of the medication to be filled by prison officials and given to Wakefield at release. However, he never received his medication.

Wakefield alleged that he requested the medication but was told by the officer that, "there wasn't any medication available." The officer allegedly refused to make a phone call to prison medical staff to check on the status of the prescription, citing that the prison was "late paroling," implying that he was too busy.

ELEVEN DAYS LATER, WITH HIS DISORDER UNTREATED, WAKEFIELD HAD A VIOLENT OUTBURST THAT LED TO HIS SUBSEQUENT ARREST.

Wakefield brought a § 1983 action against the prison, alleging that, "his Eighth Amendment rights were violated when the officer refused to provide him with prescription psychotropic medication upon his release."¹

A lower court dismissed the claim, but the Court of Appeals found that the "officer's alleged refusal to provide the inmate with prescribed medication upon his release supported claims of deliberate indifference to the inmate's serious medical needs."¹

Ultimately, the state's failure to provide medication sufficient to cover Wakefield's transitional period amounted to "an abdication of its responsibility to provide medical care to those, who by reason of incarceration, are unable to provide for their own medical needs."²

More than half of all people incarcerated have a mental illness (56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail inmates).³ It has also been found that individuals with untreated mental health may be at higher risk for future recidivism on release from prison.⁴ These statistics underscore the importance of continuing medication compliance – both during and after incarceration.

For correctional institutions, this case underscores the importance of having a release pharmacy program that is easy to administer and that is strictly followed. What could this prison have done differently? What lessons can we learn to improve release pharmacy programs?

1. *Wakefield v. Thompson*, 177 F.3d 1160 (1999)

2. *Estelle*, 429 U.S. at 103-05

3. The National Reentry Resource Center

4. Jennifer M. Reingle Gonzalez and Nadine M. Connell, 2014: Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity. *American Journal of Public Health*. <https://doi.org/10.2105/AJPH.2014.302043>.

CURRENT PRACTICES AND CHALLENGES IN RELEASE PROGRAM ADMINISTRATION

The landmark court case *Estelle v. Gamble* established that the government has an obligation to provide medical care for those whom it is punishing by incarceration, stating that the Eighth Amendment's prohibition against cruel and unusual punishment, made applicable to states through the Due Process Clause of the Fourteenth Amendment, mandates that states provide adequate medical care to all their prisoners.

Case law has established that prisoners' (or detainees') ability to secure medication on their own behalf is not necessarily restored the instant he or she walks through the prison gates and into the civilian world. In other words, upon release it is reasonable to assume that it will take a patient some number of days, or even weeks, to coordinate his or her own care, which includes finding a doctor, scheduling and attending an appointment, obtaining a diagnosis and filling a prescription. Therefore, the government has a responsibility to provide a temporary supply of medication to released individuals that extends beyond the initial incarceration period.

Today, most correctional facilities provide released individuals a supply of medications as they are transitioned into the community. However, correctional facilities and their healthcare providers face escalating problems.

First, there is the major challenge of unscheduled releases. When releases are not scheduled, it is nearly impossible for central pharmacies to fill prescriptions within such short time constraints, and resulting in most offenders leaving the facility without their medications.

FOR JAILS, IN PARTICULAR, UNSCHEDULED RELEASES ARE PROBLEMATIC, FREQUENTLY OCCURRING IN **MORE THAN 80% OF RELEASES.**

In these cases, medical personnel do not have contact with the individual prior to release; therefore, the individual has no opportunity to receive his or her release medications. However, even when medical staff see the patient prior to release, detainees often don't want to wait for their medications, creating a longer detention, and another missed opportunity to get the individual the needed medication.

WITH MORE THAN 9 MILLION RELEASES EACH YEAR, A HIGH PERCENTAGE OF RELEASED INDIVIDUALS NEVER RECEIVE THEIR MEDICATIONS.³

Second, many release medications are abandoned, not only resulting in facilities paying for drugs that are not used, but creating potential liability for the agency. Patients often deposit release medications in trash receptacles nearest to their release points. Other released offenders sell "marketable" drugs, making correctional agencies a provider of commonly abused drugs to the illegal market. Finally, most release medications filled at a facility are administered in blister packs, not child-resistant packaging, creating the potential for an additional liability.

3. The National Reentry Resource Center



While the practice of providing patients with a supply of medications at release is not uncommon, this approach may no longer be a "best practice."

ALTERNATE PRACTICE: THE VALUE OF A RETAIL PHARMACY NETWORK

InMedRx was asked to develop a release medication program because a client recognized the risks and costs associated with traditional release programs, as well as the potential of future liabilities.

THE RELEASE PHARMACY PROGRAM THAT WAS DEVELOPED PROVIDES INDIVIDUALS WITH A PRESCRIPTION TO FILL THEIR RELEASE MEDICATIONS AT A LOCAL PHARMACY RATHER THAN PROVIDING THE ACTUAL SUPPLY OF MEDICATION AT RELEASE.

This simple change, that is compliant with state laws and regulations, has the following results:

- It improves administration by eliminating wait times associated with filling medications on-site (which is especially important with unscheduled releases).
- It eliminates the problem of abandoned medications in trash receptacles outside of correctional facilities.
- It eliminates the liability associated with dispensing medications in blister packs by using child-resistant packaging.
- It results in correctional clients paying for a much smaller percentage of medications (only those likely to be used) versus those abandoned (estimated to be around 60-70%).
- It gives ALL released offenders the opportunity to receive their medications, by eliminating wait times, and making release program administration run more smoothly. The program makes it easier to ensure each released offender has access to their medications, thereby mitigating risks of "deliberate indifference" or "abdication of responsibilities."



Released individuals receive a prescription to fill medications at one of 70,000 pharmacies nationwide.

The program promotes ongoing medication compliance by establishing a pharmacy relationship.

HOW A RETAIL PHARMACY RELEASE PROGRAM WORKS

A retail pharmacy release program involves providing correctional facilities prescription cards, similar to group health programs, that are given to released offenders to present at the pharmacy to pick up their prescriptions. The program can be implemented directly with a facility or integrated with the facility's existing institutional pharmacy or healthcare service company to administer all pharmacy services seamlessly.

As part of program roll-out, training is provided to facility staff (including the facility's primary pharmacy or healthcare provider, as applicable) on how to administer the program. Pre-release educational materials that cover the importance of continuing medications upon release are also provided to the facility for use by offenders.

Following release, prescriptions can be picked up by offenders at **virtually any pharmacy**, including all major chains and most independent pharmacies. Alternatively, a facility can select specific pharmacies near the facility if an open access network is not desired.

Administratively, instead of receiving individual invoices from separate pharmacies, the facility/health care provider receives a single invoice

each billing cycle with as much detail as desired, such as patient name, date/location of pickup, and medication(s) filled.

DATA AND REPORTS ARE PROVIDED ABOUT WHICH OFFENDERS FOLLOW DIRECTIONS BY PICKING UP THEIR MEDICATIONS, RECOGNIZING THAT THOSE WHO DO ARE MUCH MORE LIKELY TO BE COMPLIANT WITH THE MEDICATION AND HEALTHCARE COMPONENTS OF THEIR POST-INCARCERATION PLAN.

Reports are tailored for community corrections team, which includes parole officers, so that each group only receives the information they need to perform their job, in compliance with HIPAA regulations.

In summary, a release program that leverages a retail pharmacy network can eliminate waste, track release medications prescribed by correctional organizations, reduce costs and liabilities, and improve medication compliance, which may also have a positive impact on recidivism rates.

A release medication program that uses retail pharmacies represents a step forward in improving program administration, by leveraging a nationwide pharmacy network with secure technology and data collection.

ABOUT INMEDRX

InMedRx, a Care Services, LLC company, was founded to support the emergency and after-hours pharmacy needs of institutional pharmacies, healthcare providers, correctional facilities, juvenile detention facilities and behavioral health services. After several years of serving this niche, additional service offerings to support pharmacy needs for release and re-entry programs were developed in response to challenges faced by our clients.

Today, InMedRx is committed to providing timely and requisite secondary pharmacy care from initial detainment through release of inmates into the community. Our core capabilities in pharmacy network management, medication delivery, and data analysis enables us to meet the evolving needs of institutional pharmacies and healthcare providers, correctional facilities, juvenile detention centers and behavioral health services centers nationwide.

FOR MORE INFORMATION ON HOW YOU CAN IMPROVE YOUR RELEASE PROGRAM, CONTACT US AT **888.896.1283** OR EMAIL US AT **INFO@INMEDRX.COM**.



Our mission at InMedRx is to assist clients in providing timely and appropriate pharmacy care to inmates from initial custody through release.



90,000+

Correctional
claims processed
annually



500+

State DOC & city
and county jails
using InMedRx



200+

Community mental
health facilities
using InMedRx



100+

Residential
re-entry centers
using InMedRx



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