



### **UPDATE: 115s AND PRESCRIBED MEDS**

As we reported in last month's Lifer-Line, LSA has received several reports of prisoners, who were taking medications prescribed by CDCR's own doctors, being issued 115s RVRs as a result of testing positive for those meds during random UAs. Duh.

And while we had hoped that this we-can't-make-up-stuff-this-dumb problem might have been isolated in one or two institutions, that now appears not to be the case. We continue to receive reports and documentation from inmates at several prisons verifying that either through ignorance, spite or a territorial pissing-match (pardon the pun) this situation is more widespread than we had thought.

The good news: taking this issue to our contacts in the legislature and CDCR we have been able to impact the problem to some extent and new 'guidelines' have been issued that are supposed to clear up the problem and alleviate the anxiety that has caused some prisoners to cease taking their prescribed meds for fear of getting the write up. Of course, they could still be written up for failing to take the authorized meds. Catch 22, anyone? But progress IS being made, though often on a case-by-case basis.

We know of some inmates in this situation who were convicted of 115s and who have since had those RVRs removed from their C-file, 'in the interest of justice,' and others who have had the write ups dismissed at the hearing, for the same reason. Ironic, at best. But, the important thing is to get those bogus 115s removed, most especially for lifers who may be headed to the board anytime in the next 5 years.

If you or someone you know is in this situation, charged with a 115 for drug usage when a valid prescription for that drug is in force, send us all the information, including all documentation, ASAP. That includes the 115, any findings from the hearing and what validation you may have of your prescription. And don't depend on the medicos at your prison to stand up for you. We have numerous instances when these 'clinicians' either renege on their validation of prescription at the 115 hearing or are not well-trained enough (scary, but not surprising) to understand that a prescribed drug may show up in a UA test as a derivative of another.

The most common problems seems to be faced by those prisoners prescribed Tylenol with Codeine, a common pain alleviator. Aside from the custodial staff at institutions being in something of turf battle with the medical staff (no big deal, nothing much at stake here, just people's lives) and refusing to talk to each other, some on both sides don't seem to be aware that codeine use will frequently test positive for morphine in UA samples. It does. There is proof. A little education would help.

So if you're faced with this situation let us know. Send us all the documents you can, we'll make copies and send back the originals, if you need them and we'll take your case as far as we can, which, thankfully, is pretty far. Send us the documents at the same time you apprise us of your situation, so we don't have to waste time writing back to you for those items. If in doubt, send it—we'll sort it out.

But---we are talking here only about drugs you are taking that are prescribed by CDCR medical staff. If you are self-medicating, sorry. If you are supplementing your prescription with additional 'goodies,' we can't help you. And, we can't help you fight a 10 year old 115 beef that has nothing to do with prescribed drugs. Get real guys.

We want to do everything we can to be sure no prisoner is saddled with a damaging 115 for a bogus reason. In addition to working with staff and CDCR on the problem we've alerted the BPH to the issue and explained the situation to the board, hopeful that the commissioners will be aware of possible spurious RVRs if they are encountered at hearings.

## **TRENDING NOW**

Among the issues LSA is currently pursuing are the upcoming use of 'drug sniffing' dogs in visiting processing, the issuance (or failure to do so) of medical insurance cards to released inmates (including lifers), what to call a Deputy Commissioner at a parole hearing, IWF issues and program needs and changes for lifers. These items are interspersed around attending parole hearings, producing newsletters, answering inmate letters, research, family seminars, proposed legislation, and issues involving already paroled lifers.

That's right, we don't forget you once you go home. Of those issues listed above, and many more, here's a quick snapshot of three.

1. Drug dogs in visiting. Using that old canard of an 'emergency regulation change' CDCR CDCR apparently hoped to sneak this nasty little idea in when no one was looking. The proposal would call for 'highly trained canines,' though no mention was made of the training of those who would handle them, to be present in visiting process. These dogs (all large, intimidating breeds) would 'alert' to scents on visitors who, according to the CDC, might be trying to introduce contraband into the prison via visiting, be that contraband illicit drugs, tobacco or the dreaded cell phone menace.

However, no mention was made of how or if these official Fidos could distinguish between someone who was actually trying to smuggle in say, tobacco, and that die hard smoker who had just finished off a cigarette before coming into visiting processing, or that cell phone junkie who made one last call before locking the offending appliance in the car. And should the dogs 'alert' on a visitor, that visitor's only choice, if they want to actually see the loved one they came so far to visit, is to submit to a strip search. What fun.

But, least we think CDC is playing favorites, the proposed rule change would allow for these same doggie detectives to sniff around staff coming and going also. On occasion. Just to be fair. Oh, but should the pooches alert on a staff member, said staffer needn't disrobe (how embarrassing and humiliating); they can be cleared for entrance with a simple pat down. No favorites here.

LSA was among the estimated 800 or so responses to have been received by CDCR to that little surprise. Our contribution was a four page objection and rebuttal of the proposal, starting with the honesty of the 'emergency' status through the need for large, intimidating breeds to the assumption that most of the contraband coming into prisons does so through visitors.

2. After receiving letters from several inmates asking why a 'judge' suddenly appeared on the panel at their parole hearing, a little inquisitiveness on our part and attendance at a few parole hearings found the answer. Under a personnel qualification change implemented by the BPH in an effort to provide better trained individuals to serve in the Deputy Commissioner spot, those hired for that position going forward must be qualified to be Administrative Law Judges, a nice title for someone trained as an attorney.

But it seems some of the newly anointed 'judges' apparently were so struck by the rubric, meant only to delineate their level of training, that they began using the title in their introduction on the record at hearings. A bit confusing, or, as we told the BPH monthly meeting, "A rose by any other name might smell as sweet, but a Deputy Commissioner by any other name is just confusing."

Apparently it was just a passing fancy, as shortly thereafter it was announced that going forward, all DCs would in fact, remain DCs in name as well as practice. So, if you had a 'judge' at your recent hearing—no worries. Only the name was changed to, well, certainly not to protect the innocent.

3. Commissioner confirmations. Governor Brown recently reappointed six sitting parole commissioners, who will now, within the next 12 months, once again go before the Senate Rules committee and the entire Senate for confirmation. As always, we will be there to testify in favor of, or opposition to, those confirmations. In order to do so, we will be attending hearings chaired by those commissioners, evaluate their efforts, read transcripts and report our assessments, to the Senate.

We are especially interested in hearings chaired by Commissioners Peck, Anderson, Garner, Montes, Singh and Roberts. If one of these commissioners chaired your parole hearing in the last 6 months, or if you find them on the panel at your upcoming hearing, let us know how you think things went, whether or not you receive a grant of parole.

## WHAT WE WILL DO

To give our readers something of a slice of life of what we at LSA do, the following is an exchange of emails between LSA Director Vanessa Nelson-Sloane and the BPH, regarding the performance, or lack thereof, of a state appointed attorney. As mentioned in previous articles, the BPH does monitor the actions of state attorneys and has developed something of a disciplinary process apart from the State Bar Association. But before any attorney's actions can be addressed, they must be reported.

You may write to the BPH legal team at Board of Parole Hearings, Post Office Box 4036, Sacramento, CA 95812-4036 and note on the envelope it is directed to the LEGAL TEAM, or you may write to us at LSA, PO BOX 277, Rancho Cordova, Ca. 95741 and we'll take it from there, as evidenced below. While ethics prevent the BPH legal team from reporting directly on actions taken involving individual attorneys, suffice to say we know there has been action taken involving more than one state attorney and we hope to assist in other reviews.

Also in this newsletter is a survey form we hope you will fill out regarding your interactions with and the performance of your state attorney, to help us help you. But, as noted in the below exchange with BPH Lead Counsel Moseley, we recognize that simply receiving a denial of parole is not wholly or even entirely the fault of your attorney, state or private.

Email to BPH Chief Legal Counsel Howard Moseley from LSA:

The above noted attorney has been the subject of many recent letters from inmates regarding his approach to representation, the facts presented to them and demeanor.

Specifically, Mr. XXXX appears to be advising lifers to write letters of apology or remorse to victims and mail such letters to Victims Services; as we know you are aware, OVSRS has not been accepting such letters for well over a year. Additionally, Mr. XXXX appears to be both advising numerous clients to stipulate to unsuitability at his initial meeting with them and/or giving these meetings short shrift, including meeting with 28 clients in one day at one prison.

After receiving letters and calls from several prisoners and family members regarding Mr. XXXX's level of commitment I spoke briefly with Mr. XXXX himself, who attempted to explain that his direction regarding letters to OVSRS was a result of being so directed at the state attorney training session provided by BPH. We are aware that no such advice was given by BPH representatives at those training sessions.

Mr. XXXX appears to be a bit fuzzy on several details and while he maintains he has never advised anyone to stipulate, particularly when the upcoming hearing is the result of a successful PTA or AR, I find it hard to believe all those individuals contacting us with this information are either wrong or untruthful. Perhaps Mr. XXXX's explanation to them is unclear. Perhaps.

In any case, we bring this information to your attention to put Mr. XXXX 'on radar,' as it were, for any review or action you may find appropriate, and we will continue to monitor his performance, always mindful of the fact that a denial is not necessarily the result of poor representation by an attorney.

It is our understanding that Ms. Shaffer may have received a recent letter from inmate XYZ regarding his recent interactions with Mr. XXXX. Mr. XYZ attached documentation of his attorney/client conference and is

currently concerned that he signed a stipulation document without being properly advised of what he was signing and in fact wishes to proceed with his [recent] hearing, scheduled as the result of a successful PTA. I believe if you have the time and opportunity to review this letter and attending documents the concerns highlighted here will be evident.

If Ms. Shaffer has not received the letter, we would be happy to provide you with the copy sent to our offices, for your review.

Thank you for your time and what we know to be your concern with the actions of state appointed attorneys. We appreciate your efforts and commitment.

Response:

*Thank you for your referral regarding attorney XXXX. We did receive a referral from inmate XYZ which we are now processing. As you know, direct referrals from inmate-clients are most actionable, but your overall impressions are helpful as well. Thanks again.*

Our current survey on the performance of state attorneys is contained on Page 6—we encourage everyone to respond—your information helps us help you with the best representation possible.



## **OUR GRATITUDE AND THANKS TO CCI**

As we have often stated, LSA depends on donations to help fund the work, including publications and travel to parole hearings, that we do. And we are grateful for each donor and donation. But our special thanks and heart-felt gratitude go to those inmates and inmate groups who contribute to us, as we know their dollars are even more keenly felt and hard earned.

So it is with great thanks that we acknowledge the super donation of \$500 made to LSA from the Higher Power AA Group from California Correctional Institute in Tehachapi. We understand what it takes for prisoners to accumulate that much money and we are humbled by your confidence and trust in us and the work we do for you, and all lifers.

### ATTORNEY SURVEY

Life Support Alliance is seeking information on the performance of state appointed attorneys in the lifer hearing process. Please fill out the form below in as much detail as possible, use extra sheets if needed. Please include your name, CDC # and institution—this information will not be revealed but is needed to access transcripts of your hearing for further review by our staff. Details and facts are vital, simple yes or no answers are not probative. Mail to PO BOX 277 Rancho Cordova, Ca. 95741. Form not necessary, use plain paper if desired. And remember, just because you may have been denied is no reason to fault the attorney. Suitability is up to you, but your attorney is your advocate in the hearing.

NAME \_\_\_\_\_ CDC # \_\_\_\_\_ HEARING DATE \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ GRANTED/DENIED (YRS) \_\_\_\_\_

INITIAL/SUBSEQUENT (NUMBER) \_\_\_\_\_ EVER SUITABLE (WHEN) \_\_\_\_\_

ATTORNEY \_\_\_\_\_ MEET BEFORE HEARING? \_\_\_\_\_

TIME SPENT CONSULTING \_\_\_\_\_ SUGGEST STIP/WAIVE? \_\_\_\_\_

OBJECT TO MARSY'S? \_\_\_\_\_ OBJECT TO CRA? \_\_\_\_\_ OTHER? \_\_\_\_\_

DID ATTORNEY UNDERSTAND YOPH IF APPLICABLE? \_\_\_\_\_ ELDER? \_\_\_\_\_

Please provide details on attorney performance, lack of including interaction with parole panel, DAs. Was attorney attentive during hearing, helpful to you prior to hearing, offer support and advice to you? Knowledge of your case and/or parole process? Spend adequate time in consultation with you, have contact before hearing? Show up on time? Respond to questions? Did the attorney meet with a large number of inmates on the same day for consultation?