Monitoring Prescription Medication Use Among Substance-Abusing Offenders

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A RELIABLE drug detection program is essential for success in holding offenders accountable for their decision to use drugs. Also, early detection is critical if the probation or parole officer is to intervene swiftly and decisively. Quick detection, in itself, increases the risk and cost of drug use and deters some offenders (Torres, 1996, p. 18).

I have noted previously (Torres, 1996, p. 23) that the use of legal prescriptions to "get loaded" or to mask the use of illegal drugs presents a challenge to the probation officer because these drugs are prescribed by a physician and not easily within the officer's control. Getting high on prescription drugs is one method offenders use to avoid complying with the condition requiring them to abstain from the use of illegal drugs. Prescription drug abuse can be an effective way for offenders to avoid addressing treatment issues while remaining dependent on mind-altering chemicals.

Reliance on prescription medication, even if these drugs are not abused, can hinder treatment and long-term sobriety and abstinence. In most cases, probation officers inform offenders that they have serious concerns about the offenders' prescription for codeine, valium, barbiturates, or other mind-altering drugs and request that the offenders ask their physicians to prescribe an alternative medication. Most of the time this simple request to change medications suffices. However, in a small number of cases, the probation officer encounters offenders who do not respond to the officer's request or physicians who insist that they and not the officer are the doctor and will therefore decide what medication is appropriate. At other times, officers encounter doctors who refuse to respond to a request for medical information. This article addresses this unique supervision dilemma and provides specific techniques to deal with the situation.

Using Prescription Drugs to Mask Illegal Drugs Use

The use and abuse of legal medication is one way in which substance abusers manipulate their special drug testing condition. Offenders whose drug of choice has been an opiate, such as heroin, will occasionally seek a prescription for codeine. Since both heroin and codeine will metabolize into morphine, the laboratory and probation officer are unable to determine definitively if the positive test for morphine results from heroin or other illegal opiate use or from prescribed medication. In the case of offenders who use this as a ploy to continue their opiate habit, they will use both legal and illegal drugs and, when found to be positive for morphine, they will show the codeine prescription to the officer and drug counselor and say that the prescription must be the reason for the "dirty." These offenders respond very cooperatively and eagerly present whatever documentation the officer requests.

The "speed" or methamphetamine user, on occasion, will obtain a prescription for diet pills or some over-the-counter medications that contain amphetamines as part of the active ingredient. It is common knowledge that a Vicks inhaler may result in a positive test for amphetamine. Therefore, a prescription for any medication containing even minute quantities of amphetamine/methamphetamine may be sufficient to provide a defense for a test found positive for amphetamine/methamphetamine.

Problems with prescription medication use primarily involve the above two substances. On rare occasions, a positive test for cocaine may be justified by nasal, dental, or bronchoscopic surgery because of cocaine's ability to constrict blood vessels and reduce bleeding during surgery. The use of prescription medications to "beat" the test is not an uncommon strategy used by sophisticated offenders, and the degree of sophistication will vary dramatically. Therefore, it is incumbent on the probation officer, to the extent possible, to monitor closely the use of prescription drugs.

Legitimate versus Illegitimate Prescriptions

The initial challenge facing the probation officer is to determine if the offender is in fact ill and visiting a doctor for legitimate treatment. Oftentimes, this determination is easy to make because the offender demonstrates overt symptoms. In other cases, however, the symptoms may not be so obvious. Needless to say, it is always advisable to review the file to determine if the offender pre-

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viously has experienced problems with prescription drugs. That is, is there any history of the offender abusing prescription medication or is there documentation showing that the person previously attempted to manipulate the testing program by using prescription drugs. If a clear assessment cannot be made, the officer should give the offender the benefit of the doubt and then wait to see what further activity occurs or whether the offender obtains refills for the medication.

Illegitimate use of prescription medication to mask illegal drug use often is accompanied by "red flags" or indicators of subterfuge. For example, persons may report for drug testing and immediately present a prescription for codeine medication, informing the drug counselor or probation officer that they hurt themselves, pulled a muscle, had dental work done, or, if they are females, experienced severe cramps or other gynecological problems that require medication for pain and discomfort. A urine test may be found to be highly diluted (specific gravity under 1.010), a drug evaluation (skin check) may detect marks or evidence of drug use by injection, the offender may stall (claim to be unable to produce a urine test), or exhibit signs of opiate intoxication such as lethargy, slurred speech, and constricted pupils that do not react to light. The presence of any of these signs immediately should cause the officer to examine closely the circumstances surrounding the use of prescription drugs, consider increasing the testing schedule, and, *at the minimum,* confront the offender about the other indicators present.

The need to confront the offender is emphasized because all too frequently officers do not want to bother with the extra effort it takes to determine if someone may be beating the test by using one or more of these techniques. For some officers, it is much easier to accept the offender's excuse, justification, or defense at face value. If we know anything about substance abusers, it is that they will go to extraordinary lengths to continue the use and abuse of drugs. I believe that officers do a disservice to offenders by allowing them to beat officers without being confronted. If officers do not confront offenders, they will not detect illegal drug use, and if officers do not detect illegal drug use, they will not be able to intervene early enough to prevent further criminality. Further, by neglecting to confront some of these complex deceptions offenders use, officers fail to meet their fundamental obligation to protect the public.

Offender Does Not Inform the Doctor of Probation/Parole Status

In most cases, when offenders receive a prescription from a doctor, they do not inform medical personnel of their prior substance abuse history and current status on drug testing and supervision. Most of the time, offenders do not want to experience the additional problems associated with volunteering this information. If officers reach the conclusion that the medication is for a genuine illness, they may opt to do nothing and allow the offender to take the medication until finished. However, if officers are concerned about the medication for any reason—such as the offender's recent release from prison, prior abuse of prescriptions, unstable adjustment, or uncertain nature of the medical problem—then officers may instruct the offender to return to the doctor and request a substitute, non-opiate or non-amphetamine medication.

Officers may advise offenders to tell the doctor whatever they choose to obtain a substitute that is not a mind-altering drug. Offenders may report to the doctor that they do not want something that strong or that they do not like taking opiate derivative drugs, or offenders may tell the doctor that they have a history of substance abuse and wish to avoid any drugs that may cause them to relapse. Alternatively, offenders may inform the doctor that they are on federal supervision and have a drug testing condition and that the prescribed medication interferes with participation in the testing program. Any of these reason are generally sufficient to persuade a doctor to prescribe a non-controlled substance drug, if such a substitute will not adversely affect the offender's medical treatment.

Offender Signs Release of Confidential Information and Officer Obtains Medical Data

In some cases, offenders may not wish to inform the doctor of either their drug testing or their status on supervision. Offenders may inform the officer that they sought medical treatment for a legitimate ailment and the doctor felt it was appropriate to prescribe the narcotic or other medication. Offenders may be cooperative but decline to inform the medical staff of their drug testing or supervision. In this situation, the officer should request that the offender sign a form for release of medical information to request verification from the doctor. The officer may choose to verify the illness and therefore the need for the medication or may take the opportunity to request, if appropriate, a substitute non-narcotic medication. By virtue of the formal request for medical information, the physician and physician's staff will be made aware of the offender's status and, in the future, may take greater care in prescribing medication. Many offenders, in an attempt to avoid what they consider an embarrassing situation, promptly will agree to return to the doctor to request a substitute prescription without intervention or correspondence from the probation officer.

Offender Signs Release of Information and Doctor Does Not Provide Information

Perhaps the most troublesome situation arises when the offender informs the probation officer that the doc-

tor feels the medication prescribed is appropriate and will not consider other alternative drugs. The issue may be complicated further when the offender signs a release of medical information and the doctor fails to respond. This situation arose for me when one of my cases on dual probation and parole supervision was taking several prescribed medications for a back ailment and associated pain. The prescribed drugs included codeine, muscle relaxants, and tranquilizers. The offender was quite sophisticated, and I strongly suspected that he was abusing the multiple medications he was receiving. In fact, he had prescriptions from more that one doctor and informed me that he had been required to see specialists for his back injury. I sent several letters to one particular doctor requesting information about the offender's diagnosis, the medication prescribed, and the prognosis. A signed release for medical information was included in these requests, but the doctor did not respond. I also made several telephone calls in an attempt to talk with the doctor, but still there was no response.

After being repeatedly frustrated in my efforts to obtain medical information, I requested the assistance of the U.S. Attorney's Office in Los Angeles. I informed the assigned assistant U.S. attorney (AUSA) of my efforts to obtain medical information for the purpose of assessing the offender's need for the prescribed drugs. The request for assistance from the AUSA was to determine if a subpoena could be issued to obtain the requested information. At the same time I was requesting the assistance of the AUSA, I was arranging for the probation office to pay for an independent medical examination for the offender. I must emphasize that it would have been much easier to do nothing since the medication the offender was taking was legitimate and since he was under the care of a physician. The route that I took was time consuming and perhaps even fraught with the potential for litigation. Some bright defense attorney might appropriately have made the argument that I was interfering with the medical treatment of the offender.

This particular case, however, required close supervision. The offender was a bank robber with a lengthy criminal record and an equally long substance abuse history. He was bright and sophisticated and also had a history of probation and parole violations. After learning from the AUSA that a subpoena could be issued for the medical information, I sent yet another letter requesting the medical information I previously had requested. The brief letter informed the doctor that the probation office had consulted with the U.S. attorney and that a subpoena was being issued for the medical information. Immediately upon receipt of the letter, the doctor's nurse contacted me and informed me that the medical information had been sent.

Subsequently, the offender called and informed me that he had become addicted to the prescribed medication and was entering a detoxification program. He later failed to report for drug testing, failed to notify the probation officer of a change in residence, and absconded supervision. He was arrested and charged with committing two armed bank robberies.

Imposition of an Appropriate Drug Aftercare Condition

As a result of experiences with prescribed medication abuse, the Central District of California (CDC), headquartered in Los Angeles, has developed a very specific drug aftercare condition for use by the district's judges. The *core* special drug aftercare condition orders that: "The Defendant Shall Participate in Outpatient Substance Abuse Treatment and Submit to Drug and Alcohol Testing as Instructed by the Probation Officer and that the Defendant Shall Abstain From Using Illicit Drugs, and Alcohol, *and Abusing Prescription Medications* During the Period of Supervision" (Supervision Manual, p. A-400-51(c)). An order for the defendant to pay the cost of testing as directed by the probation officer supplements the condition.

The case discussed above illustrates that situations in which physicians choose not to cooperate can present complications and challenges for the probation officer. The above condition gives officers the necessary authority to monitor and investigate cases in which they suspect that offenders circumvent the testing requirement by masking illegal drug use with legitimate medication or by abusing prescription medication.

ICI Enterprises Drug Aftercare Program

The ICI Enterprises Drug Aftercare Program has been the CDC's primary drug aftercare provider for approximately 18 years and, after this length of time, has acquired a distinguished reputation for high standards. To deter offenders from abusing prescription medication or masking illegal drug use, ICI developed two forms for use by offenders who have been prescribed medication.

The first is a *Medical Disclosure Regarding Drug Testing* form that authorizes all medical care providers to disclose information to the probation officer. This form is more specific than the medical disclosure form the U.S. probation office uses and also requires the physician to sign the form acknowledging that the offender has informed the doctor of the offender's drug testing status.

The second form is used by drug counselors to monitor offenders' medications. The *Medication Log* includes the offender's name, the date the offender advised of his or her prescription, the specific name of the medication and the reason for use, the date of the prescription, the unit, the instructions, and the expiration date. The same form also contains columns with the date the offender was seen, medication presented, time, quantity

before administration, quantity after administration, and the offender's initial. This form is used to monitor closely the progress of the medication the offender is taking and allows the drug counselor and the probation officer to determine whether additional information is needed from the doctor, what amount the offender is ingesting, and when the offender has completed taking all the medication. This close monitoring also allows ICI and the officer to determine if the offender has refilled the prescription(s) and whether further information may be needed from the doctor.

The excellent teamwork between ICI and U.S. probation officers makes offenders aware that their prescription drug use will be monitored closely to prevent abuse.

Sample Letter Requesting Doctor to Prescribe Non-narcotic

Since approximately 1982, the CDC has had concerns about prescription use and abuse by offenders participating in drug aftercare testing. Historically, probation officers have dealt with the problem in a number of ways. Some officers simply may give the offender the benefit of the doubt and allow the prescription to run out, or they may allow the drug aftercare provider to address the situation. Other officers may instruct offenders to bring the medication to the testing center each and every time they test and to tell the drug counselor how many pills they have ingested since the last test. The counselor counts the number of pills at each testing date to ensure that the offender's version is consistent with the number of pills remaining in the container and that the offender still is taking the medication from the initial prescription.

If officers suspect that a doctor is operating what is commonly called a "prescription mill," they may contact the state agency responsible for overseeing the medical profession. In California, for example, the agency would be the Board of Medical Quality Assurance. Officers, with some effort, also may be able to determine whether a particular doctor is being scrutinized or currently is under investigation.

As I noted earlier in describing my experiences with a doctor who refused to respond to a request for medical information, the issue of monitoring prescription medication is delicate from a legal perspective. *The officer should never instruct an offender to stop taking prescription medication or direct the offender to take a different medication.* I believe the reasons for this are apparent. The officer is not a physician and cannot make these decisions. The officer, however, is authorized to monitor, investigate, and report the potential abuse of prescription medication to the court. The officer may instruct offenders to return to their physician and request an alternative medication. Furthermore, the officer can and should, if necessary, request medical information from the doctor to determine the diagnosis, treatment, and prognosis and also to determine if the doctor, in prescribing medication, has been made aware of the patient's drug history or current drug testing status. Officers should take care, however, to maintain federal confidentiality requirements about the offender's *treatment status.*

In 1982, the CDC recognized that many opiate abusers were obtaining prescriptions for codeine, which would mask the use of heroin. A sample letter was prepared and circulated to the district's substance abuse officers:

> Ms. Little is under the supervision of the United States Probation Office. She has a special drug aftercare condition which includes urinalysis testing.
>
> Ms. Little indicates she has been under your care and has obtained from you a prescription for codeine or a compound containing codeine.
>
> I request that you seriously consider prescribing a non-narcotic drug if possible for the following reasons:
>
> > First, many of our clients have histories of narcotic abuse. Narcotic addiction is often cited by drug using individuals as the direct or contributing cause of their illegal activities. In January 1982, John Hoos, an FBI spokesman, reported that the Southern California area led the nation in total bank and savings and loan robberies, up 52% over 1980. He estimated that 60% of the 1981 robberies may have been drug related.
> >
> > Second, our clients have admitted to the increased abuse of codeine. Some are obtaining codeine simultaneously from several doctors who unknowingly prescribe to the same individual. Many are then injecting the codeine. This abuse is consistent with an increase in codeine-related overdose deaths in Los Angeles County. A *Los Angeles Herald-Examiner* article on April 15, 1982, also noted a study by the Drug Abuse Warning Network between 1976 and 1979, which reported that the rate of codeine overdoses in California was eight times greater than in the rest of the nation.
> >
> > Third, use of urine drug screening to detect the presence of illegal opiate use is frustrated by a legal prescription for an opiate. Clients are aware that codeine is biotransformed to morphine in humans. In fact, it has been established that by the fourth day after codeine intake, only morphine may be detected by thin layer chromatography. Since the presence of morphine may be an indicator of heroin abuse, it is essential that our clients who are subject to drug testing not be given a prescription for codeine if alternative drugs are available.
>
> Thank you for your consideration in this matter. Please contact me if you have any questions or comments. (CDC memorandum, 1982, pp. 2–3)

This letter was an early attempt to address the problems of prescription medication; however, a more concise letter to fit the particular situation can be easily

designed for this purpose. In drafting this letter, the CDC had two critical concerns. The correspondence to physicians was intended to inform them of the potential for addiction to prescription medications and, secondly, to communicate the technical problems of laboratory analysis associated with attempting to monitor an offender's use or abuse of drugs. Today, while codeine continues to be a problem, the use and abuse of stimulants such as amphetamine and methamphetamine are perhaps of greater concern. In addition, the abuse of the benzodiazapine (tranquilizers) category of drugs poses a difficult problem. In 1993 I wrote a letter to a physician regarding a parolee patient who was receiving medical treatment. I indicated my concern about the multiple medications prescribed for him including Xanex, Flexeril, Voltgaren, and Codeine. In the letter, I indicated, in part:

> Enclosed for your information, please find an Authorization to Release Confidential Information signed by Mr. Jones. . . .
>
> At this time, we are in need of information relative to his medical condition and his need for the above medications. Please be assured that it is not our intent to interfere with legitimate treatment. However, physicians as yourself often are unaware of their patient's problems with controlled substances. Your assistance in providing the following information would be greatly appreciated.
>
> 1. Please provide medical records and/or a letter advising of the specific medical problem and diagnosis in this case.
>
> 2. Please advise if the patient can be taken off opiate-based medication and whether a non-opiate painkiller can be prescribed, if necessary.
>
> 3. What is the prognosis for improvement or treatment of this case?
>
> 4. Please advise if any other doctor, to your knowledge, is treating Mr. Jones.

The treating physician in this case responded promptly to my letter and was most cooperative, providing the necessary medical information to properly assess the case:

> Dear Mr. Torres:
>
> I am in receipt of your letter of 5/24/93 concerning Mr. Jones. Thank you very much for the information.
>
> As you can guess, Mr. Jones revealed none of his past history concerning his drug addictions.
>
> Rest assured that Mr. Jones will have no more Tylenol with Codeine or any other opiates prescribed for him by me. He has been also [*sic*] using Darvocet N-100 which we will continue to give him for his pain.
>
> With respect to his medical problems, enclosed you will find copies of his orthopaedic reports to the Highland Insurance Company delineating his medical care to date.
>
> If I can be of any further assistance, please do not hesitate to contact me.

Conclusions

Offenders' use of prescription medications either to mask their illegal drug use or to rely on legitimate drugs to get high is a problem that long has perplexed probation officers. Some officers choose to do nothing since the medication is legally prescribed and monitoring can be time consuming and complicated. However, it is incumbent on officers to monitor, investigate, and intervene if they determine that offenders are using this ploy to continue destructive substance-abusing behavior. To the extent that officers can uncover this ruse, both the community and the offender will be better off. The community will benefit from the prevention of further criminality associated with drug addiction, and the offender will benefit by rapid intervention/treatment and the potential avoidance of a new conviction and associated prison sentence. Many offenders with substance abuse histories are likely candidates for prosecution under "three strikes" laws that require mandatory minimum sentences of 25 years to life. I hope this article will help officers meet their obligation to protect the community by providing them with some of the specific techniques they can use to combat this troublesome supervision problem.

References

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