



June 23, 2016

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By mail and email:

Jon Litscher
Secretary
Wisconsin Department of Corrections
3099 E. Washington Ave.
PO Box 7925
Madison, WI 53707-7925

Re: Use of correctional officers to distribute medications to children
imprisoned at Lincoln Hills and Copper Lake schools

Dear Secretary Litscher,

News reports indicate that correctional officers, rather than nurses or other medical staff, have been distributing prescription medications to the children housed at most of the housing units at Lincoln Hills and Copper Lakes schools, resulting in frequent and harmful medication errors. *See* Patrick Marley, “Teen Hospitalized After Getting Wrong Medicine at Lincoln Hills,” *Milwaukee Journal-Sentinel* (May 17, 2016). The reports describe situations in which officers have failed to give a prescribed medication or given the wrong medication to a child. In at least one of those instances, the consequences were serious enough to require that the child be transported to the hospital.

The continued use of correctional officers to distribute medications to children at Lincoln Hills and Copper Lake, particularly in light of reports of errors serious enough to result in hospitalization, likely violates the Eighth and Fourteenth Amendments by putting the children at an intolerable risk of harm. We therefore ask that you take immediate steps to insure that nurses, with at least an LPN license, distribute all prescription medications to the children at Lincoln Hills and Copper Lake as soon as possible.

As you are likely aware, United States District Judge Rudolph Randa ordered DOC to have medications at Taycheedah Correctional Institution distributed by medical staff with qualifications equivalent to or greater than licensed practical nurses. *Flynn v. Doyle*, 630 F.Supp.2d 987 (E.D. Wis. 2009)



(granting preliminary injunction); *see also Flynn v. Doyle*, 672 F.Supp.2d 858 (E.D. Wis. 2009) (denying defendants' motion for summary judgment). In concluding that the plaintiffs were likely to succeed on the merits of their claim that using correctional officers to distribute medications violated the Eighth Amendment's prohibition on cruel and unusual punishment, the Court concluded that the evidence could support a finding at trial that "the continued use of correctional officers to distribute medications at TCI poses a substantial risk of serious harm to members of the class and that the defendants know of this risk but failed to take reasonable steps to abate it." 630 F.Supp.2d at 992. A recent decision in the Western District of Wisconsin similarly found that allegations that using officers to distribute medications resulted in medication errors satisfied the screening standards of the Prison Litigation Reform Act. *Steed v. Doe*, 2016 WL 1179230 (W.D. Wis., March 23, 2016) (permitting case to proceed beyond screening).

The reported medication problems at Lincoln Hills and Copper Lake are remarkably similar to the findings that led to the injunction at Taycheedah. In *Flynn*, the court noted that correctional officers bear "responsibility for simultaneously maintaining order, determining which medications to give to which prisoners, and managing a cart full of blister-packed pills and paperwork." *Id.* at 990. As DOC itself has recognized for over a decade, "Officers do not have the clinical training to recognize the various medications by name, their uses, potential and actual side effects, and whether or not the medications are effective and being properly taken." *Id.* at 991. It was no surprise, then, that officers "routinely administer wrong doses to the wrong prisoners at the wrong times." *Id.* at 990.

In denying DOC's motion for summary judgment, the *Flynn* court cited "a mountain of evidence" substantiating plaintiffs' claims that "systemic and gross deficiencies in staffing, facilities, equipment, or procedures" of the medical program violated the Eighth Amendment. 672 F.Supp.2d at 876. The mountain included evidence that "Correctional officers lack sufficient training and knowledge to understand why a medication is prescribed, or to know the side effects of that medication, proper dosing, or potential medication interactions," which "places patients at risk of harm." *Id.* at 863-864.

The newspaper reports cited above state that DOC had begun using nurses to distribute medications at one cottage, at least temporarily, but had no formal plans to do so at other housing units. However, DOC officials have more recently made statements at public meetings suggesting that efforts were underway to hire additional nurses to distribute medications at Lincoln Hills and Copper Lake. Accordingly, we also ask that you describe the Department's plans and timelines, if any, for hiring, training and deploying nurses to all of the cottages or housing units at the two schools.

We also request, pursuant to the Wisconsin open records law, Wis. Stat. §§ 19.31 *et seq.*, that you provide the following records within the custody or control

of the Wisconsin Department of Corrections (“DOC” or “the Department”), or any subdivision thereof, pertaining to distribution of prescription medications to the children held at Lincoln Hills and Copper Lake, including but not limited to: (1) current departmental or institutional policies and procedures regarding distribution of medications to detainees at Lincoln Hills and Copper Lake; (2) reports or data compilations reflecting medication errors at Lincoln Hills and Copper Lake over the past 5 years; (3) individual medication incident reports involving Lincoln Hills or Copper Lake detainees (with identifiers redacted, if necessary) from the past 6 months; (4) paper and electronic communications, including memoranda, correspondence and emails, reflecting medication distribution problems and responses to such problems at Lincoln Hills or Copper Lake from the past 6 months. In this request, the term “records” includes all information recorded in any form whatsoever, including, but not limited to, papers, digital electronic media (such as computer discs, hard-drives, CDs, zip discs, USB or “jump” drives or media, or tape back-up), and analog recording media (such as audio and video tape recordings).

I request that the information be provided without charge pursuant to Wis. Stat. § 19.35(3)(e). A waiver of processing and copying charges in this case is in the public interest. The ACLU of Wisconsin Foundation is a not-for-profit charitable and educational organization. The records are not sought for commercial use. If charges for this request will exceed \$50, please contact me prior to proceeding.

If any material responsive to this request is deemed to be exempt from disclosure, identify the material withheld and specify the asserted basis for the exemption. Please release all segregable portions of otherwise exempt material.

Note that Wisconsin law requires that requested documents be produced “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a). The Wisconsin Department of Justice policy is that 10 days is ordinarily a reasonable time for response to an open records request. Wisconsin Department of Justice, *Wisconsin Public Records Law Compliance Outline* at 11 (Aug. 2007).

If you have any questions about this request, please contact me at (414) 272-4032, ext. 12. Thank you for your prompt attention to this matter.

Sincerely,

Laurence J. Dupuis
Legal Director

cc: Winn Collins, Legal Counsel, Wisconsin Department of Corrections
Corey Finkelmeyer, Wisconsin Department of Justice