Medication Rights in Prisons: Does a correctional facility have to give a prisoner psychotropic medication if he was receiving it in the community prior to his incarceration?

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It depends on the type of medication and the nature of the prisoner's illness. There is no question that an inmate with a major mental illness, such as schizophrenia, bipolar disorder, or major depression has a right to medication (if he wants it), since the Federal Constitution mandates that correctional officials provide appropriate treatment to any inmate with a "serious" medical need, and medication is an integral part of treatment for these conditions. *Smith v. Jenkins*, 919 F.2d 90 (8th Cir. 1990); *Waldrop v. Evans*, 871 F.2d 1030 (11th Cir. 1989). However, not every mental disorder is sufficiently "serious" to qualify for constitutional protection, even if a doctor in the community has already prescribed medication for it. *See Doty v. County of Lassen*, 37 F.3d 540 (9th Cir. 1994) (nausea, shakes, headache, sleeplessness, and depressed appetite insufficiently "serious" to mandate medication). *But see Steele v. Shah*, 87 F.3d 1266 (11th Cir. 1996) ("insomnia, anxiety, and various bodily pains" and "feelings of helplessness" entitled inmate to medication).

Prisoners are not, however, entitled to their choice of medication, or even to the medication that is most likely to help their condition. So long as a qualified prison doctor performs a thorough evaluation of the inmate, and reviews his medical history, courts are unwilling to interfere with the professional judgement of the prison medical staff about which medications, if any, are appropriate. *Vaughan v. Lacey*, 49 F.3d 1344 (8th Cir. 1995). Although most jails and prisons have policies designed to ensure that there is no

interruption in the medication of a newly admitted inmate, many facilities are reluctant to provide inmates with certain drugs, such as the newer antipsychotics or the benzodiazepam tranquilizers, because of cost or security considerations. *See Wolfel v. Ferguson*, 689 F.Supp. 756 (S.D. Ohio 1987); *Mathis v. Cotton*, 1997 WL 457514 (N.D. Tex. 1997). Further, the procedures used to determine what medications are appropriate ofter result in delays before the inmate receives treatment. *See Mahan v. Plymouth County House of Corrections*, 64 F.3d 14 (1st Cir. 1995). Many institutions will also substitute cheaper medications, which are on their formulary, for the medicine that was prescribed by the treating physician in the community. These kinds of practices are not generally unlawful. *See Bridges v. Jennings*, 1998 WL 223276 (10th Cir. 1998)(upholding refusal to continue prescribing Xanax to addicted inmate); *Lewis v. Plummer*, 1997 WL 168530 (N.D. Calif. 1997)(prisoner not entitled to Valium which he was taking prior to his incarceration); *Lawthorn v. Duckworth*, 736 F.Supp. 1501 (N.D. Ind. 1987)(prison policy of limiting use of Valium because its value outweighed by the risk of offenders hoarding and selling it in the prison). However, if a prison terminates medication, care must be taken to ensure that the dose is gradually reduced when this is medically appropriate. *See Mathis*, *supra* (inmate experienced seizure when Valium abruptly terminated).