"Sure, let's see what you got" – A Qualitative Analysis of Physician Letters Used in Court Appearances

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Thesis

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Preface and Acknowledgements

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Abstract of *"Sure, let's see what you got" -A Qualitative Analysis of Physician Letters Used in Court Proceedings* by Ella van Deventer, MD, ScM, Brown University, 2024

Formerly incarcerated individuals face a host of social and medical barriers to reintegrating sustainability into society. A novel intervention of customizable form letters written by physician to be presented in prior to or during court and provide further support to these individuals. The potential role of physician input in their criminal-legal involvement through providing these letters has yet to be explored. This study aims to examine the role of physician letters in court proceedings for criminal-legally involved patients. We completed retrospective chart review for patients who have received physician letters and qualitative analysis of court transcripts that correlate to timing of said letters. We developed themes and subthemes from said court transcripts. Our results showed that customizable physician letters that provide information about the medical and social circumstances of patients were readily adopted documents to legal professionals in a court setting and found to hold relevant data referenced in judicial decision-making. Overall, this study has important implications for the role physicians and other healthcare providers can play in the judicial process for their patients. It demonstrates a novel area for providing physician insight in a court setting, thus improving the comprehensiveness of healthcare for the criminal-legally involved.

"Sure, let's see what you got" -A Qualitative Analysis of Physician Letters Used in Court Proceedings

Introduction

The United States incarcerates people at a higher rate than any other country.[1-3] Recognized as a public health crisis, incarceration has a far-reaching impact on the health of individuals and communities[4-11]. Compared with the general population, individuals with a history of criminal-legal involvement are more likely to experience chronic health conditions, substance use disorders, and mental health disorders due to challenges with social integration, reintegration, and stress.[12-16] Furthermore, research indicates that each year served in prison is associated with a 2-year decrease in life expectancy.[17]

The growing recognition of mass incarceration as a public health issue has highlighted the role of incarceration as an *upstream* social determinant of health (SDoH).[10,18,19] In a qualitative study of individuals who had been released from incarceration within the past five years, participants overwhelmingly reported social needs such as housing, employment, transport, and insurance coverage as the main barriers to accessing and maintaining engagement with healthcare.[20] This has implications for the day-to-day practice of medicine, as research has shown that nearly 50% of patients presenting for primary care at urban practices have a personal or family history of incarceration, probation, and/or parole.[21,22]

Although physicians increasingly understand that incarceration is a health-harming social risk factor, there remains uncertainty regarding effective responses to address it.[23,24] A promising approach involves the use of support letters, or character letters as it is known in the legal context, for a patient who is facing a criminal charge.[25-29] This method entails composing a letter to the judge presiding over the case that accomplishes three key objectives: 1) presents the medical and social context surrounding the patient; 2) outlines the patient's circumstances and

needs; and, 3) offers a clinical recommendation for treatment when appropriate. We herein refer to these customizable form letters written by a physician on behalf of a patient as a 'physician letter'.

Despite increasing use of the physician letter in clinical practice, no studies have explored the safety and efficacy of physician letters in criminal court proceedings. Therefore, this study seeks to fill this gap by employing a qualitative analysis of court transcripts for patients from a primary care program, for whom physician letters were submitted to judges. Specifically, our study aims to explore the adoption of physician letters in court 2) further characterize the use of them by legal professionals. We hypothesize that physician letters are well-received by judges and that they offer an avenue for context provided by physicians to be included in sentencing decisions in criminal court cases.

Methods

Sample Identification

One study team member conducted a retrospective chart review of patients enrolled in a primary care clinic for individuals with a history of incarceration. We located instances in the electronic health record (EHR) where, between 2018 and 2022, a physician authored a letter for a patient. We identified letters that were addressed "To the Honorable Court Judge" or "To the Parole Board" and recorded the letter date and patient demographics. We assigned all patients with a physician letter a randomized study ID that was used throughout the study.

Data Collection

One study team member used the Rhode Island Judiciary Public Portal to search for hearings associated with the dates of the physician letters. The Public Portal is a publicly available source of information about court records and hearings in the state. We identified any hearing within thirty days of a physician letter or one year for physician letters documented in 2020 to account for courthouse closures and delays that resulted from the COVID-19 Public Health Emergency.[30] We then requested transcripts for all identified hearing dates from Superior and District Court. We received an additional seven transcripts associated with physician letters from the Rhode Island Public Defender's Office prior to the start of the study. These transcripts were associated with physician letters that we shared before letters were being documented in the EHR. We de-identified all transcripts and coded each with its corresponding study ID.

Data Analysis

We qualitatively analyzed transcripts using a template-style thematic analysis approach, allowing for a structured yet flexible development of a codebook including deductive and inductive codes.[31] All members of the research team identified a priori codes, in light of the study aims and pre-existing clinical experience. Then we used an inductive approach to identify additional codes through review of five initial transcripts. After comparison and revision, we generated an initial codebook and applied it to a trial batch of ten transcripts. We established a final codebook through periodic reconciliation meetings. Two research team members line coded all remaining transcripts. This process included cross-checking for inter-coder reliability by several study team members and modifications to the codebook as needed. We discussed any discrepancies in coding until a unanimous consensus was reached. All transcripts were coded using Dedoose software.

Reflexivity

Reflexivity is defined as a set of iterative practices through which study team members self-reflect in order to evaluate how their subjectivity and positionality influence the research process and outcomes.[32] Study team members regularly engaged in the practice of reflexivity during each coding meeting, recognizing their positionality as healthcare and public health practitioners without lived experience of criminal-legal involvement. The incarcerated patients and patients represented in this study are disproportionately those of marginalized racial and ethnic identities, some but not all of which are represented by study team members.[33-35] Additionally, some members of the study team work directly with criminal-legally involved populations. We recognized this positionality could introduce biases into the analysis and presentation of the findings, which we regularly addressed during data collection and interpretation.

Informal member checking

Informal input from legal counterparts was solicited throughout the research process to enhance reliability, establish trust and transparency, and improve interpretation of data. Prior to the study, a medical-legal panel held at an academic medical center identified feedback from legal professionals that physician letters provided valuable data in court, thus encouraging this study. Following transcript analysis, three members of the research team engaged in informal member checking by meeting with four judges to share preliminary data and receive community review of the findings.

Results

A total of 93 individuals were enrolled in the primary care clinic program, of which 40 (43%) had a physician letter documented in the EHR. Among those with an identified letter, 27 (68%) individuals had court dates within the window of inclusion. We requested a total of 122 transcripts associated with these patients and received 59 transcripts (48%). This included the 7 transcripts already on file with the partnership pertaining to 3 additional patients. Transcripts represented 24 unique patients, of which a majority identified as male (83%), white or caucasian (46%), and between the ages of 25-39 (38%). Patient demographics are represented in Table 1. Among the 59 analyzed transcripts, 21 (36%) directly mentioned physician letters. The analysis of the transcripts demonstrated four main themes, each with several corresponding subthemes.

Theme 1: **Medical and Social Information Is Shared in Court**

Subtheme 1: Information about patients' social and medical circumstances was shared regularly in hearings.

Throughout nearly all transcripts, information regarding the patients' social, medical, and mental health circumstances was provided to the court with and without the presence of a physician letter. The purpose of presenting this type of information appeared to be to make the case for a favorable sentencing outcome for the patient, such as a reduced sentence, diversion to treatment, or the reduction of court fees.

> *Public Defender: "He lives with his sister and his son. He usually works as a cook, but he's presently at home caring for his handicapped son who has Cerebral Palsy."*

Information about medical and social circumstances was often presented in conjunction with a request or recommendation from lawyers or at the request of the court.

> *Public Defender: "Your Honor, we're asking for low surety bail. Mr. — does have an apartment through Crossroads which he has maintained for nine months. He is disabled. He is in multiple programs. He's in treatment at Rhode Island Hospital for mental health, primary care, and case management."*

Subtheme 2: Patients shared how their personal social and medical circumstances impact their ability to improve their conditions.

Some patients highlighted to the court how the medical and social circumstances of their lives limited their ability to achieve the stability that could support compliance with the court or reduce criminal-legal involvement. Patients most often referenced housing instability, disability status, an inability to maintain employment, or the lack of stable income as central barriers.

> *Patient: "I have to say that I am looking for work. It's an understatement. I have been hired dozens of times, only to be let go after completing the on-boarding paperwork, because I have to disclose that I have been convicted of a felony in the last seven years."*

Theme 2: **Medical and social context and criminal-legal involvement**

Subtheme 1: Legal professionals acknowledged the connection between medical and behavioral health disorders and criminal-legal involvement.

Some attorneys and judges attributed patient behaviors to known or suspected medical or mental health diagnoses. This suggested a cultural understanding within the legal system that mental

health diagnoses and social circumstances could be closely related to criminal-legal involvement.

> *Judge: "Um, I would imagine, based on her criminal history, that she has a substance abuse problem."*

Subtheme 2: Judges weighed social and medical circumstances of the patient in decision-making.

When reaching a decision, judges often noted the medical or social circumstances affecting patients before delivering a verdict, regardless of whether this information was presented through a physician letter. Judges also considered whether resources were available in the community that could help address these needs.

> *Judge: "I understand that there is a bed ready for you at the Providence Center Residential Program. So, I've agreed to set personal recognizance in this matter."*

Theme 3: **An Emphasis on Compliance**

Subtheme 1: Both the attorneys and patients themselves highlighted compliance with treatment and programs.

When providing information about patients' social and medical circumstances, lawyers highlighted patients' compliance or engagement with treatment programs when making their recommendations. Lawyers highlighted compliance as a positive attribute of the patient when making recommendations that would be favorable for a patient (such as reduction of fees or diversion to treatment), while they pointed to a patient's lack of compliance with prior court decisions (such as reporting to probation officers or failing to participate in treatment) when making recommendations that would lead to additional court involvement.

Public Defender: "Mr.--- does have an apartment through Crossroads which he has maintained for nine months… He is in multiple programs. He's in treatment at Rhode Island Hospital for mental health, primary care, and case management."

Similarly, patients frequently highlighted their compliance with ongoing treatment and programs in order to demonstrate to the Court the effort they were making to improve their circumstances.

Patient: "I have stayed sober and clean. I have completed a 15-week program through AdCare, where I was tested multiple times per week for drugs and alcohol."

Subtheme 3: Judges highlighted compliance as an important factor in their decision-making.

Judges also mentioned that compliance was a notable detail within the information that legal professionals or physician letters provided in court. When mentioning compliance, judges frequently attached positive emotional connotations to that behavior. This was generally followed by the verdict, implying that compliance played a positive role in their decision-making.

Judge: "Mr. ---I am glad to hear that it seems like you're doing better. And, at least, as we said, congratulations on the month of sobriety….and trying to take the steps that you need to. I know it's not easy, but at least we've started moving in the right direction. So, I am inclined to do just as the prosecutor asked me, set personal recognizance in this matter."

Theme 4: **The Role of Physician Letters**

Subtheme 1: Physician letters were an accepted form of providing clinical input and relevant information about social circumstances to judges.

In nearly all transcripts where physician letters were directly mentioned, judges openly accepted the information. Several judges appeared to weigh the information from these letters when making judicial decisions, such as diversion to treatment or the waiving of fees for patients. In only one transcript with direct letter mention was the information deemed irrelevant given the charge.

> *Public Defender: "I do have a letter from his doctor. He does suffer from a host of medical issues, again which my team has worked on all morning gathering that information. If you would like me to approach with the letter from –"*
>
> *Judge: "Sure. Let's see what you've got."*

Subtheme 2: Letters were often cited in multiples to demonstrate support for a patient.

In many, but not all, direct physician letter mentions, the physician letter was presented as one of multiple letters offered to the court. These letters originated from various organizations that could attest to a patient's engagement with said organization or program, as well as the patient's efforts to improve their conditions.

> *Public Defender: " ...provided my office with eight letters documenting the treatment that Mr.--- is currently in, several letters from doctors…"*

Discussion

This study is the first to explore the adoption and accessibility of physician letters in a criminal-legal setting. We found that legal professionals are readily introducing information about patients' medical and social circumstances and that this type of information plays an important role in court proceedings. Our analysis shows that letters specifically are an acceptable

avenue through which to provide this information and tap into an existing avenue within the court system. Overall, physician letters have a promising potential to serve as a tool to directly support patients with their medical and social needs as they intersect with criminal-legal involvement. Informal member checking confirmed these findings.

It is important to recognize that a physician or healthcare worker under these circumstances is held by the ethical balance of dual loyalty. Dual loyalty is defined as the conflict between an obligation to a patient's individual care and well-being and an obligation to the interests of a third party such as a state, employer or insurer.[36] This ethical dilemma is frequently pronounced in the setting of caring for individuals in custody or individuals with ongoing criminal-legal involvement.[37,38] In this particular case, critics may argue that the physician must balance the interest of the patient with the health and safety of the greater state and community. We highlight here that the physician letter is meant to serve as a piece of education rather than direct advocacy, providing legal professionals with data on the patient's medical and social state, as well as education on any repercussions that incarceration may hold. This additional information is not designed to ensure that patients never be incarcerated but to allow greater context about the patient, and, when relevant, the harms of incarceration, to become a regular part of decision-making.

The adoption and relevance of these physician letters demonstrate the necessity of interprofessional and cross-sectoral collaboration between medical, social service, and legal teams to provide care for a marginalized population. When used, judges seemed to suggest acceptability or usefulness of the data, to corroborate compliance or demonstrate social support. Further research is needed to establish the optimal time to introduce these letters and the most impactful content to include. For instance, conferring directly with the public defender prior to

writing a physician letter might ensure that the contents are strategically positioned for court presentation, maximizing the benefit to the patient's health and well-being. This pre-emptive discussion could also help address the aforementioned dilemma of dual-loyalty.

Incarceration has a cyclical nature, where a lack of social and structural support for individuals with a history of incarceration can lead to additional criminal-legal involvement and re-incarceration.[16,39] There appears to be a desire among legal professionals for as much context as possible to enable well-informed decision-making that can help break this cycle. This study highlights the important role physicians and other healthcare providers can play in helping to mitigate this cycle and improving care provision for their criminal-legally involved patients.

Limitations

This study has limitations. First, we were not able to predict when a physician letter would be presented in court. Informal member checking with judges confirmed that physician letters were occasionally reviewed off the record. Second, we received nearly three-quarters of transcripts requested from District Court (70%) and one-third of transcripts requested from Superior Court (36%), which represented a statistically significant difference in receipt rates ($p<.002$) (Table 2). There did not appear to be a meaningful difference in receipt rates by judge, stenographer, or hearing type (Supplemental Table 1). This is most likely due to the method of acquisition as superior court transcripts relied on outreach to individual stenographers and may have been impacted by each stenographer's availability to provide transcripts, whereas district court transcripts were centralized and software-based. Additionally, during data collection, superior court transcription data storage was undergoing a system change thus further delaying or impeding access to those transcripts. There did not appear to be additional biases within the

transcripts requested when compared to those received when categorized based on stenographer, judge, or hearing type (Supplemental Table 1).

Conclusion

Criminal-legal involvement continues beyond incarceration, impacting the health of individuals, their children, family, and communities.[11] Urban healthcare providers are statistically likely to care for an individual who has a personal or family history of incarceration, probation, or parole. Therefore, caring for the community requires that we improve care for the marginalized population of the criminal-legally involved. This study demonstrated a novel area for providing physician insight to the judicial decision-making process thus creating more comprehensive care for individuals with criminal-legal involvement. Physician letters are accepted methods for providing desired context to the judicial system and are a tool that deserves further growth, implementation, and study at the intersection of health and justice.

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Thank you to the Rhode Island Public Defender's office for their collaboration and the lawyers and law students who were involved in the creation of the form letter. Thank you also to the judges who provided input throughout the research process.

Table 1. Demographics of patients with analyzed court transcripts (N=24)

Characteristic	No (%)
	Sex
Male	20 (83)
Female	4 (17)
Age	
25-39	9 (38)
40-54	8 (33)
55-70	7 (29)
Race	
White or Caucasian	11 (46)
Black or African American	7 (29)
Multiracial	2 (8)
Other	4 (17)
Ethnicity	
Non Hispanic or Latino	18 (75)
Hispanic or Latino	6 (25)

Table 2. Statistical differences between acquisition of transcripts from District Court vs Superior Court (N=122)

Court	Total Requested	Found (N)	Found (%)
District Court	30	28	93.3%
Superior Court	92	31	33.7%
TOTAL	122	59	48.4%

Chi-square:	9.550
P-Value:	0.002

Supplemental Table 1. Number and Proportion of Superior Court Transcripts Found by Select Court Characteristics

STENOGRAPHER	Total Requested	Found (N)	Found (%)
S1	5	1	20
S2	3	2	67
S3	3	0	0
S4	2	0	0
S5	2	2	100
S6	2	1	50
S7	8	1	13
S8	25	9	36
S9	1	1	100
S10	2	0	0
S11	2	1	50
S12	2	1	50
S13	8	3	38
S14	1	0	0
S15	1	1	100
S16	2	0	0
S17	6	2	33
S18	1	0	0
S19	10	5	50
S20	1	1	100
None	2	0	0
Multiple	3	0	0
JUDGE			
J1	1	1	100
J2	7	3	43
J3	6	3	50
J4	1	1	100
J5	15	4	27
J6	5	4	80
J7	2	0	0
J8	4	2	50
J9	8	1	13
J10	5	2	40
J11	10	3	30
J12	9	4	44

J13	15	2	13
J14	1	0	0
J15	3	1	33
HEARING TOPIC			
Ability to Pay	1	1	100
Arraignment	3	2	67
Bail/Bond Setting	1	1	100
Cost Hearing or Review (including Hearing on Motion to Remit Fines & Costs, Payment Schedule)	7	2	29
Determination of Attorney	4	0	0
Disposition	1	1	100
Hearing on Motion to Modify	1	1	100
Pre-Arraignment Conference	4	1	25
Pre-Trial Conference	13	0	0
Present as a Violator	7	7	100
Restitution Review	4	0	0
Technical Violation Hearing	6	2	33
Violation Disposition or Sentencing	9	4	44
Violation Hearing (or Review)	24	5	21
Warrant Cancellation	6	3	50
None	1	1	100

NOTE: S indicates stenographer; J indicates judge; Some hearings included multiple topics and were categorized according the overarching hearing type (e.g., violation hearing and bond setting categorized as violation hearing); Multiple stenographers could be assigned to a hearing that was heard across different parts of the day.

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