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Civil Liability for Inadequate Prisoner Medical Care – An Introduction

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1. Introduction

Detention and correctional facilities have an obligation to provide adequate medical care to detainees and prisoners. Because they are in the care, custody, and control of the institution, and are unable to seek their medical care elsewhere, as free persons may do, this is an important task that considerable time, effort, and expense must be devoted to. Frequently, incarcerated persons have severe health problems, due to alcohol or drug abuse, and other factors.

This article is intended as a brief introduction to the basics of the legal obligation to provide adequate medical care. It does not attempt to address in any detail special issues concerning drug or alcohol abuse programs, [mental health issues](#), [prisoner suicide](#), [HIV/AIDS](#), health/medical/legal aspects of [tobacco smoking](#), or [dental care](#), topics which should be addressed separately in other articles.

The focus is on federal constitutional claims for inadequate medical treatment, rather than state law medical malpractice (negligence) claims. The conclusion of the article lists some helpful resources readily available on-line.

2. The Duty to Provide Medical Care

The U.S. Supreme Court has consistently stated for some time that there is an obligation to provide adequate medical care to detainees and prisoners. For convicted prisoners, the source of that obligation stems from the Eighth Amendment to the U.S. Constitution, and its prohibition on “cruel and unusual

punishment.”

In [Estelle v. Gamble](#), 429 U.S. 97 (1976), the Court addressed the treatment of a Texas prisoner who suffered a back injury, and argued that he was not provided with adequate diagnosis and treatment. Over a three-month period, he was seen by medical personnel a total of seventeen times, provided with bed rest, muscle relaxants, and prescription pain relievers. The Court rejected the prisoner’s argument that even more should have been done to address his medical problems. The Eighth Amendment, the Court stated, bars “deliberate indifference to serious medical needs of prisoners,” which would constitute the unnecessary and wanton infliction of pain. This conclusion, the Court noted, does not mean that “every claim” by a prisoner that his medical treatment was inadequate is a violation of the Eighth Amendment.

“An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain. Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute ‘an unnecessary and wanton infliction of pain’ or to be repugnant to the conscience of mankind. Thus a complaint that a physician has been negligent in dispersing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”

In [Bell v. Wolfish](#), 441 U.S. 520 (1979), the Court ruled that the obligation to provide such care to pre-trial detainees arises from the due process guarantees of the Fourteenth Amendment, and that failure to provide such care would essentially constitute a form of punishment imposed on persons not convicted of a crime, which is impermissible.

While there may be some theoretical differences as to the source of protection afforded to convicted prisoners and pre-trial detainees, the essential legal standard for a constitutional violation is the same—protection against deliberate indifference to serious medical needs. See [Butler v. Fletcher](#), No. 05-3480, 465 F.3d 340 (8th Cir. 2006) (federal appeals court finds that deliberate indifference is the appropriate standard for claims of inadequate medical care for both pretrial detainees and convicted prisoners).

As a practical matter, what does all this mean? In order for a prisoner suing for damages in a federal civil rights lawsuit to prevail, they must first prove that they had a serious medical need, that the persons being sued knew of that need, and that they intentionally or deliberately failed to provide required treatment for that need. The plaintiff prisoner must also show that this course of events caused them some

unnecessary pain and suffering or similar harm. That standard is both objective (requiring a finding of a “serious” medical need), and subjective—that is, the defendant employee or official must know of that need or condition, understand that their actions or failure to act would constitute a conscious disregard of a substantial risk of causing the prisoner serious harm, and then cause that harm, either immediately or in the future.

3. Deliberate Indifference

Deliberate indifference, as noted above, requires that the employee or official, whether they are medical personnel or other correctional personnel, actually know of the risk of harm that they are enhancing by failing to provide medical treatment, by providing clearly inadequate medical treatment, or by delaying such treatment. This is far different than the state law negligence standard used in medical malpractice lawsuits, in which the issue is whether what the medical practitioner does represents what a reasonable doctor, nurse, therapist, or other healthcare professional should do under the circumstances, i.e., the standard of medical care ordinarily expected to be provided in the local community.

It is not sufficient, therefore, in the federal civil rights lawsuit over inadequate medical care for the plaintiff prisoner to point to mere negligence by a doctor, to contend that the care provided was not absolutely the best possible, that medical personnel inadvertently failed to pursue some possible avenue of diagnosis or treatment, or that they “should have” known that their symptoms indicated a particular medical condition.

Additionally, as many courts have ruled, the mere fact that another doctor may have disagreed with the particular treatment avenue pursued—or even more, the mere fact that the prisoner would have preferred another treatment avenue, does not mean that the defendant’s actions constituted deliberate indifference. In Shell v. Brzezniak, No. 00-CV-61521, 365 F. Supp. 2d 362 (W.D.N.Y. 2005), for instance, a complaint about medical care that amounted only to a disagreement about the manner of treatment received was found insufficient to state a constitutional claim for deliberate indifference against a prison doctor. Also see Marcotte v. Monroe Corrections Complex, No. C04-1925, 394 F. Supp. 2d 1289 (W.D. Wash. 2005), in which the court ruled that an inmate’s disagreement with the reasonableness of a physician-assistant’s diagnosis and treatment of him prior to his suffering a stroke was insufficient to show deliberate indifference to his serious medical needs.

Sometimes, a prisoner may have a personal belief or preference concerning the treatment that he or she thinks should be provided. That does not mean that failure to do so is actionable. In one case, the court found that a prisoner’s personal belief

that his penile pain could be relieved by circumcision was insufficient, under the Eighth Amendment, to require the Wisconsin Department of Corrections to make arrangements to have the procedure performed for free. Adsit v. Kaplan, No. 05-C-579-C, 410 F. Supp. 2d 776 (W.D. Wis. 2006).

See also Norfleet v. Gehrke, No. 05-1237, 439 F.3d 392 (7th Cir. 2006), a case in which the court ruled that prison medical personnel who denied a prisoner suffering from arthritis soft-soled shoes for his aching feet and delayed renewal of his prescribed pain medication did not violate his rights. The evidence showed, at most, the court found, a difference of opinion concerning the proper treatment, and not deliberate indifference.

Other cases with similar results include Gillen v. D'Amico, No. 06-15733, 2007 U.S. App. Lexis 13846 (9th Cir.), in which prison officials were not shown to have acted with deliberate indifference in denying a prisoner's request for a replacement prosthetic leg, based on his claim that it fit poorly and caused him pain. The prisoner was offered alternatives of using crutches, a cane, or a wheelchair instead of getting a replacement prosthetic leg, and his mere disagreement with his treating doctors about these alternatives for his serious medical condition, an amputated leg, was insufficient to show deliberate indifference.

Also see Johnson v. Talley, No. 05-50947, 2007 U.S. App. Lexis 13879 (5th Cir.), finding that a doctor's actions in failing to provide a prisoner with a walking stick, cane, or knee brace for a period of time, if true, was, at most, a difference of opinion or negligence (medical malpractice), and was insufficient to state a claim for violation of the prisoner's constitutional rights.

In Johnson v. Doughty, No. 04-1139, 2006 U.S. App. Lexis 1060 (7th Cir.), the court found that prison doctors' decision to provide only non-surgical treatment for a prisoner's inguinal hernia was not deliberate indifference to a serious medical need. Other treatment was provided, including Tylenol and a hernia belt, as well as Metamucil to relieve bowel discomfort. The prisoner was advised to avoid heavy lifting and strenuous activity, and the prisoner also received a lower bunk permit. Another doctor the prisoner subsequently saw concurred with these conclusions. In upholding the final judgment for the defendants, the appeals court noted that, in a federal civil rights lawsuit, the standard for liability is deliberate indifference to a known serious medical need, not medical malpractice, negligence, or even gross negligence. Mere "dissatisfaction or disagreement with a doctor's course of treatment is generally insufficient."

The court found that the defendants with medical expertise acted within the scope of professional medical judgment, and did not see any worsening of the prisoner's condition that would make surgery a medical necessity. The appeals

court found no evidence to support the prisoner's allegation that the defendants had a policy of denying surgical treatment for hernias as a cost savings measure.

While the prisoner's condition was serious, and he did experience pain, he also received treatment for the pain, and "rather extensive medical attention" in general. When he was transferred to another facility, the doctors there also declined to operate. Rather than indicating deliberate indifference, the record showed "a rather thorough monitoring" of his condition. Further, after his release from prison, the prisoner still did not have an operation and he had "learned to alleviate the pain."

In [Martinez v. Garden](#), No. 05-4019, 2005 U.S. App. Lexis 27179 (10th Cir.), the facts that a Utah prisoner alleged about prison officials failing to provide surgery for problems with his testicles, if true, were found to be adequate to support an inference of deliberate indifference to a serious medical problem.

He claimed that he was not provided adequate medical treatment for a cyst on his left testicle and "epididymis" of his right testicle (an inflammation or infection of the epididymis, a convoluted duct that lies on the posterior surface of the testicle). In a lawsuit brought against prison personnel, he stated that these conditions were diagnosed by a doctor in June of 2002, and that he was told that if his symptoms did not "resolve themselves" within a month, he would need surgery.

He further claimed that his condition never improved and that the prison failed to provide the required surgery at either the prison or an outside medical facility, resulting in him experiencing ongoing "constant pain." Prison officials allegedly told him that there was nothing they could do for his condition because he has missed medical appointments, but he denied being informed of such appointments, and argued that he was dependent on prison personnel to "arrange transportation" for any appointment.

The federal appeals court found that the prisoner's complaint could be read as alleging that the defendants knew of his serious medical condition, and despite that knowledge, failed to ensure that he received medical treatment. This failure, whether based on failure to inform him of medical appointments, or to arrange transportation to them, could support a conclusion that the defendants acted with deliberate indifference. Additionally, because the prisoner also claimed that he was never informed of the medical appointments, " the court stated, "one could infer that defendants did not make the appointments, thus also potentially establishing deliberate indifference."

Deliberate indifference requires some form of knowledge of the problem.

Correctional personnel with no awareness at all of a prisoner's medical problem, therefore, will not be held liable for alleged inadequate care. In [Tatum v. Simpson](#), No. CIV A05CV00669, 399 F. Supp. 2d 1159 (D. Colo. 2005), for instance, a sheriff was found not personally liable for the alleged denial of medications and medical treatment to a jail detainee when there was no evidence that the sheriff knew either about the detainee's need for prescribed medicine or medical treatment, and no evidence which showed that the alleged deprivations occurred because of any policy or procedure established by the sheriff.

Similarly, in [Vaughn v. Greene County](#), No. 04-3916, 2006 U.S. App. Lexis 3801 (8th Cir.), a sheriff was found not liable for the death of jail detainee who had a heart attack. Medical intake forms did not reveal any prior heart problems, and there was no evidence that the sheriff was personally aware of any serious medical needs of the detainee, disregarded them, or inadequately trained or supervised his employees in a manner which caused the detainee's death.

In [Mayo v. Snyder](#), No. 05-1775, 166 Fed. Appx. 845 (7th Cir. 2006), prison administrators were not shown to have known of prisoner's requests for medical treatment for back pain prior to his initial doctor's appointment, so they could not be said to have acted with deliberate indifference to a serious medical need.

To the contrary, those with knowledge who allegedly knowingly disregard medical advice by failing to provide treatment known to be required may find themselves facing considerable difficulty in subsequent lawsuits. In [Jett v. Penner](#), No. 04-15882, 2006 U.S. App. Lexis 5891 (9th Cir.), a federal appeals court found that a prisoner presented sufficient evidence from which a jury could find that a prison doctor and a warden were deliberately indifferent to his need to have his fractured right thumb placed in a permanent cast by an orthopedic specialist, as instructed by a hospital emergency room doctor.

Medical care must not be denied as a form of punishment. See [Cook v. Pueppke](#), No. 1:05CV0105, 421 F. Supp. 2d 1201 (E.D. Mo. 2006), ruling that if, as a prisoner alleged, a nurse supervisor instructed other prison nurses not to provide him with his prescribed pain medication following a tooth extraction because of his attempted escape effort, this could constitute deliberate indifference to a serious medical need.

While negligence is not sufficient for a federal civil rights claim, in some instances the failure to correct an allegedly known negligent mistake may be. In [Spann v. Roper](#), No. 05-2721, 2006 U.S. App. Lexis 17480 (8th Cir.), the court found that a prison nurse did not act with deliberate indifference in making a prisoner take psychotropic medications actually prescribed for another prisoner, since that was at most a negligent mistake, but that a jury could find that she acted

with deliberate indifference in leaving him in his cell without immediate medical attention for three hours after she realized her mistake.

If a denial of needed care results from an official municipal policy or custom, the municipality or agency can be held liable, as well as individual personnel. In [Davis v. Carter](#), No. 05-1695, 2006 U.S. App. Lexis 16183 (7th Cir.), the court found that the estate of a jail inmate who died from untreated methadone withdrawal on the sixth day of a ten day sentence for a traffic offense presented sufficient evidence from which a jury could find that the county had a widespread custom or practice of failing to provide timely methadone treatment to prisoners.

In some instances, in order to show that particular medical treatment or lack thereof constituted deliberate indifference, there may be a need for expert testimony from medical personnel, when the need for such treatment would not be obvious to a layman, or when it is required to show that the treatment provided (or not provided) caused the subsequent harm. In [Alberson v. Norris](#), No. 06-1534, 2006 U.S. App. Lexis 20784 (8th Cir.), the failure to present expert testimony to support claim that deliberate indifference to prisoner's need for medical treatment for a rare autoimmune disease caused his death was "fatal," as a matter of law, to that claim, according to the court.

In a case where it was alleged that jailers significantly delayed summoning an ambulance for prisoner exhibiting "obvious" symptoms of heart attack, who had previously told them he was a heart patient, a court found that if they did so, they violated his clearly established constitutional rights. [Plemmons v. Roberts](#), No. 05-3110, 439 F.3d 818 (8th Cir. 2006). See also [Gordon v. Frank](#), No. 05-3981, 2006 U.S. App. Lexis 18299 (8th Cir.). (Officers at jail were not entitled to qualified immunity in lawsuit brought concerning death of prisoner with a heart condition when they allegedly knew of his serious medical condition, were aware of his complaints of difficulty breathing and chest pain, but failed to take steps to provide immediate medical assistance).

4. The Issues of Delay and Negative Results from Treatment

An issue that comes up from time to time in prisoner lawsuits over medical care is that of delay in providing needed or requested treatment, even though the treatment is ultimately provided. Prisoner who claimed that his treatment for symptoms of a heart attack was delayed failed to show that the delay had any detrimental effect on him, and therefore could not pursue a federal civil rights claim against prison officials and employees.

A case illustrative of this is [Laughlin v. Schriro](#), No. 04-2101, 2005 U.S. App. Lexis 26648 (8th Cir.), in which a Missouri prisoner claimed that, after he

experienced physical symptoms one morning which he believed indicated a heart attack, he pressed a call button in his cell at least twice until a correctional officer responded more than an hour later.

After he told the officer about his symptoms, it allegedly took another twenty minutes before another prison employee came to his cell, and another fifteen minutes before medical assistance arrived. He was then allegedly taken to a medical unit, examined by a doctor, given an over-the-counter antacid, and then returned to his cell. Almost five hours later, medical assistance again responded to his cell, and the prisoner was taken to the medical unit and then admitted to the infirmary. The next day, he was taken to a hospital, where he was diagnosed as having suffered a small acute myocardial infarction, and subsequently received angioplasty treatment there.

A federal appeals court upheld summary judgment for the defendants. To win on a federal civil rights lawsuit for inadequate medical care, the court noted, the plaintiff needed to show both that the deprivation suffered was "objectively serious," and that the defendant prison official was "deliberately indifferent" to his health or safety.

The "objective seriousness," the court said, must be measured by the effect of a delay in treatment. While the plaintiff prisoner presented evidence of his diagnosis and treatment, he failed to offer any evidence showing that the alleged delay in treatment had a detrimental effect on him, and therefore failed to create a genuine issue of material fact on an "essential element" of his lawsuit. Summary judgment in favor of the defendants was therefore proper,

Similarly, in Wood v. Idaho Department of Corrections, No. CV04-99 391 F. Supp. 2d 852 (D. Idaho 2005), a court found that mere delay in vaccinating inmate suffering from Hepatitis C with Hepatitis A and B vaccines was not a violation of the Eighth Amendment. Inmate did not get Hepatitis A or B before he was vaccinated, and his alleged "worry" and "distress" from the fear that he would be insufficient for a constitutional violation.).

On the other hand, when it is clear and obvious to all that medical care is required, failing to arrange for it, especially when it results in further sickness or injury, will lead to liability. In one case, the court found that the detention officers' alleged actions of ignoring prisoner's requests for medical care for two full days after he experienced pain, vomiting, and nausea would be adequate to state an Eighth Amendment claim for liability for prisoner's subsequent ruptured appendix. Boyd v. Robeson County, No. COA03-1222, 621 S.E.2d 1 (N.C. App. 2005).

The mere fact that there is a negative result from the treatment provided, on the

other hand, does not necessarily mean that the medical care provided was inadequate. Patients do, of course, get worse and even die, even when given the best of care in some instances. In one case, the court found that jail staff members did not act with deliberate indifference to the medical needs of a pretrial detainee who died while suffering from acute drug withdrawal with excessive vomiting. The detainee, the court noted, was provided with immediate medical attention when his symptoms occurred. [Sylvester v. City of Newark](#), No. 03-4872, 120 Fed. Appx. 419 (3rd Cir. 2005), so that medical personnel attempted to do what they could for him.

A similar case is that of [Estate of Harbin v. City of Detroit](#), No. 03-2486, 147 Fed. Appx. 566 (6th Cir. 2005), in which the estate of a pretrial detainee who died from heart attack while incarcerated failed to show that the city failed to provide him with adequate medical care. The record showed that detainee was taken to the hospital after he complained of chest pains.

In [Gusman v. Bureau of Prisons](#), No. 06-2022, 2007 U.S. App. Lexis 11571 (3rd Cir.), the court found that a prisoner who received treatment more than 30 times between January 2003 and March 2004 for his ear infections, including receiving antibiotics, antihistamines, anti-inflammatory and pain medications, and ear drops, and was sent to a specialist approximately five months after the ear infections began did not show deliberate indifference to his serious medical needs, despite the fact that he subsequently suffered a significant hearing loss. Additionally, because the warden was not a doctor, his alleged failure to respond to the prisoner's medical complaints while he was already being treated by medical staff members was not deliberate indifference.

Minor or negligent delays will not result in liability. In [Johnson v. Hamilton](#), No. 05-1453, 2006 U.S. App. Lexis 16767 (8th Cir.), the court found that an alleged one-month delay in x-raying a prisoner's hand after a nurse tentatively diagnosed him as having a fractured finger was not shown to be anything more than negligence, which was insufficient for a federal constitutional claim.

Similarly, in [Hood v. Krajnik](#), No. 05-10254, 2007 U.S. Dist. Lexis 23342 (E.D. Mich.), a prisoner did not show that a knee injury he suffered was sufficiently serious so that a 30-minute delay, as opposed to denial, of treatment for it constituted deliberate indifference to a serious medical need. The prisoner's injury was a "chronic knee condition," present for years, for which it was not "obvious" that it required a doctor's attention. There was also no evidence that the delay caused him any damage

A prisoner cannot successfully recover damages for alleged inadequate medical care if his worsening condition is a result of his own actions to comply with

medical instructions or other similar self-injurious acts. [Gibson v. Weber](#), No. 05-1888 433 F.3d 642 (8th Cir. 2006), for instance, a diabetic prisoner's foot injuries, burns from participating in a Native American religious sweat lodge purification ceremony, only worsened and necessitated amputation after he refused to comply with medical personnel and undertook to provide his own care. He therefore failed to present sufficient evidence to support his subsequent claim for inadequate medical treatment.

On the other hand, when it can be shown that a negative result was caused by a delay in treatment or by inadequate treatment, there can be liability. In [Billops v. Sandoval](#), [No. Civ.A. H-05-0530](#), 401 S. Supp. 2d 766 (S.D. Tex. 2005), the court found that a prisoner's estate, by asserting that prison medical personnel were deliberately indifferent for months to his medical condition, including persistent sinus problems, while his weight dropped from 190 to 138 lbs. stated a claim for violation of his 8th Amendment rights and could be the basis of liability for his subsequent death from an intracerebral abscess caused by bacterial sinusitis.

5. Relevant Resources

The federal [Bureau of Prisons](#) (BOP) has made available on its website the full text of a number of [Clinical Practice Guidelines](#) (CPGs) on various health/medical issues relevant and important in the care of prisoners. These include topics such as asthma, coronary artery disease, depression, detoxification of chemically dependent inmates, diabetes, gastroesophageal reflux disease (GERD), dyspepsia & peptic ulcer disease, headache, hepatitis, HIV, hypertension, lipid disorders, medical management of exposures; HIV, HBC, HCV, human bites, and sexual assaults, methicillin-resistant staphylococcus aureus (MRSA) infections, preventive health care, tuberculosis, and varicella zoster virus infections. New CPGs are published on the website when issued from time to time.

Also of interest on the BOP site are links to the BOP's [national formulary](#), concerning medications for use in federal prison facilities, a [report on infectious disease management](#), and a document on [discharge assistance for social work professionals](#), concerning health care resources for prisoners being released into the community. Additionally, the BOP's [program statements](#) in the areas of inmate (and staff) health services covers a broad range of issues, including alcohol surveillance and testing programs, autopsies, birth control, pregnancy, child placement, and abortion, dental services, health services administration, inmate co-payment program, laboratory services, over-the-counter medications, patient care, pharmacy services, plastic surgery and identification records, psychiatric services, and administrative safeguards for psychiatric treatment and medication.

Much useful information is always available at the website of the [Centers for](#)

[Disease Control and Prevention](#). A very [useful collection of links](#) to healthcare information on a wide variety of topics is found on the website [Corrections Connection](#). Also important is the website of the [National Commission on Correctional Health Care](#).

Special issues concerning the care of dying prisoners, including links to on-line resources and a selected bibliography may be found at the website of the [National Prison Hospice Association](#).

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