



ISSN 1935-0007

Cite as: 2009 (9) AELE Mo. L. J. 301
Jail & Prisoner Law Section – September 2009

Civil Liability for Inadequate Prisoner Dental Care

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Introduction

While providing dental care to prisoners may not be as “dramatic” as providing medical care for heart attacks, strokes, cancer, HIV/AIDS or cancer, it is a necessary part of what correctional facilities must provide. A substantial number of federal courts, both at the trial and appeals court levels, have grappled with prisoner lawsuits alleging inadequate dental treatment and seeking money damages.

This article briefly examines some of these cases. The focus is liability under federal civil rights law for allegedly inadequate dental treatment. The article does not discuss claims for ordinary dental malpractice, which may be brought under state law. At the end of the article, a few useful resources are listed.

Prisoner Dental Care

The general basis for federal civil rights liability for inadequate medical care of all kinds is the prohibition, in the Eighth Amendment, of “cruel and unusual punishment.” In [Estelle v. Gamble](#), #75-929, 429 U.S. 97 (1976), the U.S. Supreme Court held that the Eighth Amendment bars “deliberate indifference to serious medical needs of prisoners,” which would constitute the unnecessary and wanton infliction of pain.

The Court extended that protection to pre-trial detainees in [Bell v. Wolfish](#), #77-1829, 441 U.S. 520 (1979), finding 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 adequate care would essentially constitute a form of punishment imposed on persons not convicted of a crime, which is impermissible. These rulings, as they apply to

all prisoner medical care, are discussed in more detail in [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.

Dental problems may, in some instances, be serious medical needs. In [Hartsfield v. Colburn](#), #03-2602, 2004 U.S. App. Lexis 11572 (8th Cir.), for instance, a federal appeals court ruled that an inmate's claim that a prison doctor and nurse failed to arrange for dental care for him for six weeks after his written request stated a possible claim for deliberate indifference to his serious medical needs. The prisoner alleged that he submitted a written medical request asking to be examined by a jail nurse and doctor on October 20, 2001, claiming that he was suffering a severe toothache and three loose teeth, but that his complaints were ignored.

He finally received treatment from a dentist on December 5, 2001, the inmate asserted, and the dentist told him that the delay had caused a bad infection in his mouth. The dentist pulled three of his teeth and prescribed antibiotics and ibuprofen.

The prisoner sued, claiming that the nurse and doctor had been deliberately indifferent to his serious medical needs and that the jail had a policy or custom of not providing adequate treatment for pretrial detainees in order to save money.

Overtaking summary judgment for the defendants, a federal appeals court noted that the plaintiff presented evidence that he suffered extreme pain from loose and infected teeth, which caused blood to seep from his gums, swelling, and difficulty sleeping and eating. This was a serious need for medical attention that "would have been obvious to a layperson, making submission of verifying medical evidence unnecessary."

Further, the prisoner claimed that the nurse ignored his repeated complaints and requests for medical attention, and that the doctor did nothing when contacted about his condition. The doctor allegedly withheld dental treatment for "non-medical reasons" such as the prisoner's behavioral problems. There was a factual issue, therefore, whether these defendants were deliberately indifferent to the prisoner's serious medical needs when they failed to arrange for dental treatment until about six weeks after his written request for it, causing him to suffer further pain and infection.

Similarly, in [Farrow v. West](#), #01-13846, 320 F.3d 1235 (11th Cir. 2003), a federal appeals court ruled that a trial court improperly granted summary judgment on a prisoner's claim for "deliberate indifference" to his serious medical needs to a dentist who only provided him with dentures fifteen months after first prescribing them as medically necessary, and one month after prisoner filed suit.

This prisoner had only two lower teeth when he entered the Alabama prison system in June of 1999, a condition that made it painful for him to consume hard foods and forced him to improvise a soft diet consisting of foods that he could ingest by using only his

tongue and the upper part of his mouth. He also had difficulty closing his mouth without having his two lower teeth slice into his upper gums, causing his gums to bleed, and often experienced severe soreness and swelling in his gum, and his condition also led to weight loss.

During a visit to a prison dentist in October of 1999, the dentist prescribed a complete denture for the prisoner's upper mouth and a removable partial denture to fit over the prisoner's two remaining teeth for his lower mouth. He also began the process of constructing the dentures by taking an impression of the prisoner's mouth.

The prisoner allegedly “angered” the dentist by complaining the following month about the delay in completing the dentures, saying that he did not know of any dentist “in the free world” who took longer than thirty days to provide dentures. The dentist allegedly refused to meet with the prisoner for several months, and the prisoner repeatedly suffered bleeding gums and other problems. Ultimately, he filed a federal civil rights lawsuit over the delay in December of 2000, seeking an injunction ordering that his dentures be completed and delivered. The dentures were then delivered on January 2, 2001, “nearly fifteen months” after the dentist had prescribed them as medically necessary, but less than one month after he filed suit.

The appeals court had little difficulty in finding that the prisoner's obtaining of dentures represented a “serious medical need.” While not saying that merely having few or no teeth and a definite need for dentures “per se” constitutes a serious medical need in each case, in this prisoner's case, the evidence showed “pain, continual bleeding and swollen gums, two remaining teeth slicing into gums, weight loss,” and other medical problems.

The appeals court also found that there was evidence from which a fact finder could rule that the dentist acted with “deliberate indifference” to this serious medical need. The dentist had knowledge of the prisoner's need for the dentures, and even prescribed them. There were long periods of time during which the prisoner received no dental care.

While the prisoner's condition may not have required “immediate” attention, his claim survived summary judgment, the court ruled, “given his recognized need for denture treatment, the nature of his continuing problems, the sheer length of the delay involved, and the lack of any reasonable explanation for the inordinate delay in this case.” No “reasonable explanation” for the delay was offered, the court noted.

The court found that, drawing all reasonable inferences in the prisoner's favor, the evidence would support a jury finding that the dentist “purposefully refused to treat or see” the prisoner for a considerable period of time after he had an argument with the prisoner during the November 1999 visit and told the prisoner that he was “sick of being bother[ed] with [him].” There was therefore a genuine issue of fact as to whether the dentist acted with deliberate indifference to a serious medical need.

Civil liability must be based on the existence of a serious medical condition, requiring treatment. Slight discomfort will not suffice. In [Greene v. Pollard](#), #08-3884, 2009 U.S. App. Lexis 12655 (Unpub. 7th Cir.), for example, the court noted that a prisoner's own description of the only symptoms he claimed to have suffered as a result of denial of a specific dental procedure, bonding of a tooth, amounted to a sensitivity to hot and cold and a constant aching. These symptoms, unlike such things as a gum infection or tooth decay, did not constitute serious medical needs, as they did not pose substantial risks to his health if untreated. The prisoner's personal prediction that things might worsen over time was not enough to show an Eighth Amendment violation, and the prisoner had been free to request another dental appointment if his condition worsened.

Similarly, in [Olivas v. Corrections Corporation of America](#), #Civ.A.4:04-CV-511, 408 F. Supp. 2d 251 (N.D. Tex. 2006), the court found that an incident in which prisoner broke two front teeth was not a dental injury requiring emergency care, so that a delay in treatment did not amount to deliberate indifference to a serious medical need by the private prison-management company managing the facility. Further, the evidence showed that he did not initially ask for emergency care, and that he did not suffer pain that required anything more than over-the-counter medications.

Failure to provide prisoners with supplies that they can use to perform routine oral hygiene can also result in possible liability. In [Board v. Farnham](#), No. 03-2628, 2005 U.S. App. Lexis 101 (7th Cir. 2005), the court found that denial of toothpaste for an extended period of time could violate a detainee's rights because of the possible consequences of poor dental hygiene.

The appeals court noted that “pursuant to constitutional requirements, a pretrial detainee 'may not be punished prior to an adjudication of guilt in accordance with due process of law.'” “Accordingly, in assessing the constitutionality of the conditions or restrictions faced by pretrial detainees like the plaintiffs, “we must determine whether the conditions allegedly encountered by the detainee amounted to punishment.”

The appeals court found that the plaintiffs stated a claim against the sheriff with their assertion that he repeatedly ignored their requests for toothpaste for a period of the time they were incarcerated at the jail. The court pointed out that a lack of proper dental hygiene can result in periodontal disease, followed by tooth loss and can also be related to life-threatening problems, including sepsis and heart complications. Because of these possible consequences, the denial of toothpaste for a long period of time can constitute a constitutional violation.

The issue of delay in treatment frequently comes up in litigation over prisoner dental care. Courts have rejected arguments that a delay in treatment may not be a basis for liability. See, [Chance v. Armstrong](#), #97-2028, 143 F.3d 698 (2nd Cir. 1998) (Inmate's

assertion that prison dentists delayed filling cavities and preferred extracting his teeth to doing so stated a possible Eighth Amendment claim; trial court was mistaken in ruling that delay in dental treatment could not state a federal civil rights claim).

To result in liability, however, the delay must be unwarranted, and cause serious problems, amounting to deliberate indifference. In [Johnson v. Mullin](#), #04-7110, 2005 U.S. App. Lexis 19285 (10th Cir.), for instance, the court found that, despite an alleged one-month delay in obtaining dental treatment for him, a prisoner failed to allege facts that would show that defendant prison officials were deliberately indifferent to his serious medical needs in not arranging for him to obtain immediate dental treatment for gingivitis and broken teeth.

The plaintiff claimed that he first requested medical treatment for bleeding, swelling, and infection in his mouth, and was seen two days later by a prison doctor who diagnosed gingivitis and broken teeth, and prescribed an antibiotic and ibuprofen for the pain. The doctor also allegedly told the prisoner that he needed to see a dentist immediately, but he did not see a dentist, according to the plaintiff, until a full month later.

The prisoner sued the warden, the acting chief health service administrator, and a certified dental assistant, claiming that they were deliberately indifferent to his serious medical needs by refusing to obtain dental treatment for him, causing him to endure thirty to forty days of severe pain. The plaintiff did not, however, claim that these defendants had any personal role in his treatment or ever examined him.

The plaintiff's claim amounted to ascribing deliberate indifference to the failure of the defendants to arrange for him to see a dentist prior to the regular prison dentist's scheduled rounds. The health service administrator denied the prisoner's grievance, telling him he was scheduled with the dentist "in the very near future," and the warden allegedly signed off on the denial of the grievance.

Deliberate indifference, however, must be based both on the existence of objectively serious medical needs, and knowledge by the defendant of the substantial risk of serious harm from the failure to provide particular care. The appeals court found that, even taking the facts and their inference in the light most favorable to the plaintiff, he failed to show the subjective knowledge sufficient to prove his case.

Despite the prisoner's claim that the defendants should have arranged for immediate dental care, the prison's policy provided that outside dental resources could be accessed only in the case of a dental "emergency," and only when such emergency is identified by designated medical personnel, such as a dentist, physician, nurse practitioner, physician assistant, or registered nurse.

No one with such authority ever classified the prisoner's case as an "emergency," and

the doctor who allegedly recommended that the plaintiff seek immediate dental care never filed the required form indicating a dental emergency as required by the policy. The Defendants, therefore, were never told that the prisoner's situation constituted an emergency, and were therefore not “aware of facts” from which they could have known that a “substantial risk of serious harm” existed.

Some other cases involving the issue of delay in treatment include:

* [McCarthy v. Place](#), #07-3974, 2008 U.S. App. Lexis 24361 (6th Cir.), in which a federal appeals court overturned summary judgment for a defendant dentist in a prisoner's lawsuit claiming disregard of a serious risk of harm in allegedly merely giving prisoner ibuprofen for the pain of a severe toothache, rather than providing a temporary filling for that tooth to alleviate the pain, pending the performance of several other extractions which had to be performed before a permanent filling was provided. This allegedly resulted in a seven-month delay in treatment of the cavity at issue. Some other prisoners had allegedly received temporary fillings in such situations.

* [Young v. Kazmerski](#), #07-2224, 2008 U.S. App. Lexis 4127 (3rd Cir.), finding that a prisoner's claim that correctional employees delayed providing him with the dentures he needed for eleven months, resulting in him suffering pain and difficulty in eating and chewing food was sufficient to present a genuine issue of material fact as to whether they were deliberately indifferent to a serious medical need. All of his teeth had been pulled except six bottom teeth, and he claims that the remaining teeth cut into his top gums, interfering with his sleep and with eating.

* [Finley v. Parker](#), #05-56531, 2007 U.S. App. Lexis 25662 (Unpub. 9th Cir.), ruling that the actions of a dental assistant, in allegedly failing to follow prison procedure and repeatedly refusing to add a prisoner's name to a sick call list, resulting in a 7-1/2 month delay in his access to a dentist for the removal of a fragment of a tooth previously extracted could constitute deliberate indifference. The court rejected the prisoner's claim concerning another, chipped, tooth. The dental assistant's action in giving the prisoner a choice between waiting for a filing or immediate extraction of the chipped tooth was not deliberate indifference.

A delay in treatment, however, will not result in liability when the reason for the delay is attributable to the prisoner. See [Hartsfield v. Colburn](#), #06-2454, 2007 U.S. App. Lexis 17141 (8th Cir.). (A delay in referring a prisoner to an oral surgeon to have three teeth extracted did not amount to deliberate indifference to a serious medical need when the trial court found, without any clear error, that a prison nurse lacked knowledge of a serious medical need, and that the delay in fact resulted from the prisoner's own failure to follow the institution's administrative procedures. The prisoner's claims amounted to, at most, a claim of negligence, which is not sufficient for a federal civil rights lawsuit, which requires a showing of deliberate indifference.), and [Yoon v. Hickman](#), #05-55338, 2006 U.S. App.

Lexis 4873, 171 Fed. Appx. 541 (9th Cir. 2006) (Prison dentist who saw a prisoner on nine occasions, and provided tooth extraction, salt rinses, and medication, did not act with deliberate indifference. Court finds that any delays in treatment were caused, in part, by the prisoner's own refusal to show up for five scheduled appointments.).

What does it take to show that the dental treatment provided was inadequate?

It will certainly take more than a prisoner's mere assertion. In [Meuir v. Greene County Jail Employees](#), #05-3394, 2007 U.S. App. Lexis 13006 (8th Cir.), a federal appeals court upheld summary judgment against a prisoner who claimed that a jail's medical personnel were deliberately indifferent to his serious dental needs, and retaliated against him for refusing to visit the county dentist, as well as that the county had an improper policy under which teeth were only pulled out, rather than treated. The defendant produced medical evidence that the treatment provided or offered was adequate, and the prisoner's bare claim that the treatment was inadequate did not create a genuine issue of fact. Further, while the prisoner claimed, on the basis of a conversation with a guard, that the county had a "pull teeth only" policy, his transfer to another facility prior to filing his lawsuit deprived him of standing to pursue any challenge to the alleged policy.

No care at all, if shown, will be an inadequate response to a serious dental problem. In [Newsome v. Chatham County Detention Center](#), #07-10838, 2007 U.S. App. Lexis 27818 (Unpub. 11th Cir.), a prisoner who claimed that he was denied needed dental care created, in his affidavit, a genuine issue of disputed material fact as to whether nurses knew of a serious medical need, and intentionally refused to treat it, either by stating that they would not respond to any of his requests for treatment or by "laughing in his face." A conflict between the existing medical records and the prisoner's version of events was an issue of fact for a jury to decide.

Failure to provide dentures, when medically required, can constitute inadequate treatment. In [Scribner v. Linthicum](#), #06-41108, 2007 U.S. App. Lexis 9552 (Unpub. 5th Cir.), the appeals court found that a prisoner's lawsuit claiming deliberate indifference to his serious medical needs was improperly rejected by the trial court when there was some evidence that the medical director of the prison knew of his condition requiring that his teeth be removed but implemented a policy which barred him from being fitted for dentures. Similarly, in [Vasquez v. Dretke](#), #05-41170, 2007 U.S. App. Lexis 5665 (Unpub. 5th Cir.), a court found that a Texas prisoner's claim that the failure to provide him with recommended dentures caused him difficulty eating, headaches, disfigurement, severe pain, and bleeding in his mouth and stool was sufficient to assert a claim for a violation of his constitutional rights.

Medical personnel may not withhold dental treatment from prisoners in retaliation for unrelated misconduct, or because of disagreements over the treatment provided. See [Cook v. Pueppke](#), #1:05CV0105, 421 F. Supp. 2d 1201 (E.D. Mo. 2006), holding that

if, as 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. Similarly, in [Harrison v. Barkley](#), #97-2286, 219 F.3d 132 (2nd Cir. 2000), the court held that prison officials could not withhold medical treatment from a prisoner who needed a cavity filled because the prisoner refused to consent to the extraction of another tooth; such withholding, if true, violated prisoner's constitutional rights.

Negligence may be a basis for liability for medical malpractice under state law, but it is insufficient for federal civil rights liability, which must be based on deliberate indifference to a known serious medical problem. In [Finnegan v. Maire](#), #04-4200, 405 F.3d 694 (8th Cir. 2005), for instance, the court found that a prisoner's allegations against a prison dentist and others arising out of difficulties with tooth extraction, while they may be sufficient to show negligence, were inadequate to show deliberate indifference as required for a federal civil rights claim. Similarly, in [Majors v. Ridley-Turner](#), 277 F. Supp. 2d 916 (N.D. Ind. 2003), a prisoner's claim of a "great deal" of suffering as a result of a tooth extraction which did not "go well" was insufficient to support a lawsuit for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The prisoner's claim, at most, amounted to possible negligence or medical malpractice, which is insufficient for a constitutional claim, the court stated.

The mere fact that a prisoner disagrees with the course of dental treatment provided, or would prefer a different alternative, is not a basis for showing deliberate indifference, so long as the treatment actually provided is based on medical judgment. The same principal applies even if the prisoner finds and presents another dentist who would have recommended or pursued a different course of treatment.

In [Anderson v. Fishback](#), #CV F 05-0729, 2008 U.S. Dist. Lexis 52791 (E.D. Cal.), the court ruled that a disagreement by a prisoner concerning whether or not a tooth should be extracted was insufficient to show deliberate indifference to his serious dental medical needs. The prisoner claimed that dental treatment was improperly conditioned on his consenting to a tooth extraction that he objected to. The court found that this was nothing more than a difference of opinion concerning the appropriate dental treatment, and did not show that the prison dentist was deliberately indifferent to the prisoner's needs. While the prisoner was entitled to medical (specifically in this case, dental) treatment, he was not necessarily entitled to the type of care he preferred. The prisoner could proceed, however, on his claim that he told the defendants that he was in severe pain because of his diseased teeth, and that nothing was done to alleviate his pain.

Similarly, in [Amarir v. Hill](#), #06-16195, 2007 U.S. App. Lexis 25651 (Unpub. 9th Cir.), when a prisoner was seen by a dentist on nine separate occasions over a 13 month period, there was no showing of deliberate indifference to a serious medical need, but instead, merely a showing that the prisoner had a different opinion than the dentist

concerning the required treatment. The prisoner also failed to allege that he could not afford outside treatment because of indigence.

In [James v. Pennsylvania Dept. of Corrections](#), #06-2937, 2007 U.S. App. Lexis 9919 (Unpub. 3rd Cir.), a prisoner failed to show an undue delay in receiving dental treatment, and the mere fact that he might have preferred a different course of treatment did not show deliberate indifference to his serious medical needs. The prisoner's own evidence conclusively established that he had received timely treatment, and there was no evidence that the dentist's choices concerning that treatment were based on any motive beyond providing routine patient care.

A similar holding was reached in [Beauclair v. Graves](#), #06-3265, 2007 U.S. App. Lexis 12149 (Unpub. 10th Cir.), stating that even if all of a prisoner's complaints concerning his medical and dental treatment were true, that merely established that there was a difference of opinion concerning the appropriate medical treatment for his problems, or that certain defendants were negligent, rather than a violation of his constitutional rights. The prisoner himself agreed that the defendants provided him with the treatment they deemed appropriate.

The fact that another dentist disagrees with the course of treatment is not enough to render treatment offered “deliberate indifference.” In [Davis v. Collins](#), #06-3701, 2007 U.S. App. Lexis 9406 (Unpub. 3rd Cir.), the court found that a prisoner did not show deliberate indifference to a serious medical need simply by alleging that he and another dentist disagreed with a prison dentist's recommendation that a tooth be extracted as non-restorable after a failed root canal procedure. The decision not to perform another procedure, known as an apicoectomy merely showed a medical disagreement about the preferred treatment rather than the deliberate failure to provide adequate care.

In [O'Connor v. McArdle](#), #06-1355, 2007 U.S. App. Lexis 4101 (Unpub. 2nd Cir.), the court held that a dentist's offer to modify a prisoner's existing dental bridge, rather than to provide a replacement fixed bridge when the existing one wiggled slightly due to a cavity on a tooth did not constitute deliberate indifference to a serious medical condition.

Resources

The following are a few useful resources on the topic of this article.

- American Dental Association Internet page on “[meth mouth](#),” an increasingly common problem involving prisoners who are present or former abusers of methamphetamines. “This condition, known as meth mouth, develops rapidly and is attributable to many causes, including the drug's effect of drying the mouth, the tendency of users to grind their teeth and a drug-induced craving for sugary drinks. Often, tooth damage is so severe that extraction is the only viable option.”

- “Dental Care of Prison Populations,” Makrides and Shulman, J. Correct Health Care. 2002; 9:291-306. [Abstract](#).
- Vaughn, Michael., Dias, Clarissa Freitas. and Ekhomu, Jessica. “Section 1983 Liability Against Prison Officials and Dentists for Delaying Dental Care in Correctional Institutions” Paper presented at the annual meeting of the American Society of Criminology (ASC), Los Angeles Convention Center, Los Angeles, CA, Oct 31, 2006. [Abstract](#).
- [Improving the Oral Health of Prisoners to Improve Overall Health and Well-Being](#) Henrie M. Treadwell, Ph.D. and Allan J. Formicola, DDS, Am J Public Health. 2005 October; 95(10): 1677–1678.
- [Dental Public Health Considerations for Prison Populations](#) slideshow presentation Nicholas S. Makrides DMD, MA, MPH, Capt. USPHS
- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.

AELE Monthly Law Journal

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