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❖ **Introduction**

Police officers are first responders. Their primary role is not to render medical assistance to others. Despite this, in the course of patrolling neighborhoods and responding to a wide variety of calls for assistance, they inevitably run into individuals who are seriously ill, such as heart attacks, strokes, epileptic seizures, diabetic incidents, and any number of other health emergencies in which the lack of swift action may all too often mean the difference between life and death or permanent impairment and disability.

Given the near certainty of this eventuality, law enforcement personnel and the agencies that employ them must address these circumstances. Prior articles in this publication have addressed officers' roles in public protection of arrestees, witnesses, informants, injured crime and accident victims, disturbed or suicidal persons, and those who are intoxicated. See the [Resources section](#). This article briefly examines some cases in which courts have grappled with the legal issue of what, if any, are the duties of law enforcement personnel

who encounter ill persons. We addressed encounters with physically injured persons in a 2009 article, [Public Protection: Injured Crime and Accident Victims](#).

At the conclusion of our discussion, some general recommendations are made concerning things that agencies and officers should consider. Then a few relevant resources and references are presented.

### ❖ **Mistaken Diagnosis**

One problem that comes up numerous times in this context are circumstances in which officers encounter someone having a major health crisis that they mistakenly diagnosed as something else, such as intoxication, and act accordingly. While the end result may be tragic, courts will not impose liability on officers who act upon what they reasonably thought they knew.

In [Padula v. Leimbach](#), #10-3395, 638 F.3d 595 (7th Cir. 2011), police officers believed that a motorist who veered off the road, and disobeyed orders to exit his vehicle was intoxicated. He was actually diabetic, and suffering from hypoglycemia. The officers physically pulled him from his car, struck him, and used a chemical agent when he resisted their efforts. After a paramedic recognized the driver's diabetic condition, he was transported to a hospital, where he subsequently died. The officers, under these circumstances, were not liable for the motorist's death, based on the reasonableness of their belief that he was intoxicated.

Similarly, in [Florek v. Village of Mundelein](#), #10-3696, 6449 F.3d 594 (7th Cir. 2011), officers did not know that they were observing the opening phases of a major health crisis. After officers made a controlled purchase of pot in front of an apartment, officers entered the premises, and arrested a female occupant who was smoking marijuana. After she told them that she felt ill, they allegedly denied her requests for a low-dosage aspirin. She subsequently had a heart attack, but the officers were not liable for denying her medical attention, since they were not on notice, based on her appearance, of her serious medical condition, and were not directly made aware that she was experiencing chest pains.

In [Flores v. Jaramillo](#), #10-40096, 389 Fed. Appx. 393, 2010 U.S. App. Lexis 16520 (Unpub. 5th Cir.), when three officers were executing a search warrant, a woman complained of and exhibited some health problems. The officers allegedly denied her request for access to her anti-anxiety medication. Twenty minutes later, the officers summoned EMS personnel to treat her, which they did, leaving the scene, only to be called back later to transport the woman to the hospital.

At some point, she suffered cardiac arrest and went into a coma, remaining in it. A lawsuit accused the officers of violating her civil rights through deliberate indifference to her need for immediate medical care while she was, in essence, a pretrial detainee. A federal appeals court upheld a ruling that the officers were entitled to qualified immunity. They had no subjective knowledge at first that the woman was in serious need of immediate medical attention, and when this became clear to them, they summoned medical personnel and did not interfere with their treatment. Their actions might have been, at worst, negligent, but did not violate her constitutional rights.

Sometimes a call for medical help may not be responded to for reasons beyond the officer's control. In [\*Cummins v. Lewis County\*](#), #76249-0, 133 P.3d 458 (Wash. 2006), the court found that a county was not liable for failure to provide assistance to a heart attack victim on the basis of a 911 call which was hung up before the dispatcher receiving the call could respond, and before any assurance of assistance was made. Although the dispatcher sent an officer to investigate, a prank call had also come from the same pay phone minutes earlier, and the officer cleared the call after finding a boy near the phone who admitted to having made the prank call, but failed to go to the address given in the call reporting the heart attack. The heart attack victim subsequently died. Under these circumstances, no promise of medical aid was given on which the heart attack victim could have reasonably relied.

### ❖ **Known Medical Crisis**

When responding to a known medical crisis, a failure of officers to respond appropriately may result in liability.

This is illustrated by [\*McKenna v. Honsowetz\*](#), #08-2080, 617 F.3d 432 (6th Cir. 2010), in which two officers responded to a 911 call indicating that a man was having a seizure in his home. Finding the man in his bedroom, the officers allegedly told him to get dressed, which he started to do, but then he started to lie down again, and the officers allegedly picked him up by his hands, pulled him up from the ground, and told him to put his pants on. They ultimately handcuffed his wrists and ankles and the man began actively struggling with them.

The officers, however, claimed that the man was unresponsive to verbal questioning, that one of them put a hand on his arm or shoulder to try to rouse him, and that he then did rouse, becoming aggressive and violent, pushing them and causing one officer to fall backwards, making it necessary to handcuff him. Firefighters then arrived as the officers

were restraining him, and together with emergency medical personnel removed him on a stretcher.

In a lawsuit against the officers for violation of the man's Fourth Amendment rights, a jury awarded him \$6,000 for medical bills, and \$275,000 for pain and suffering. The trial court reduced the pain and suffering award to \$10,000. A federal appeals court upheld this result, finding that the jury could reasonably have found that the officer acted in an "objectively law-enforcement rather than medical-response capacity," and unreasonably searched the house for drugs and seized the plaintiff.

### ❖ Do No Harm

If one of the first rules for doctors and other medical personnel is to first do no harm, courts also generally will not impose liability on officers confronted with possible medical emergencies who merely fail to act, and who leave ill persons no worse off than when they found them.

In [\*Carver v. City of Cincinnati\*](#), #06-3230, 474 F.3d 283 (6th Cir. 2007), police officers and emergency medical technicians who found a man lying on a couch when they responded to a call reporting a suspected cardiac arrest in an apartment, and who also found a female dead on the floor there had no general duty to provide assistance to the man on the couch, and were therefore not liable for his subsequent death there. The defendants did not restrain him in any way or place him in their custody, nor did they create a greater danger to him, such as by preventing access for private persons seeking to render assistance, given the absence of any indication that there was any private rescue attempted.

The fact that the officers closed the apartment off as a crime scene for an investigation of the female's death did not by itself increase the risk that the man on the couch would also die. Further, there was no indication that he died while the officers were present. Denial of qualified immunity was therefore reversed.

A different result was reached in [\*Wallace v. Dean\*](#), #SC08-149, 3 So. 3d 1035 (Fla. 2009), in which sheriff's deputies performed a well-being check at a woman's residence in response to a 911 call.

When they went to her home, they found her breathing but unresponsive on a couch in her home. They did not summon medical aid, instead telling a neighbor to leave the woman's door unlocked and check on her later. The neighbor found the woman still unresponsive the next day, and called emergency medical personnel, who took the woman to the hospital, where she died without again regaining conscious.

A wrongful death lawsuit by the woman's daughter asserted that her death was caused by the deputies negligently responding to the 911 call. The Florida Supreme Court held that the sheriff owed the decedent a common law duty of care under state law and that sovereign immunity did not bar the daughter's claim because the deputies' actions were clearly within the scope of their employment and were operational in nature.

Officers will not generally be liable for failing to take or authorize medical procedures when there are medical personnel present who are fully capable of doing so themselves.

This is illustrated by [\*McGaughey v. District of Columbia\*](#), #11-7001, 684 F.3d 1355 (D.C. Cir. 2012). In that case, a female college student was brought to a hospital emergency room after she passed out at a party. Despite their concern that she might have been involuntarily drugged and then raped, police officers declined to authorize the carrying out of a forensic exam. Subsequently, she sued the District of Columbia, claiming that its police were negligent in failing to investigate her possible sexual assault, and that the District negligently hired, trained and supervised the officers in the area of investigating sexual assaults.

Summary judgment was properly granted for the defendant municipality on these claims. The officers owed a duty to investigate possible crimes to the public, not to any specific individual. Additionally, the officers did not prevent the hospital from administering any forensic test, and had its own independent authority to do so if it wished, but declined to do so.

### ❖ **Enhancing the Danger**

Courts are most likely to impose civil liability on officers who, when encountering seriously ill persons, do something to enhance the existing danger or create new dangers to the person.

In [\*Penilla v. City of Huntington Park\*](#), #95-56254, 115 F.3d 707 (9th Cir. 1997), for instance, the court found that police officers could potentially be liable for moving a seriously ill man from his front porch to inside his house, canceling a call for paramedic assistance, and leaving him alone in the locked house. The federal appeals court ruled that officers were not entitled to qualified immunity, as their actions may have enhanced the risk to the man, who later died inside the home.

Similarly, in [\*Rivas v. City of Passaic\*](#), #02-3875, 365 F.3d 181 (3rd Cir. 2004), police and EMTs who responded to a report of a man having a seizure were not entitled to summary

judgment in a lawsuit claiming that they created a further danger to him and used excessive force to restrain him, causing his death.

In that case, a woman in Passaic, New Jersey woke up one morning to find her 44-year-old husband shaking uncontrollably. One of her children called 911 and an ambulance with emergency medical technicians (EMTs) was dispatched. She advised them that her husband had previously had seizures and that he was taking diabetic medication. Inside the apartment, the EMTs found the husband standing in the living room and he began walking in their direction “like a zombie.” One of the EMTs later claimed that the man attacked her without provocation, put his arm around her neck, and attempted to strangle her. The wife disputed this, but the second EMT confirmed this version of the incident.

The EMTs called for police backup. When the officers arrived, one of them claimed that the man became very aggressive and began punching and pushing him in the chest. The officers claimed that they reacted by trying to restrain the man, and that they then all fell on the floor of the living room. The man’s wife claimed that the officers threw her husband to the floor without any provocation.

Three officers attempted to restrain the man, who allegedly kept pulling away. The officers claimed that at one point during the struggle, the man tried to grab an officer’s pistol from his holster. One of the officers then struck the man in the face with a flashlight. Two of the officers also claim that the man bit them. They also allegedly pushed the man’s head into the carpet while they tried to handcuff his wrists behind his back. The wife claimed that the man had not tried to get the officer’s gun, but had only reached around blindly with his arm and touched the officer’s thigh. She also claimed that the officer’s flashlight, at one point, was jammed into her husband’s mouth for a number of minutes.

The man was ultimately placed face down on a stretcher and carried downstairs, with his ankles bound with cloth restraints. One of the EMTs stated that carrying the man face down on the stretcher violated his EMT training, but that he felt like the situation was in the hands of the police at that point. It was disputed whether the man fell off of the stretcher, or went off it when he became combative on the porch. Paramedics arrived, and discovered, when they turned the man onto his back that he was not breathing. He was subsequently pronounced dead.

The man’s estate and family sued the officers and EMTs, claiming that they had used excessive force to quiet and restrain him and created or enhanced the danger to him, causing his death. A federal appeals court upheld the denial of summary judgment to the defendants.

The court found that there was a genuine issue of fact as to whether the EMTs “consciously disregarded” a great risk of harm to the man by falsely accusing him of acting violently and then subsequently “abandoning” him to the police, creating a danger of harm that would not have existed otherwise.

It also found that there was a genuine issue of fact as to whether the police officers, who were told that the man was experiencing a seizure, used excessive force to quiet him. Additionally, the court stated, while the facts were disputed, a reasonable jury could find, on the basis of the evidence, that the man did not present a threat to anyone’s safety as he lay in a prone position on the porch with his hands and ankles secured behind his back.

In some circumstances, even if it would be possible to render medical assistance, there may be other urgent priorities. The court in [\*Cannon v. City of Philadelphia\*](#), #98-CV-4790, 86 F.Supp. 2d 460 (E.D. Pa. 2000), for example, found that the officers’ alleged failure to provide transportation to hospital for a woman having a heart attack, and blocking of the road to the hospital with police vehicles did not “shock the conscience” when they were searching for shooting suspects and attempting to secure a crime scene at the time.

## ❖ Recommendations

While rendering aid to ill persons is not the primary task of law enforcement, officers and agencies do aspire to serve the community in this manner when it is possible to do so. Being ready and equipped to do so can greatly enhance that possibility.

1. It is generally required in law enforcement academies that officers undergo basic first aid training, to know how to give CPR, as well as be given basic information that can aid them in being able to recognize the telltale signs and symptoms of major health crises such as heart attacks, strokes, epileptic seizures, and diabetic comas and some of the preliminary measures that can increase the possibility that a person will be able to survive the onset of these events until full competent medical assistance can be provided.
2. Agencies should adopt standardized protocols and contact information readily at hand and routinely updated for their communities as to who and where to call to most efficiently summon appropriate trained medical personnel when needed. This includes procedures to converse with EMS/EMT personnel via radio or mobile phone when a prompt response cannot be expected.

3. Some agencies have put basic specialized medical equipment in all police cars. Some have equipped mobile police units with automatic external defibrillators (AEDs) to equip police to respond to heart attack calls or deal with them when they are encountered. These devices also protect officers who suffer heart attacks.
4. Management should meet periodically with public health authorities to discuss these issues to find out what more officers can do in this area as medical knowledge and techniques develop and change, and as new and improved technology becomes available to assist in such situations.

## ❖ Resources

The following are some useful resources related to the subject of this article.

- [Advisory Legal Opinion: Officer's duty to provide aid to ill or injured](#), Florida Office of the Attorney General (Sept. 15, 1989).
- ["Epilepsy and First Aid for Seizures"](#), WebMD.
- [Public Protection: Ill Persons](#), AELE Case Summaries.
- ["What to do if someone goes into diabetic shock"](#), Livestrong.com.

## ❖ Prior Relevant Monthly Law Journal Articles

- [Public Protection: Witnesses](#), 2009 (4) AELE Mo. L. J. 101.
- [Public Protection: Informants](#), 2009 (5) AELE Mo. L. J. 101.
- [Public Protection: Injured Crime and Accident Victims](#), 2009 (8) AELE Mo. L. J. 101.
- [Public Protection: Intoxicated Persons](#), Part 1, 2013 (3) AELE Mo. L. J. 101.
- [Public Protection: Intoxicated Persons](#), Part 2, 2013 (4) AELE Mo. L. J. 101.
- [Public Protection: Arrestees](#), 2011 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101.



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