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**Civil Liability for Inadequate Prisoner Medical Care:  
Eye and Vision Related**

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❖ **Introduction**

Jails and prisons are constitutionally mandated to provide adequate medical care to those in their care, since prisoners and detainees cannot seek medical treatment on their own. Deliberate indifference to the need for treatment of a known serious medical problem can result in civil liability. A number of cases have made it clear that included in this requirement is treatment for eye and vision problems. This article takes a brief look at some of the caselaw addressing this issue, makes some suggestions to consider, and ends with a listing of some useful resources and references.

The legal standard for claims concerning the medical care of convicted prisoners stems from the Eighth Amendment's prohibition of "cruel and unusual punishment," as established in [Estelle v. Gamble](#), #75-929, 429 U.S. 97 (1976), while claims concerning inadequate medical care of pre-trial detainees are analyzed under the due process guarantees of the Fourteenth Amendment, as set forth in [Bell v. Wolfish](#), #77-1829, 441 U.S. 520 (1979). While there are both theoretical and certainly practical differences on the obligations owed to prisoners versus 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\*](#), #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). In the discussion that follows, the plaintiffs in the cases were convicted prisoners rather than pre-trial detainees unless the discussion specifies otherwise.

## ❖ Cataracts

One serious medical condition that can develop to interfere with an inmate's vision is cataracts. A number of cases have made it clear that the failure to provide adequate treatment for them can constitute deliberate indifference. In [\*Colwell v. Bannister\*](#), #12-15844, 763 F.3d 1060 (9th Cir. 2014), for instance, an inmate claimed that prison officials were deliberately indifferent in refusing him cataract surgery to restore his vision.

A federal appeals court ruled that blindness in one eye caused by the cataract was a serious medical condition. It further held that the blanket denial of the surgery, based solely on a policy that "one eye is good enough for prison inmates," if true, could be found to be deliberate indifference by a jury. The record appeared to indicate that prison officials ignored the recommendations of treating medical specialists, instead relying on the opinions of non-specialist and non-treating medical personnel who rendered their decisions based on the administrative policy.

In [\*Stevenson v. Pramstaller\*](#), #07-cv-14040, 2009 U.S. Dist. Lexis 25495 (E.D. Mich.), on the other hand, a court found that a prisoner's allegation that correctional officials knowingly refused to provide treatment or to investigate his request for treatment, specifically ophthalmic evaluation and cataract surgery, failed to establish a claim for disability discrimination. His argument that an allegedly resulting disability was the loss of vision in his right eye did not show that the defendants denied him care on the basis of a disability. The prisoner also failed to show that the defendants acted with deliberate indifference to his serious medical needs, or that they acted merely in order to save the cost of treatment, as opposed to acting on a medical finding concerning the stability of his eye condition.

A prisoner must show that a delay in or denial of treatment caused actual harm. In [\*Samonte v. Bauman\*](#), #06-16697, 2008 U.S. App. Lexis 1559 (9th Cir.), an inmate suffering from an eye problem, a cataract, was monitored by doctors, and received eye surgery when it was decided that it was medically necessary. There was no showing that a three-month wait for an eye doctor appointment resulted in any permanent damage or additional harm. The

inmate's claims against the Governor of Hawaii were also rejected, and could not be based merely on the fact that she was the governor.

## ❖ Glaucoma

Another common medical problem with a serious impact on vision is glaucoma. Failure to provide adequate treatment can result in an award of damages. See [\*Caldwell v. District of Columbia\*](#), # 97CV2405, 201 F. Supp. 2d 27 (D.D.C. 2001), in which a prisoner was properly awarded \$174,178 in damages for asserted delays in his treatment for glaucoma and skin cancer. Evidence showed that, despite his repeated grievances, treatment was delayed and required surgical removal of a lesion rather than cryosurgery and increased the future risk of skin cancer. The delay in treating glaucoma resulted in corneal swelling and might result in the loss of his eye.

Similarly, in *Smith v. Franklin*, U.S. Dist. Ct., Atlanta, Ga., reported in the Atlanta Journal, Feb. 2, 1991, an inmate blinded in one eye by glaucoma was awarded \$225,000 for a jail medical director's failure to provide him with necessary prescription eye drops.

In [\*DeWitt v. Corizon, Inc.\*](#), #13-2930, 760 F.3d 654 (7th Cir. 2014), a prisoner submitted a number of requests for healthcare for his bloodshot left eye, but was allegedly released on parole without receiving treatment. Upon release, he underwent laser surgery for glaucoma in his right eye, but continued to have problems with his left eye.

When he was reincarcerated, he made several more attempts to receive treatment, and finally underwent surgery to remove part of his left eye's ciliary body three years later. In his lawsuit claiming deliberate indifference to his glaucoma condition, the trial court denied repeated requests for an appointed lawyer, finding that his claims were not meritorious or overly complex. A federal appeals court found that this denial of appointed counsel was an abuse of discretion and that this abuse impacted on the prisoner's ability to develop and litigate his claim.

In another case, a prisoner claimed that the failure to provide him with prescription eye drops for his glaucoma violated his Eighth Amendment rights as well as constituting negligence under state law. A panel of a federal appeals court ruled that he failed to show that the delays in supplying him with the eye drops was due to deliberate indifference to a serious medical need, and the trial court did not err in declining to retain jurisdiction over the state law negligence claim. [\*Byrd v. Shannon\*](#), #11-1744, 709 F.3d 211 (3rd Cir. 2013). The full Third Circuit subsequently vacated the panel decision, and ordered a rehearing en banc. [\*Byrd v. Shannon\*](#), #11-1744, 711 F.3d 370 (3rd Cir. 2013).

Deliberate indifference must be based on both knowledge of a prisoner's medical condition and some sort of personal involvement in the treatment. In [\*Richardson v. Nassau County\*](#), #99 CV 2051, 277 F. Supp. 2d 106 (E.D.N.Y. 2003), a jail nurse who took an incoming pre-trial detainee's medical history was not liable for any damage allegedly resulting from a 51-day delay in providing an eye examination and a resumption of medication which worsened his glaucoma when she had no further contact with him after intake process. The plaintiff also failed to show that sheriff had any knowledge about his condition or was personally involved, in anyway, in the 51-day delay in scheduling his eye examination.

### ❖ High Blood Pressure, Diabetes, and Cancer

There are a number of general health conditions that are not primarily conditions of the eye which nonetheless can have a serious impact on a prisoner's eyes and vision if not properly treated. These include high blood pressure, diabetes, and cancer. In [\*Fourte v. Faulkner County, Arkansas\*](#), #13-2241, 746 F.3d 384 (8th Cir. 2014), a jail detainee claimed that he became partially blind because of a delay in treatment for his high blood pressure. A doctor and a nurse were entitled to qualified immunity on a claim that they failed to carry out a medical screening of the plaintiff when he was booked into the jail, as there was no clearly established right to a general medical screening upon admission to a detention center. The county was also entitled to summary judgment on the medical screening claim when he did not exhibit obvious signs of a serious medical condition. The expert witness testimony established, at most, negligent medical malpractice in failing to prescribe medication after several high blood pressure readings, but that was insufficient for a constitutional claim.

In [\*Vandiver v. Prison Health Servs., Inc.\*](#), #11-1959, 727 F.3d 580 (6th Cir. 2013), a prisoner filed a lawsuit against a health care service and five medical professionals claiming that they were deliberately indifferent to his chronic serious medical conditions of diabetes and Hepatitis C, and that this had caused the need for partial amputation of his feet and visual impairment. He argued that this deliberate indifference was ongoing, subjecting him to a risk of coma, death, or further amputations. While he had filed three previous lawsuits dismissed as frivolous, he was not precluded from proceeding as a pauper on the current lawsuit under the "three strikes" rule of the Prison Litigation Reform Act because his claims of an ongoing risk of additional harm fell within the "imminent danger" exception to that rule. On remand, the trial court found that he had made sufficient allegations against some of the defendants (but not others) to proceed with his claim. [\*Vandiver v. Prison Health Services, Inc.\*](#), #1:14-cv-350, 2014 U.S. Dist. Lexis 69495 (W.D. Mich.).

Deliberate indifference must be more than ordinary medical malpractice (negligence). It must involve deliberately inadequate treatment for a known medical condition. In [\*Reilly v. Vadlamudi\*](#), #11-1252, 680 F.3d 617 (6th Cir. 2012), when a prisoner was examined by a prison doctor and a nurse, complaining of a swollen eye and a headache, they recommended, respectively, a warm compress and the taking of Tylenol. After his release, the prisoner discovered that the swollen eye was because of a rare form of bone cancer. The misdiagnosis by the medical personnel could not support a federal civil rights claim.

The doctor only had one brief contact with the prisoner, and there nurse did refer him to an optometrist. “(N)either negligent medical care, nor the delay in providing medical care, can rise to the level of a constitutional violation absent specific allegations of sufficiently harmful acts or omissions reflecting deliberate indifference.”

### ❖ Other Conditions

Any number of other medical conditions can have an impact on inmate vision. In [\*Ortiz v. Webster\*](#), #10-2012, 655 F.3d 731 (7th Cir. 2011), a death row prisoner claimed that the prison’s medical director was deliberately indifferent to his serious medical need for eye surgery. Overturning summary judgment for the defendant doctor, a federal appeals court held that there were genuine issues of material fact as to whether he ignored the prisoner’s condition of pterygia, a thin film that covers the eye.

While that condition is often confined to the white part of the eye, in this case it extended over the corneas, making his uncorrected vision 20/80 as a result, and causing persistent itching and irritation. There was a record showing that a number of doctors recommended surgery, but that their advice was not followed, and the prisoner’s eyesight then further deteriorated.

In [\*Zuege v. Knoch\*](#), #10-3373, 423 Fed. Appx. 621, 2011 U.S. App. Lexis 10221 (Unpub. 7th Cir.), a prisoner failed to show that medical personnel acted with deliberate indifference in failing to diagnose and treat his Fuchs’ dystrophy, a corneal disease, since the record showed that they repeatedly examined him (no less than seven times in a nine month period), and recommended piggyback lenses and artificial tears in response to his reports of eye pain.

### ❖ Physical Injury

Physical injury, whether as a result of an accident or an injury suffered in an assault, can obviously impact a prisoner’s eyes just as easily as another part of his or her body. When

that occurs, a prison or jail that is aware of the injury must endeavor to provide prompt adequate treatment. In [\*Smith v. Knox County Jail\*](#), #10-1113, 666 F.3d 1037 (7th Cir. 2012), a pretrial detainee attacked by another prisoner suffered painful injuries to his head and eyes. Despite requesting medical attention, he allegedly received none for five days, and instead was “locked down” for 72 hours following the attack, despite the fact that officers allegedly knew of his obvious injuries, as evidenced by blood, dizziness and vomiting and his complaints of extreme pain. Overturning the dismissal of the lawsuit for failure to state a claim, the appeals court ruled that “even a few days’ delay in addressing a severely painful but readily treatable condition suffices to state a claim of deliberate indifference.”

If the extent of the injury is not known, failure to adequately treat it may not constitute deliberate indifference. In [\*Jones v. Van Fleit\*](#), #01-4303, 49 Fed. Appx. 626, 2002 U.S. App. Lexis 21601 (7th Cir.), the court held that a prisoner could not pursue a federal civil rights claim against an optometrist for failing to immediately treat a retinal tear following an injury to his eye when he could not show that the doctor was subjectively aware of his serious medical needs. Despite the seriousness of the subsequent permanently blurred vision and light sensitivity that the prisoner experienced, the doctor did not act with deliberate indifference since he saw no sign of retinal damage during his examination.

A mere disagreement with the course of medical treatment provided is also not sufficient to impose liability. In [\*Thomas v. Brockbank\*](#), #05-3480, 195 Fed. Appx. 804, 2006 U.S. App. Lexis 25547 (10th Cir.), a prisoner who received nine eye examinations during an eight-month period after he suffered an eye injury during a handball game failed to show that prison officials acted with deliberate indifference to his medical needs. All the prisoner’s claims showed was that he was in disagreement with the treatment offered by optometrists and an ophthalmologist, which is insufficient for an Eighth Amendment claim. The prisoner’s lawsuit was properly dismissed as frivolous.

As with all lawsuits, a plaintiff who knows that they have a possible claim must assert it in a timely manner. In [\*McCafferty v. Jefferson Parish Sheriff’s Office\*](#), #04-CA-205, 880 So.2d 84 (La. App. 5th Cir. 2004), a prisoner who suffered a loss of sight in one eye knew of the delay in his medical treatment when three months intervened between hospital visits for his eye injury after a fistfight. Accordingly, the statute of limitations began to run after the second hospital visit. While the prisoner sued the county sheriff within the one-year statute of limitations period, he failed to add a doctor as a defendant until more than a year had passed, so that his claim against the doctor and his insurer was barred.

### ❖ Self-Injury

Some eye injuries may be self-inflicted, and the result of psychological or psychiatric problems. In [\*Sibley v. Lemaire\*](#), #98-30301, 184 F.3d 481 (5th Cir. 1999), *cert. denied*, #99-1039, 529 U.S. 1019 (2000), a sheriff and his deputies were found not liable for a pretrial detainee's bizarre action of blinding himself by plucking out his eyes; while prisoner's behavior was "increasingly erratic," there was nothing that informed the defendants that he had an intent to harm himself; defendants attempted to care for prisoner and did not act with deliberate indifference.

### ❖ Specialists

In some instances, eye and vision medical problems may require access to specialists, as recommended by medical personnel. In [\*Kuhne v. FL Dept. of Corrections\*](#), #12-13387, 745 F.3d 1091(11th Cir. 2014), while the trial court held that the plaintiff prisoner had voluntarily, and with informed consent, signed a form refusing to have a consultation with a retinal specialist, the appeals court reversed summary judgment for the defendants. It ruled that there were genuine issues of material fact as to the validity as well as the scope of the refusal form. Further proceedings were ordered as to whether any of the individual defendants acted with deliberate indifference in failing to provide him with medical treatment for his retinopathy.

### ❖ Some Suggestions

As with most aspects of prison or jail administration addressing common issues, it is best to have written policies and procedures as to how personnel should handle medical care for eye and vision problems. This should address such issues as intake screening, eyeglasses, treatment for known medical conditions affecting the eyes, payments or co-payments for services for those who have available funds, and referrals to specialists when appropriate. The following are a few suggestions to consider.

1. Prisoners (and detainees anticipated to be in custody for more than a brief period of time) should be given an optometric screening to detect ocular abnormalities or disease and a distance vision screening as part of a physical health assessment.
2. If the results of the distance vision screening indicate a need for an eye examination, the prisoner or detainee should be advised that she or he may submit a health care request to receive the examination.



3. If it is determined during the optometric screening that the prisoner or detainee has eye problems not related solely to acuity, they shall be referred to an eye care practitioner.
4. New prisoners and detainees should be permitted to keep their personal prescription glasses. However, they should be permitted to receive or retain prescription glasses with glass, tinted, or transitional lenses (i.e. lenses that darken when exposed to sunlight) only if a treating eye care practitioner determines that there is a medical need (documented in the prisoner's health record, including diagnosis) for such lenses. Similarly, a prisoner may receive or retain prescription sunglasses only if the treating eye care practitioner determines that there is a medical need for such sunglasses, which shall be documented, including diagnosis, in the health record. Sunglasses should not be mirrored or contain a similar solid reflective coating. If the prescription glasses a person enters the facility with violates any of these restrictions, they should be permitted to retain them only until acceptable replacement glasses are obtained.
5. Contact lenses or prosthetic eyes should be issued to a prisoner only for a documented medical condition requiring them. Contact lenses should not be prescribed for cosmetic reasons.
6. Inmates suffering from diabetes (Type I or Type II), hypertension, or HIV infection should receive regular funduscopic eye examinations at specified intervals. The [Ophthalmology Guidance](#) issued by the Federal Bureau of Prisons (February 2008) provides some recommendations on page 3 regarding the frequency of such examinations for each of these illnesses. It also contains some useful discussion of standards concerning when referrals to eye care specialists should be made.
7. Medically indicated, emergent or urgent ophthalmologic surgeries should never be delayed, and should be approved by a designated medical director (or their designee) at the facility, with proper and complete documentation required.

## ❖ Resources

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

- [The Center for Prisoner Health and Human Rights](#).
- [Correctional and Public Health Resources by State](#), U.S. Centers for Disease Control and Prevention (April 14, 2014).



- [A Jailhouse Lawyer's Manual: Chapter 23: Your Right to Adequate Medicare Care](#), Columbia Human Rights Law Review (Ninth Edition 2011).
- [Medical Care](#). AELE Case Summaries
- [Medical Care: Eye & Vision Related](#). AELE Case Summaries.
- Michigan Department of Corrections, [Policy Directive 04.06.165: Optometric Services](#) (September 21, 2009).
- [The National Commission on Correctional Health Care \(NCCHC\)](#).
- [Opportunities For Cost Savings in Corrections Without Sacrificing Service Quality: Inmate Health Care](#), by Phil Schaenman, Elizabeth Davies, Reed Jordan, and Reena Chakraborty, Urban Institute (2013).
- [Ophthalmology Guidance](#), Federal Bureau of Prisons (February 2008).
- [World Health Organization \(WHO\) Health in Prisons Projects \(HIPPP\)](#).

#### ❖ **Prior Relevant Monthly Law Journal Articles**

- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.
- [Forced Feeding or Medication of Prisoners](#), 2007 (12) AELE Mo. L. J. 301.
- [Legal Issues Pertaining to Inmate Funds](#), 2008 (4) AELE Mo. L.J. 301. (includes section on recovery of medical costs).
- [Transsexual Prisoners: Medical Care Issues](#), 2009 (8) AELE Mo. L. J. 301.
- [Civil Liability for Inadequate Prisoner Dental Care](#), 2009 (9) AELE Mo. L. J. 301.
- [Mental Health Care of Prisoners](#), 2009 (11) AELE Mo. L. J. 301.
- [Shackling of Pregnant Prisoners](#), 2009 (12) AELE Mo. L. J. 301.
- [Avoiding Liability for Antibiotic Resistant Infections in Prisoners](#), 2011 (3) AELE Mo. L. J. 301.

#### ❖ **References:** (*Chronological*)

1. [The Unconventional Optometrist: Eye Care Behind Bars](#), by Adrienne Chan, OptometryStudents.com (Oct. 12, 2014).
2. [Vision in prison](#), by N. Withers, Optometry Today (May 31, 2013).
3. [Eyeglasses in Corrections: Looking out for Vision Requests](#), Jail Medicine (August 12, 2012).

4. [Eye Care for Inmates](#), by E. Friedman O.D., Eye Care Professional Magazine (March 2009).
5. [A Look Inside Prison Eye Care](#), by Barbara Boughton, EyeNet Magazine, American Academy of Ophthalmology (February 2009).
6. Online eye care in prisons in Western Australia, by K. Yogesan, C. Henderson, C.J. Barry, and IJ Constable, J Telemed Telecare (2001); 7 Suppl 2:63-4. [Abstract](#).
7. Optometric Services in the Prison System, by S.B. Verma, 66 Optometry & Vision Science No. 1, pp. 6-8, American Academy of Optometry (January 1989). [Abstract](#).

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