

KNOW YOUR RIGHTS

MEDICAL, DENTAL AND MENTAL HEALTH CARE

ACLU National Prison Project

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Medical Care

Prison officials are obligated under the Eighth Amendment to provide prisoners with adequate medical care.¹ This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government.²

In order to prevail on a constitutional claim of inadequate medical care, prisoners must show that prison officials treated them with "deliberate indifference to serious medical needs."³

What is deliberate indifference?

A prison official demonstrates "deliberate indifference" if he or she recklessly disregards a substantial risk of harm to the prisoner.⁴ This is a higher standard than negligence, and requires that the official *knows of and disregards* an excessive risk of harm to the prisoner.⁵ The prison official does not, however, need to know of a specific risk from a specific source.⁶

Proof of prison officials' knowledge of a substantial risk to a prisoner's health can be

¹Estelle v. Gamble, 429 U.S. 97, 103 (1976).

²West v. Atkins, 487 U.S. 42, 57-58 (1988); Richardson v. McKnight, 521 U.S. 399 (1997).

³ Estelle, 429 U.S. at 104.

⁴ Farmer v. Brennan, 511 U.S. 825, 836 (1994).

⁵ Id. at 837.

⁶ Id. at 843; Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998).

proven by circumstantial evidence. For example, it may be inferred from "the very fact that the risk was obvious."⁷ This circumstantial proof may be shown by deterioration in prisoners' health, such as obvious conditions like sharp weight loss. A prison official cannot "escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist."⁸

Officials' knowledge can also be proven by direct evidence. For example, prisoners might present sick call requests, medical records, complaints, formal grievances or other records reflecting: the nature of the complaint, the date of the complaint, the individuals to whom the complaint was made, the treatment provided, the adequacy of the treatment, the date the treatment was provided, the medical staff seen, the nature of follow-up care ordered and whether it was carried out, the effects of any delay in obtaining treatment, and any additional information relating to the complaint.

What is a serious medical need?

The Eighth Amendment prohibits the "unnecessary and wanton infliction of pain."⁹ Some factors courts have considered in determining whether a "serious medical need" is at issue are "(1) whether a reasonable doctor or patient would perceive the medical need in question as important and worthy of comment or treatment; (2) whether the medical condition significantly affects daily activities; and (3) the existence of chronic and substantial pain."¹⁰ Additionally, courts will be likely to find a "serious medical need" if a condition "has been diagnosed by a physician as mandating treatment or ... is so obvious that even a lay person would easily recognize the necessity of a doctor's attention."¹¹

A serious medical need is present whenever the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of

⁷ Farmer, 511 U.S. at 842.

⁸ Id. at 843 n.8.

⁹ Estelle v. Gamble, 429 U.S. at 104.

¹⁰ Brock v. Wright, 315 F.3d 158, 162 (2nd Cir. 2003) (internal quotation marks omitted).

¹¹ Hill v. DeKalb Reg'l Youth Detention Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994) (internal quotation marks, citation omitted).

pain.”¹² Significant injury, pain or loss of function can constitute "serious medical needs" even if they are not life-threatening.¹³ Pain can constitute a "serious medical need" even if the failure to treat it does not make the condition worse.¹⁴ At least one court has held that pregnancy, at least in its later stages, constitutes a serious medical need.¹⁵

Elements of an adequate medical care system

The Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care. Prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to the medical staff or if the staff is not competent to examine the prisoners, diagnose illnesses, and then treat or refer the patient.¹⁶ The prison must also provide an adequate system for responding to emergencies. If outside facilities are too remote or too inaccessible to handle emergencies promptly and adequately, then the prison must provide adequate facilities and staff to handle emergencies within the prison.¹⁷

¹² Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002).

¹³ See Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005) (severe heartburn with frequent vomiting); Brock v. Wright, 315 F.3d 158, 163-64 (2nd Cir. 2003) (painful keloids); Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002) (effects of pepper spray on bystanders); Ellis v. Butler, 890 F.2d 1001, 1003 (8th Cir. 1989) (swollen, painful knee); Pulliam v. Shelby County, 902 F. Supp. 797, 801-02 (W.D. Tenn. 1995) (denial of dilantin prescribed for seizure disorder); Chaney v. City of Chicago, 901 F.Supp. 266, 270 (N.D. Ill. 1995) (post-surgical care of foot); Bouchard v. Magnusson, 715 F.Supp. 1146, 1148 (D. Me. 1989) (persistent back pain); Smallwood v. Renfro, 708 F. Supp. 182, 187 (N.D. Ill. 1989) (cut lip); Henderson v. Harris, 672 F.Supp. 1054, 1059 (N.D. Ill. 1987) (hemorrhoids); Case v. Bixler, 518 F.Supp. 1277, 1280 (S.D. Ohio 1981) (boil).

¹⁴ See Boretti v. Wiscomb, 930 F.2d 1150, 1154 (6th Cir. 1991) (denial of dressing and pain medication for wound); Ellis v. Butler, 890 F.2d 1001, 1003 (8th Cir. 1989) (nurse's failure to deliver pain medication); Washington v. Dugger, 860 F.2d 1018, 1021 (11th Cir. 1988) (denial of treatments that could "eliminate pain and suffering at least temporarily"); H.C. v. Jarrard, 786 F.2d 1080, 1083, 1086 (11th Cir. 1986) (denial of medical care for injured shoulder was unconstitutional, although no permanent injury resulted); Lavender v. Lampert, 242 F.Supp.2d 821 (D. Or. 2002) (failure to provide pain medication for partial spastic paralysis of the foot).

¹⁵ Doe v. Gustavus, 294 F.Supp.2d 1003, 1008 (E.D.Wis. 2003).

¹⁶ Such referrals may be to other physicians within the prison, or to physicians or facilities outside the prison if reasonably speedy access exists.

¹⁷ Hoptowit v. Ray, 682 F.2d 1237, 1252-53 (9th Cir. 1982).

A mere difference of medical judgment is not actionable.¹⁸ But the decisions of prison doctors are not per se unassailable.¹⁹ In general, the prisoner must be able to show that the actions of medical staff could not be supported by legitimate medical judgment.

Some examples of actionable harm from inadequate medical care include:

- Serious denials or delay in access to medical personnel.²⁰
- A denial of access to appropriately qualified health care personnel.²¹
- A failure to inquire into facts necessary to make a professional judgment.²²
- A failure to carry out medical orders.²³

¹⁸ Stewart v. Murphy, 174 F.3d 530, 535 (5th Cir. 1999).

¹⁹ See, e.g., Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005) (“a prisoner is not required to show that he was literally ignored”); Hunt v. Uphoff, 199 F.3d 1220, 1223-24 (10th Cir. 1999) (one doctor denied insulin prescribed by another doctor); Miller v. Schoenen, 75 F.3d 1305 (8th Cir. 1996) (recommendations from outside hospitals not followed).

²⁰ Estelle v. Gamble, 429 U.S. at 104; Weyant v. Okst, 101 F.3d 845, 856-57 (2nd Cir. 1996) (delay of hours in getting medical attention for diabetic in insulin shock); Natale v. Camden County Correctional Facility, 318 F.3d 575 (3rd Cir. 2003) (delay of 21 hours in providing insulin to diabetic); Wallin v. Norman, 317 F.3d 558 (6th Cir. 2003) (delay of one week in treating urinary tract infection, and one day in treating leg injury); Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) (two-month delay in getting prisoner with head injury to a doctor).

²¹ LeMarbe v. Wisneski, 266 F.3d 429 (6th Cir. 2001), cert. denied, 535 U.S. 1056 (2002) (failure of surgeon to send patient to a specialist); Mandel v. Doe, 888 F.2d 783, 789-90 (11th Cir. 1989) (physician’s assistant failed to diagnose broken hip, refused to order x-ray, and prevented prisoner from seeing a doctor); Washington v. Dugger, 860 F.2d 1018, 1021 (11th Cir. 1988) (failure to return prisoner to VA hospital for treatment of Agent Orange exposure); Toussaint v. McCarthy, 801 F.2d 1080, 1112 (9th Cir. 1986) (rendering of medical services by unqualified personnel is deliberate indifference).

²² Liscio v. Warren, 901 F.2d 274, 276-77 (2nd Cir. 1990) (physician failed to inquire into the cause of arrestee’s delirium and thus failed to diagnose alcohol withdrawal); Miltier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990) (doctor failed to perform tests for cardiac disease in patient with symptoms that called for them); Inmates of Occoquan v. Barry, 717 F. Supp. 854, 867-68 (D.D.C. 1989) (failure to perform adequate health screening on intake).

²³ Estelle v. Gamble, 429 U.S. at 105 (“intentionally interfering with treatment once prescribed”); Lawson v. Dallas County, 286 F.3d 257 (5th Cir. 2002) (failure to follow medical orders for care of paraplegic prisoner); Walker v. Benjamin, 293 F.3d 1030 (7th Cir. 2002) (refusal to provide prescribed pain medication); Koehl v. Dalsheim, 85 F.3d 86, 88 (2nd Cir. 1996) (denial of prescription eyeglasses); Erickson v. Holloway, 77 F.3d 1078, 1080 (8th Cir. 1996) (officer’s refusal of emergency room doctor’s

- Reliance on non-medical factors in making treatment decisions.²⁴
- Judgment so egregiously bad that it really isn't medical.²⁵

Dental Care

Dental care of prisoners is governed by the same constitutional standard of deliberate indifference as is medical care.²⁶

“Dental care is one of the most important medical needs of inmates.”²⁷ Dental care that consists of pulling teeth that can be saved is constitutionally inadequate.²⁸ Delays in dental care can also violate the Eighth Amendment, particularly if the prisoner is suffering pain in the interim.²⁹ Prolonged deprivation of toothpaste can violate the Eighth Amendment.³⁰ One court has held that some minimal level of prophylactic dental care is constitutionally required.³¹

request to admit the prisoner and take x-rays); Boretti v. Wiscomb, 930 F.2d 1150, 1156 (6th Cir. 1991) (nurse’s failure to perform prescribed dressing changes).

²⁴ Boswell v. Sherburne County, 849 F.2d 1117, 1123 (8th Cir. 1988) (budgetary restrictions); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986) (same); Ancata v. Prison Health Services, Inc., 769 F.2d 700, 704-05 (11th Cir. 1985) (refusal to provide specialty consultations without a court order); Wilson v. VanNatta, 291 F.Supp.2d 811, 816 (N.D. Ind. 2003) (cost).

²⁵ Greeno v. Daley, 414 F.3d 645, 654 (7th Cir. 2005) (treatment “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate [plaintiff’s] condition”); id. at 655 (“doggedly persist[ing] in a course of treatment known to be ineffective”); Adams v. Poag, 61 F.3d 1537, 1543-44 (11th Cir. 1995) (medical treatment that is “so grossly incompetent, inadequate, or excessive as to shock the conscience” constitutes deliberate indifference); Hughes v. Joliet Correctional Ctr., 931 F.2d 425, 428 (7th Cir. 1991) (evidence that medical staff treated the plaintiff “not as a patient, but as a nuisance”).

²⁶ Hoptowitz v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

²⁷ Ramos v. Lamm, 639 F.2d 559, 576 (10th Cir. 1980); accord Wynn v. Southward, 251 F.3d 588, 593 (7th Cir. 2001); Hunt v. Dental Dept., 865 F.2d 198, 200 (9th Cir. 1989).

²⁸ Chance v. Armstrong, 143 F.3d 698, 700-02 (2nd Cir. 1998); Dean v. Coughlin, 623 F. Supp. 392, 405 (S.D.N.Y. 1985); Heitman v. Gabriel, 524 F. Supp. 622, 627 (W.D. Mo. 1981).

²⁹ Hartsfield v. Colburn, 371 F.3d 454, 457 (8th Cir. 2004) (six weeks); Canell v. Bradshaw, 840 F. Supp. 1382, 1387, 1393 (D. Or. 1993), aff’d, 97 F.3d 1458 (9th Cir. 1996) (several days); Fields v. Gander, 734 F.2d 1313, 1315 (8th Cir. 1984) (three weeks); Farrow v. West, 320 F.3d 1235 (11th Cir. 2003) (fifteen-month delay in providing dentures).

³⁰ Board v. Farnham, 394 F.3d 469 (7th Cir. 2005).

Mental Health Care

Mental health care of prisoners is governed by the same constitutional standard of deliberate indifference as is medical care. A “severe” mental illness is one “that has caused significant disruption in an inmate’s everyday life and which prevents his functioning in the general population without disturbing or endangering others or himself.”³²

Elements of an adequate mental health care system

The Eighth Amendment requires that prison officials provide a system of ready access to adequate mental health care. First, there must be a systematic program for screening and evaluating inmates in order to identify those who require mental health treatment. Second, treatment must entail more than segregation and close supervision of the inmate patients. Third, treatment requires the participation of trained mental health professionals, who must be employed in sufficient numbers to identify and treat in an individualized manner those treatable inmates suffering from serious mental disorders. Fourth, accurate, complete, and confidential records of the mental health treatment process must be maintained. Fifth, prescription and administration of behavior-altering medications in dangerous amounts, by dangerous methods, or without appropriate supervision and periodic evaluation, is an unacceptable method of treatment. Sixth, a basic program for the identification, treatment and supervision of inmates with suicidal tendencies is a necessary component of any mental health treatment program.³³

Some examples of actionable harm from inadequate mental health care include:

- Lack of adequate mental health screening on intake.³⁴

³¹ Barnes v. Government of Virgin Islands, 415 F.Supp. 1218, 1235 (D.V.I. 1976).

³² Tillery v. Owens, 719 F.Supp. 1256, 1286 (W.D. Pa. 1989), aff'd, 907 F.2d 418 (3rd Cir. 1990).

³³ Ruiz v. Estelle, 503 F.Supp. 1265, 1339 (S.D. Tex. 1980) (citations omitted), aff'd in part and rev'd in part on other grounds, 679 F.2d 1115 (5th Cir.), amended in part and vacated in part, 688 F.2d 266 (5th Cir. 1982); accord Balla v. Idaho State Bd. of Corrections, 595 F.Supp. 1558, 1577 (D. Idaho 1984); Coleman v. Wilson, 912 F.Supp. 1282, 1298 n.10 (E.D. Cal. 1995).

³⁴ Woodward v. Correctional Medical Servs., 368 F.3d 917 (7th Cir. 2004); Gibson v. County of Washoe,

- Failure to follow up on prisoners with known or suspected mental health disorders.³⁵
- Failure to provide adequate numbers of qualified mental health staff.³⁶
- Housing mentally ill prisoners in segregation or “supermax” units.³⁷
- Failure to transfer seriously mentally ill prisoners to more appropriate facilities.³⁸
- Improper use of restraints.³⁹
- Excessive use of force against mentally ill prisoners.⁴⁰

290 F.3d 1175, 1189 (9th Cir. 2002), cert. denied, 537 U.S. 1106 (2003); Inmates of Occoquan v. Barry, 717 F.Supp. 854, 868 (D.D.C. 1989); Inmates of the Allegheny County Jail v. Pierce, 487 F.Supp. 638, 642, 644 (W.D. Pa. 1980).

³⁵ Woodward v. Correctional Medical Servs., 368 F.3d 917 (7th Cir. 2004) (failure to respond to signs that prisoner was suicidal); De'Lonta v. Angelone, 330 F.3d 630 (4th Cir. 2003) (failure to treat prisoner's compulsion to self-mutilate); Olsen v. Bloomberg, 339 F.3d 730 (8th Cir. 2003) (failure to take reasonable steps to prevent prisoner suicide); Cavalieri v. Shepard, 321 F.3d 616, 621-22 (7th Cir.), cert. denied, 540 U.S. 1003 (2003) (failure to respond to warnings that prisoner was suicidal); Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001), cert. denied, 537 U.S. 817(2002); Sanville v. McCaughtrey, 266 F.3d 724, 738 (7th Cir. 2001); Waldrop v. Evans, 871 F.2d 1030, 1036 (11th Cir. 1989); Arnold v. Lewis, 803 F.Supp. 246, 257-58 (D. Ariz. 1992).

³⁶ Waldrop v. Evans, 871 F.2d 1030, 1036 (11th Cir. 1989) (non-psychiatrist was not qualified to evaluate significance of prisoner's suicidal gesture); Cabrales v. County of Los Angeles, 864 F.2d 1454, 1461 (9th Cir. 1988), vacated, 490 U.S. 1087 (1989), reinstated, 886 F.2d 235 (9th Cir. 1989); Wellman v. Faulkner, 715 F.2d 269, 272-73 (7th Cir. 1983) (“a psychiatrist is needed to supervise long term maintenance” on psychotropic medication); Ramos v. Lamm, 639 F.2d 559, 577-78 (10th Cir. 1980).

³⁷ Jones'El v. Berge, 164 F.Supp.2d 1096 (W.D. Wis. 2001); Ruiz v. Johnson, 37 F.Supp.2d 855, 913-15 (S.D. Tex. 1999), rev'd on other grounds, 243 F.3d 941 (5th Cir. 2001), adhered to on remand, 154 F.Supp.2d 975 (S.D. Tex. 2001); Coleman v. Wilson, 912 F.Supp. 1282, 1320-21 (E.D. Cal. 1995); Madrid v. Gomez, 889 F.Supp. 1146, 1265-66 (N.D. Cal. 1995); Casey v. Lewis, 834 F.Supp. 1477, 1549-50 (D. Ariz. 1993); Finney v. Mabry, 534 F.Supp. 1026, 1036-37 (E.D. Ark. 1982); see also Gates v. Cook, 376 F.3d 323, 343 (5th Cir. 2004) (noting evidence that “the isolation and idleness of Death Row combined with the squalor, poor hygiene, temperature, and noise of extremely psychotic prisoners create an environment ‘toxic’ to the prisoners’ mental health”).

³⁸ Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151, 209, 211 (D.P.R. 1998); Madrid, 889 F.Supp. at 1220; Coleman, 912 F.Supp. at 1309; Arnold v. Lewis, 803 F.Supp. 247, 257 (D. Ariz. 1992).

³⁹ Wells v. Franzen, 777 F.2d 1258, 1261-62 (7th Cir. 1985); Campbell v. McGruder, 580 F.2d 521, 551 (D.C. Cir. 1978).

⁴⁰ Coleman, 912 F.Supp. at 1321-23; Kendrick v. Bland, 541 F.Supp. 21, 25-26 (W.D. Ky. 1981).

- Lack of training of custody staff in mental health issues.⁴¹

Medical Billing

Many prisons across the country charge inmates for basic medical care as a way to cut costs and discourage prisoners who abuse sick call. The government, however, still has an obligation to provide medical care for prisoners.⁴² One court has expressed the belief that medical billing policies requiring prisoners to pay for care may be unconstitutional.⁴³ But most courts have found co-pay and over-the-counter (OTC) policies constitutional as long as prisoners are not deprived of needed care because of their inability to pay.⁴⁴ When a billing policy prevents a prisoner from receiving adequate health care because the prisoner cannot pay, courts will be more likely to conclude that the policy is unconstitutional.⁴⁵

⁴¹ Olsen v. Layton Hills Mall, 312 F.3d 1304, 1319-20 (10th Cir. 2002).

⁴² Estelle, 429 U.S. 97 (1976); see also DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 199-200 (1989) (“[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – e.g., food, clothing, shelter, medical care, and reasonable safety – it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”).

⁴³ See Collins v. Romer 962 F.2d 1508 (10th Cir. 1992).

⁴⁴ See Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997) (charging inmates for medical care is not per se unconstitutional; deterrent effect did not violate the Eighth Amendment or Due Process Clause); Gardner v. Wilson, 959 F. Supp. 1224, 1228 (C.D. Cal. 1997); Bihms v. Klevenhagen, 928 F.Supp. 717, 718 (S.D. Tex. 1996) (no constitutional right is implicated by the state seeking compensation for costs of maintaining prisoners); Hudgins v. De Bruyn, 922 F.Supp. 144 (S.D. Ind. 1996); Johnson v. Department of Public Safety & Correctional Servs., 885 F.Supp. 817 (D. Md. 1995) (co-pay system bore rational relationship to legitimate prison goal of efficient use of resources and promoting inmate responsibility, and therefore was not unconstitutional).

⁴⁵ See, e.g., Martin v. DeBruyn, 880 F.Supp. 610, 615 (N.D. Ind. 1995) (“[a] prison official violates the Eighth Amendment by refusing to provide [over-the-counter] medicine for a serious medical need only if the inmate lacks sufficient resources to pay for the medicine. If the inmate can afford the medicine but chooses to apply his resources elsewhere, it is the inmate, and not the prison official, who is indifferent to serious medical needs.”).