

# Medical Care in Jail

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## Overview

- Civil Suit Process
- Legal Liability
- Documentation
- Preparing for Deposition and Trial

## Legal Process

- Inmate represented by Attorney
- Pro Se Inmate

## Parties in the Lawsuit Process

- **Plaintiff:** Inmate or family
- **Defendants:** persons being sued. Medical personnel, County or jail officers
- **Experts:** individuals retained to offer expert testimony
- **Judge:** person who oversees the trial process
- **Juries:** panel of individuals who decide case

## Pro Se Complaint

DOC NO [REDACTED]  
REC'D/FILED [REDACTED]

United States District Court  
Western District of Wisconsin

PETER OPPENHEIMER  
GLAUBENSHOFER COURT  
NO OF WI

Plaintiff(s)  
[REDACTED]

Case No. 16 G [REDACTED]

Defendant(s)  
[REDACTED]

**COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

I. PLACE OF PRESENT CONFINEMENT (Provide full address)  
Stanley Corp., Inst. 109 Corrections Br., Stanley WI 54768

A. Is there a grievance procedure in your prison(s)? YES  NO

B. Have you filed a grievance concerning the facts relating to this complaint?  
YES  NO

C. If you have used the grievance process:

1. Describe what you did and the result, if any.  
Filed external inmate grievance complaining about various medical conditions & need for Treatment. Denial thereof.

2. Is the grievance process completed? YES

D. If you did not use the grievance process, explain why not. NA

## Service Waivers

**WAIVER OF SERVICE OF SUMMONS**

To: [REDACTED]  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, [REDACTED],  
(DEFENDANT NAME)

acknowledge receipt of your request that I waive service of summons in the action of [REDACTED],  
(CAPTION OF ACTION)

which is case number [REDACTED] in the United States District Court  
(DOCKET NUMBER)

for the Eastern District of Wisconsin.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after [REDACTED] or within 90 days after that date if the request was sent outside the United States.  
(DATE REQUEST WAS SENT)

## If served with a Complaint/ legal packet

- Immediate contact with your attorney
- Time frame for responding



## Responding to Complaint

- Allegations Not Necessarily True
- Limited Time to Answer
- Affirmative Defenses
- Long Process



## State vs. Federal Court

- Federal Courts are not Courts of general jurisdiction
  - Constitutional/Federal questions
  - Diversity Jurisdiction
  - Subject matter statutes—patents, trademarks
- Removal to Federal Court
- Considerations

## Wisconsin Districts



## State Law Claims

- Common Law Negligence/medical malpractice
- Intentional Infliction of Emotional Distress
- Wrongful Death
- Failure to Properly Train, Supervise

## Constitutional/Civil Rights

- **4th Amendment:** Unreasonable medical care
- **8th Amendment:** Cruel and Usual Punishment
- **14th Amendment:** Deliberate indifference to medical care

## Federal Statutes

- **Americans with Disabilities Act**
  - Reasonable Accommodation



## Why Bring a Civil Rights Claim?



## Recovery

- State Law Claim
  - Medical malpractice limits
  - No attorney fees
- Constitutional/Civil Rights Claims
  - Unlimited damages
  - Reasonable attorney fees

## Statute of Limitations

- Negligence actions 3 years
- **6 years** for civil rights claims



## Medical/Mental Health Care

- Wis. Stats. Sec. 302.83
- Sheriff is required to Provide Necessary Medical
- Medical and Mental Health Care
- Can contract for medical
- High Risk Area for County/medical



## Federal Claims

- 42 U.S.C. Sec. 1983
  - Every person who, under color of any statute, ordinance, regulation, custom, or usage, ...subjects, or causes to be subjected, any citizen...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable...

## Typical Claims

- Delay in treatment
- Not getting proper Medications
- Not being sent to specialist
- Not being given same medications prescribed prior to incarceration by outside provider
- Not being seen or given the treatment requested
- Accommodation Requests
  - Wheelchair
  - Special Diet
  - Bunk

## Policymaker vs. Decision-maker

- Final say on an inmate's treatment plan may make a provider the final decision-maker with respect to inmate's care. That does not establish that the provider is the final policymaker for purposes of *Monell* liability. See *Valentino v. Village of South Chicago Heights*, 575 F.3d 664, 675 (7th Cir. 2009) (noting difference between having decision-making authority for some decisions and having the responsibility "for establishing final government policy on a particular issue").
- Officials with final decision-making authority are deemed policymakers for *Monell* purposes.

## 42 U.S.C. § 1983 and Monell

- The *Monell* theory of municipal liability applies in § 1983 claims brought against private companies that act under color of state law. To prevail on a *Monell* claim, the plaintiff needs to show that the company's policy, practice, or custom, caused a constitutional violation. See *Shields v. IL. DOC*, 746 F.3d 782 (7<sup>th</sup> Cir. 2014).
- Private corporations that contract to provide essential government services—such as correctional medical care—can be held liable under § 1983.

## Medical Care Required

- Federal Law
  - Fourth Amendment
  - Fourteenth Amendment
  - Eighth Amendment
- State Law
  - Wis. Stats. Sec. 302.83
  - Medical/Mental Health



## What Standard Applies?



Arrest/  
No probable cause

Pretrial Detainee

Sentenced

4th Amendment

14th Amendment

8<sup>th</sup> Amendment

Objectively  
Reasonable

Deliberate  
Indifference

Deliberate  
Indifference

## 4th Amendment Reasonableness

- Whether the actions taken were **reasonable**
- Four factors
  - Notice of the medical needs
  - Seriousness of medical need
  - Scope of requested treatment
  - Jail Security interests



### Case Examples:

- *Sallenger v. City of Springfield, IL*, 630 F.3d 499 (7<sup>th</sup> Cir. 2010)
  - Objective reasonableness standard applies to the medical needs of a person under arrest who has not yet had a judicial determination of probable cause.
  - The Fourth Amendment requires reasonableness, not immediacy.
- *Legg v. Pappas*, 383 Fed.Appx. 547 (7<sup>th</sup> Cir. 2010)
  - Arrestee appeared drunk rather than in need of medical care.
  - Neither arrestee nor his family told officers he needed medical care; at hospital he told doctor he was “just drunk.”
  - Officers and healthcare acted reasonably based on these facts.

### Not All Conditions Are Sufficiently Serious

- Not every “ache, pain, or medically recognized condition involving some discomfort warrants relief under the Eighth Amendment.” *Gutierrez v. Peters*, 11 F.3d 1364 (7<sup>th</sup> Cir. 1997).

### Medical need is “sufficiently serious” if:

- Diagnosed by a physician mandating treatment
- A layperson would easily recognize need for medical care
- If left untreated could result in further injury or unnecessary and wanton infliction of pain

### Two Hurdles to Establish Claim

- Inmate had a serious medical condition
- 8<sup>th</sup> and 14<sup>th</sup> Amendment: Acted with the requisite culpable state of mind, deliberate indifference

### Sufficiently Serious Condition

- The inadequate treatment of minor medical needs does not rise to a civil rights violation.
- Refusal to “dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild headache or minor fatigue ... does not violate the Constitution.”
- Common Cold not a serious condition
- Objective standard



### Serious Medical Condition

- A doctor or patient would find important and worthy of comment or treatment
- A medical condition that significantly affects an individual’s daily activities
- The existence of chronic and substantial pain
- Conditions that are life-threatening or carry a risk of permanent serious impairment if left untreated

## Deliberate indifference Standard

- Higher standard
- Nurse acted with deliberate indifference to medical needs
  - Knowledge of information of medical need
  - Consciously disregarded that need



## Gutierrez v. Peters, 11 F.3d 1364 (7th Cir. 1997)

- While chronic and substantial pain can constitute a serious medical need, “[n]ot every ache, pain, or medically recognized condition involving some discomfort warrants relief under the Eighth Amendment.”

## Deliberate indifference

- Subjective standard
- More than negligence, gross negligence or even recklessness
- Medical malpractice not enough
- Aware of the risk and consciously disregarded it.
- Must show that the care was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner’s condition.” *Snipes v. DeTalla*, 95 F.3d 586 (7th Cir. 1996).

## Subjective Component

- To satisfy the subjective component, inmate must show that nurses/officers acted with a “sufficiently culpable state of mind” – **must know of and disregard serious risks to the inmate’s medical/mental health needs.**



## Kingsley v. Hendrickson, 135 S.Ct. 2466 (2015)

- Excessive force case. Kingsley arrested and held in WI county jail pending trial. (Pretrial detainee)
- Kingsley refused to comply with officers’ order to exit cell so he was forcibly removed. Officers placed him face down on bunk in new cell to remove handcuffs. Kingsley claimed he was struck with Taser and head was slammed on concrete bunk.
- Brought suit under 14<sup>th</sup> Amendment for excessive force

## Kingsley, cont.

- At trial, jury instructions contained both objective and subjective components requiring Kingsley to prove that the officers’ use of force was both “unreasonable in light of the facts and circumstances” and that they “recklessly disregarded plaintiff’s safety by failing to take reasonable measures to minimize the risk of harm to plaintiff.”
- Jury found in the officers’ favor, Kingsley appealed. Seventh Circuit affirmed, holding that law requires subjective inquiry into officers’ state of mind.
- U.S. Supreme Court disagreed and held that a pretrial detainee can prevail on claim by providing only objective evidence that challenged action is not rationally related to legitimate government objective or is excessive in relation to that purpose.

## Objective standard applied

- Court cannot apply the objective unreasonableness standard mechanically on a pretrial detainee's claim; rather, objective reasonableness turns on the facts and circumstances of each particular case.
- Court must make a determination as to the objective unreasonableness of the force used from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight.
- Kingsley Court's reasoning was not limited only to excessive force claims.

## Deliberate Indifference

- May be something less than a nurse completely ignoring requests for medical care
- Not doing enough in response
- Delay in getting medical care
- Not what a nurse "should have known"



## Disagreement with Treatment

- Inmate's disagreement with care is not enough.
- The Constitution does not require prison officials to administer the least painful treatment. *Snipes v. DeTella*, 95 F.3d 586 (7th Cir. 1996)
- Evidence that some medical professionals would have chosen a different course of treatment is insufficient to make out a constitutional claim. *Steele v. Choi*, 82 F.3d 175, 179 (7th Cir. 1996).

## Intentional Act

- If the act involves the gratuitous infliction of pain or suffering it is deemed to be punishment. As long as the act was intended, it is a violation of the prisoner's constitutional right even if the act was not intended as punishment. See *Davis v. Wessel*, 792 F.3d 793 (7th Cir. 2015).
- For instance, "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim."

## Deliberate Indifference

- If a decision is made by a health care professional, it is presumptively valid. *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254 (7th Cir. 1996).
- "To infer deliberate indifference on the basis of a physician's treatment decision, the decision must be so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment." *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006).
- A plaintiff must demonstrate something approaching a total unconcern for his welfare in the face of serious risks or a conscious, culpable refusal to prevent harm. *Duane v. Lane*, 959 F.2d 673, 677 (7th Cir. 1992.)

## Example:

- *Askew v. Davis*, 613 Fed.Appx. 544 (7th Cir. 2015)
- Medical personnel are not required to defer to a prior doctor's diagnosis; rather, they are free to make their "own, independent medical determination as to the necessity of certain treatments or medications, so long as the determination is based on ... professional judgment and does not go against accepted professional standards."
- One-year delay in providing inmate with therapeutic shoes to alleviate pain from diabetic neuropathy, which had been provided at previous correctional institution, was not deliberate indifference where medical staff determined shoes were not medically necessary and pain was caused by inmate's failure to take insulin.

## Denial of Medication

- May not be enough unless it is without reason
- If denial of medication is warranted by the greater course of treatment and the medical care provided is reasonable, no eighth amendment violation.
- But if medication was denied simply because they did not want inmate to have it, may establish claim.

## Booking

- Booking is where initially screened for medical issues, mental health issues, special needs, safety needs and security needs
- Best practice is for medical and mental health staff to conduct initial screening
- If custody staff conduct screening, should be properly trained
- Ask and get answers to questions
- “Yes” answers need explanation
- Screening forms should be reviewed
  - Basket/email/voicemail



## Access to Care

- Don't deny access
- Don't delay access
- Includes access to emergency, routine care, specialists, nurses
- Do not create barriers to health care



## Right to care that is ordered

- Once care ordered, inmate should receive that care
- Cannot be any delay in getting care
- Ordered lower bunk, given certain cream, other exercises

## Officer and Medical Responsibility

- Observe/listen
- Document
- Relay

## Observe/Listen

- Odd behavior
- Change of conditions
- Inmate observations
- Family/attorney Information
- Prior history/knowledge



## Document

- Odd behavior
- Change of conditions
- Contacts with Family/Friends/Attorney
- Contacts with Officers
- Contacts with Supervisors



## Relay

- To Supervisors
- Medical Personnel
- Family
- Done timely
- Voicemail/email may not be enough
- Document, document, document!



## Reliance on Medical

- Officers are not medical professionals
- Can rely on medical experts
  - Decisions state that officers are encouraged to rely on medical employees. See *Berry v. Peterman*, 604 F.3d 435 (7th Cir. 2010)
- Reliance is not without limits



## *Greeno v. Daley*, 414 F.3d 645 (7th Cir.2005)

- Logical division of labor and responsibility.
- Non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor.

## Limits on reliance:

- Nonmedical prison officials are entitled to defer to the judgment of jail health professionals so long as the inmate's complaints are not ignored. *Hayes v. Snyder*, 546 F.3d 516 (7th Cir.2008).
- Nonmedical officials have duty to affirmatively investigate medical complaints and consult with staff. *Id.*

## Change of Conditions

- Makes new statements of self harm
- Observe new symptoms or issues
- Condition is getting worse
- Change in demeanor/communication
- New information



## New Information

- Ask questions
- Report new information to medical/physician
- Document
- Consider ER or contacting physician

## CELL CHECKS

- **Hourly checks**
  - At least every hour
  - Document checks
  - Well-being of inmate
  - Report concerning issues
- **Special Needs/Observation**
  - 15 minute/30 minute
  - Know what type of watch
  - Know medical condition



## Inmate Request Slips

- Procedure to obtain medical
- Must provide request slips
- Medical to promptly respond
- Evaluate/prioritize
- Relay your observations
- Document Responses



## Issues

- Inmate returns from ER with instructions
- Family calls about medical condition/depression
- Inmate's attorney calls
- Crisis visits
- Incidents documented
- Know what policies say
- Messages left for nurse

**MEDICAL AND MENTAL HEALTH - REQUEST FOR CARE**

Name: [REDACTED] CELL: 0416 DOB: [REDACTED] ID: [REDACTED] Date: 9-21-15

Check service requested:  Doctor - \$7.50     Nurse - \$5.00     Mental Health - No Charge

Written Response     Outside Appointment

Please explain service requested in detail (PRINT NEATLY):      Expected Release Date: \_\_\_\_\_

*The pain in my neck has ~~increased~~ re-appeared worse than ever. I cannot longer endure the severe sharp pain. Please help me. My pain is also throbbing in and thru my head in the mid. Please help. My neck has operated on several by Sgt. Roberto. I need on ice pack to help with swelling pain. Please help. The medication is not effective.*

1. No inmate will be denied medical care due to inability to pay or due to insufficient funds in account.  
 2. Fees will be collected only for services requested by the inmate.  
 3. All fees will be immediately deducted from the inmate's account. If there is insufficient funds in the account the fees will be applied and the account will show a negative balance. Any money received by the inmate (except bond money) will be first used to satisfy the inmate's debt with the Shelbourn County Sheriff's Office before any money can be used for canteen purchases.

INMATE SIGNATURE: [REDACTED]      STAFF SIGNATURE: [REDACTED]      DATE: 9-22-15

*see attached*

[REDACTED] SCF-4746

## Documentation

There is a presumption that a medical record is accurate if there is no evidence of tampering



## Purpose of Documentation

- To show complaints and care provided
- Documents communication with other health care providers
- Document communications with officers and family members
- Legal record of treatment and contacts regarding inmate

Be as clear as possible. Assume someone with no context may need to refer to the record 1-2 years in the future and will need to understand what was happening and why.

## Documentation

- Visits with inmates
- Change of Symptoms
- Information from family/inmates, Officers
- Calls to physician and supervisors
- Discharge Information



## Issues Regarding Documentation Pitfalls

- Fail to follow Policies/Practices
- Fail to document Information
- Late charting
- Missing records
- Failure to obtain or document authorization from physician
- Including personal opinions
- Fail to date and sign
- Incomplete or vague information



## Documentation

- If not documented, will claim it was not done.
- If poorly or vaguely documented, will claim that care was substandard
- If mistakes or incorrectly documented, the claim will be that you lied or tried to cover up



## Grievance Procedure

The Prison Litigation Reform Act requires exhaustion of Administrative remedies.

*Santiago v. Ware*, 205 Wis. 2d 295 (Ct. App. 1996);  
*Perez v. Wisconsin Dep't of Corrs.*, 182 F.3d 532 (7th Cir. 1999).



## Grievance Procedure

“To exhaust remedies, a prisoner must file complaints in the place, and at the time, the prison’s administrative rules require.”

*Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002).

## Grievance Procedure

- Established Procedure
- Clearly Written
- Knowledge of Procedure
- Access to Forms
- Documentation of Grievances



## Exhaustion of Admin. Remedies

If administrative remedies are unavailable, the exhaustion requirement is met.

*Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002).



## Purpose of a Deposition

- Obtain Information
- Preserve Information
- Commit to a position
- Basis for impeachment
- Authenticate documents
- Obtain evidence at trial
- Fishing expeditions may be allowed

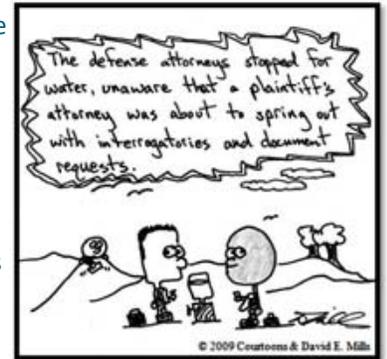


*"Isn't it a fact, Mr. Claus, that the sole light on your vehicle that dark Christmas Eve of the accident was a red-nosed reindeer?"*

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## Recommendations for Proper Testimony Techniques

- In civil, as compared to criminal, case may be more complex, far-reaching in discovery/implications, exposure that testimony leads to damages against nurses and jail.
- Nurses/officers may be more inexperienced versus sophisticated plaintiff attorneys.



On the Discovery Channel

## Survival Tactics

- Preparation
- Recognition
- Do not volunteer or be emotional
- Do not guess or assume
- Do not be persuaded to keep talking
- I don't know vs. I don't recall
- Do not try to remember every detail
- Do not agree with absolutes
- Get out the primary, necessary fact

## THANK YOU!

## Any Questions?

