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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 by failing to take reasonable steps to abate that risk.[5]

Prison officials' knowledge of a substantial risk to a prisoner's health can be proven by

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[1] Estelle v. Gamble, 429 U.S. 97, 103 (1976); Brown v. Plata, 131 S.Ct. 1910, 1928 (2011) ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment… A prison that deprives prisoners basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.").

[2] West v. Atkins, 487 U.S. 42, 56-57(1988); *see also* 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, 847.

circumstantial evidence. For example, it may be inferred from "the very fact that the risk was obvious."[6] 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."[7]

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 medical 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?

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."[8] Additionally, courts may 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."[9]

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 pain if not treated."[10] Significant injury, pain or loss of function can constitute "serious medical needs"

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[6] Farmer, 511 U.S. at 842.

[7] Id. at 843 n.8.

[8] Brock v. Wright, 315 F.3d 158, 162 (2d Cir. 2003) (internal quotation marks, citation omitted).

[9] Hill v. DeKalb Reg'l Youth Detention Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994) (internal quotation marks, citation omitted); see also Schaub v. VonWald, 638 F.3d 905, 914 (8th Cir. 2011); Leavitt v. Corr. Med. Servs, Inc., 645 F.3d 484, 497 (1st Cir. 2011); Gee v. Pacheco, 627 F. 3d 1178, 1192 (10th Cir. 2010); Iko v. Shreve, 535 F.3d 225, 241 (4th Cir. 2008); Williams v. Rodriguez, 509 F.3d 392, 401 (7th Cir. 2007).

[10] Gayton v. McCoy, 593 F.3d 610, 620 (7th Cir. 2010); Atkinson v. Taylor, 316 F.3d 257, 266 (3d Cir. 2003); Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002); Harrison v. Barkley, 219 F.3d 132, 136 (2d Cir. 2000).

even if they are not life-threatening.[11] Pain can constitute a "serious medical need" even if the failure to treat it does not make the condition worse.[12] And the harm to health does not need to have already occurred; exposure to a risk that may cause harm in the future (such as exposure to tobacco smoke) may also be the basis for deliberate indifference.[13]

At least two courts have held that pregnancy, at least in its later stages, constitutes a serious medical need.[14] Complications arising from pregnancy are serious medical needs that require appropriate medical care.[15] Although access to abortion is generally protected,[16] courts may

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[11] See Schaub v. Vonwald, 638 F.3d 905, 915 (8th Cir. 2011) (paraplegic suffering from sores, edema, and spasticity); 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 (2d Cir. 2003) (painful keloids); Farrow v. West, 320 F.3d 1235 (11th Cir. 2003) (need for dentures with pain, weight loss, etc.); Hernandez v. Keane, 341 F.3d 137, 141-42 (2d Cir. 2003) (injured hand with bullet fragments embedded); Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002) (effects of pepper spray on bystanders); Montgomery v. Pinchak, 294 F.3d 492, 500 (3d Cir. 2002) (HIV); Ellis v. Butler, 890 F.2d 1001, 1003 (8th Cir. 1989) (swollen, painful knee); Massey v. Hutto, 545 F.2d 45, 46 (8th Cir. 1976) (ulcers); Soneeya v. Spencer, 851 F. Supp. 2d 228, 244-45 (D. Mass. 2012) (gender identity disorder); Shultz v. Allegheny County, 835 F.Supp.2d 14 (W.D. Pa. 2011) (bacterial pneumonia); Hawkins v. County of Lincoln, 785 F. Supp. 2d 781, 786 (D. Neb. 2011) (suicide watch); Jones v. Pramstaller, 678 F. Supp. 2d 609, 617-20 (W.D. Mich. 2009) (meningitis); Petrichko v. Kurtz, 117 F. Supp. 2d 467, 470 (E.D. Pa. 2000) (dislocated shoulder); 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); Benter v. Peck, 825 F. Supp. 1411, 1417 (S.D. Iowa 1993) (20/400 vision); 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, 1056-59 (N.D. Ill. 1987) (hemorrhoids); Case v. Bixler, 518 F. Supp. 1277, 1280 (S.D. Ohio 1981) (boil).

[12] See Smith v. Knox County Jail, 666 F.3d 1037, 1040 (7th Cir. 2012) (failure to treat dizziness and pain for five days); 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 have "eliminated pain and suffering at least temporarily"); H.C. by Hewett 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).

[13] Helling v. McKinney, 509 U.S. 25, 33 (1993).

[14] Doe v. Gustavus, 294 F. Supp. 2d 1003, 1008 (E.D. Wis. 2003); Webb v. Jessamine County Fiscal Court, 802 F. Supp. 2d 870, 881 (E.D. Ky. 2011).

[15] E.g. Goebert v. Lee County, 510 F.3d 1312, 1326 (11th Cir. 2007) (leaking amniotic fluid severe enough to cause stillbirth); Pool v. Sebastian County, Ark., 418 F.3d 934, 945 (8th Cir. 2005) (bleeding, passing blood clots, and severe pain from cramping); Coleman v. Rahija, 114 F.3d 778, 785 (8th Cir. 1997) (pre-term labor).

uphold prison policies that put additional burdens on women seeking abortions where a woman's health is not endangered by the pregnancy.[17]

Some examples of inadequate medical care that may constitute deliberate indifference to serious medical needs include:

- Serious denials or delay in access to medical personnel.[18]
- A denial of access to appropriately qualified health care personnel.[19]
- A failure to inquire into facts necessary to make a professional judgment.[20]
- A failure to carry out medical orders[21] (although a disagreement among doctors as to the appropriate medical orders will not always support a claim of deliberated indifference).[22]

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[16] Monmouth County Corr. Inst. Inmates v. Lanzaro, 843 F.2d 326 (3d Cir. 1987) (nontherapeutic, elective abortion is a serious medical need in the context of *Estelle*); Roe v. Crawford, 514 F.3d 789 (8th Cir. 2008) (prison policy prohibiting the transportation of pregnant inmates offsite for "nontherapeutic" abortions violated Due Process).

[17] Victoria W. v. Larpenter, 369 F.3d 475, 486 (5th Cir. 2004) (upholding prison policy requiring court order to obtain abortion).

[18] Estelle, 429 U.S. at 104; Thomas v. Cook County, 604 F.3d 293 (7th Cir. 2009) (failure to respond to medical requests for two days where prisoner died from untreated pneumococcal meningitis); Jett v. Penner, 439 F.3d 1091 (9th Cir. 2006) (delay of over a year before seeing a hand specialist); Natale v. Camden County Corr. Facility, 318 F.3d 575 (3d 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); Weyant v. Okst, 101 F.3d 845, 856-57 (2nd Cir. 1996) (delay of hours in getting medical attention for diabetic in insulin shock); Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) (two-month delay in getting prisoner with head injury to a doctor).

[19] Hayes v. Snyder, 546 F.3d 516, 526 (7th Cir. 2008) (failure to refer to a specialist); LeMarbe v. Wisneski, 266 F.3d 429 (6th Cir. 2001)(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); Martinez v. Garden, 430 F.3d 1302 (10th Cir. 2005) (failure to inform prisoner of medical appointments or arrange transportation to see doctor).

[20] Goebert v. Lee County, 510 F.3d 1312, 1327-28 (11th Cir. 2007) (failure to look into complaint of pregnant detainee who had been leaking amniotic fluid for a week was an act of "willful blindness"); 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) (overruled on other grounds by Farmer v. Brennan, 511 U.S. 825 (1994)); Inmates of Occoquan v. Barry, 717 F. Supp. 854, 867-68 (D.D.C. 1989) (failure to perform adequate health screening on intake).

- Unjustifiable reliance on non-medical factors in making treatment decisions.[23]
- Decisions so egregiously bad that they are not based on sound medical judgment.[24]

Elements of an adequate medical care system

The Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care. Prisoners must have the ability to ask for care on a regular basis.[25] Prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to the medical staff, if sick calls are not conducted regularly and professionally, or if the staff is not competent to examine the prisoners, diagnose illnesses, and then treat or refer the patient. [26]

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[21] Estelle, 429 U.S. at 105 ("intentionally interfering with treatment once prescribed"); Smith v. Smith, 589 F.3d 736, 739 (4th Cir. 2009) (denial of prescribed treatment for foot infection); 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 treat pain where prisoner complained of pain, manifested physical indications of pain, and had been prescribed pain medication by outside doctor); Koehl v. Dalsheim, 85 F.3d 86, 88 (2d 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 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).

[22] See, e.g., Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006) (explaining that "a difference of opinion among physicians on how an inmate should be treated cannot support a finding of deliberate indifference" unless the difference is "so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment.")

[23] See, e.g., 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 Servs, Inc., 769 F.2d 700, 704-05 (11th Cir. 1985) (refusal to provide specialty consultations without a court order); Newman v. Alabama, 559 F.2d 283, 286 (5th Cir. 1978) (legislative inaction); Wilson v. VanNatta, 291 F. Supp. 2d 811, 816 (N.D. Ind. 2003) (cost).

[24] Roe v. Elyea, 631 F.3d 843, 862-63 (7th Cir. 2011) (prescribing treatment without considering individual inmate's condition constituted "a failure to exercise medical – as opposed to administrative – judgment at all."); Greeno v. Daley, 414 F.3d 645, 654-55 (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").

[25] Thomas v. Cook County Sheriff's Dept., 604 F.3d 293, 302-05 (7th Cir. 2009) (failure to have a system in place for timely review of inmate's medical requests sufficient to find liability against the county).

[26] Johnson-El v. Schoemehl, 878 F.2d 1043, 1055 (8th Cir. 1989) (sick call available only once a week states a claim for a violation of a clearly established constitutional right); Bass by Lewis v. Wallenstein, 769 F.2d 1173, 1186 (7th

Prisoners also have the right to care and appropriate follow up,[27] and to be seen by appropriately credentialed staff, including specialist care required by their condition.[28]

Several courts have required that facilities screen prisoners at intake to identify persons with communicable diseases or other serious medical conditions that require prompt attention.[29] 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.[30]

Cir. 1985) ("systematic and gross deficiencies" in staffing, quality of personnel, and sick call procedures result in denial of constitutionally adequate medical care); Todaro v. Ward, 565 F.2d 48, 53 (2d Cir. 1977) (system of screening medical complaints was constitutionally inadequate where nurse only viewed prisoner for 15-20 seconds, made no physical examination, and then passed "cryptic" written notes to another nurse to make scheduling decisions); Tillery v. Owens, 719 F. Supp. 1256, 1306 (W.D.Pa. 1989), aff'd, 907 F.2d. 418 (3d Cir. 1990) ("cursory" sick call and sick call where noise level impeded doctors from evaluating patients constitutionally inadequate).

[27] E.g. Johnson v. Wright, 412 F.3d 398, 406 (2nd Cir. 2005) (denial of hepatitis C treatment recommended by all of prisoner's treating physicians); Lawson v. Dallas County, 286 F.3d 257, 262-63 (5th Cir. 2002) (failure to comply with doctor's follow-up orders to prevent and treat paraplegic prisoner's decubitus ulcers); Aswegan v. Bruhl, 965 F.2d 676, 677-78 (8th Cir. 1992) (failure to follow doctor's care instructions and not cuff prisoner's hands behind his back); Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977) (substantial delays in scheduling follow-up appointments and tests and repeated non-compliance with medical orders unconstitutional).

[28] Hayes v. Snyder, 546 F.3d 516, 524-26 (7th Cir. 2008) (failure to refer prisoner to a specialist when general practitioner himself could not diagnose cause of inmate's pain sufficient to state a claim of deliberate indifference to a serious medical need); Jett v. Penner, 439 F.3d 1091, 1097-98 (9th Cir. 2006) (two and a half month delay in requesting orthopedic consultation sufficient to state a claim against doctor); Oxendine v. Kaplan, 241 F.3d 1272, 1278-79 (10th Cir. 2001) (two week delay in referring prisoner to outside, qualified medical help while reattached portion of inmate's finger blackened and became necrotic states a claim for Eighth Amendment violation); Andrews v. Camden County, 95 F. Supp. 2d 217, 229 (D.N.J. 2000) (failure to have Medical Director on staff created unreasonable risk of violating Eighth Amendment).

[29] E.g., Lareau v. Manson, 651 F.2d 96, 109 (2d Cir. 2008) (failure to screen inmates for communicable diseases unconstitutional); Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151, 210 (D.P.R. 1998) (failure to screen inmates for infectious diseases unconstitutional); see also Woodward v. Corr. Med. Servs. of Ill., Inc., 368 F.3d 917, 928-29 (7th Cir. 2008) (private prison company's failure to train employees, permitting nurses to not fill out intake forms, and allowing practice of not reviewing said forms violated the Eighth Amendment); Reynolds v. Goord, 103 F.Supp.2d 316 (S.D.N.Y. 2000) (failure to take adequate steps, such as screening incoming inmates, to protect health and safety of inmates would be a constitutional violation).

[30] Hoptowit v. Ray, 682 F.2d 1237, 1252-53 (9th Cir. 1982); Provencio v. Vazquez, 258 F.R.D. 626, 637 (E.D. Cal. 2009).

The constitution may also be violated by inadequate, unhygienic, or dilapidated equipment and medical facilities.[31] It is also incumbent upon prisons to keep accurate medical records.[32]

Prescription medications and medically necessary diets must be made available to prisoners.[33]

A mere difference of medical judgment is not actionable.[34] But the decisions of prison doctors are not necessarily unassailable.[35] In general, the prisoner must be able to show that the actions of medical staff could not be supported by legitimate medical judgment.[36]

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[31] Harris v. Thigpen, 941 F.2d 1495, 1509 (11th Cir. 1991) (minimally adequate care may require access to expensive equipment such as CAT scanners or dialysis machines); Newman v. Alabama, 503 F.2d 1320, 1331-33 (5th Cir. 1975) ("glaringly unhygienic" conditions and facilities in "a state of disrepair" is a constitutional violation); Benjamin v. Fraser, 161 F. Supp. 2d 151, 186 (S.D.N.Y. 2001) (sanitation and lighting in medical clinic and infirmary fall below constitutional standards), aff'd in part, vacated in part on other grounds, 343 F.3d 35, 52 (2d Cir. 2003); see also Brown v. Plata, 131 S.Ct. 1910, 1933-34 (2011) (citing insufficient space for medical staff to examine and treat prisoners, at least where resulting in delays in treatment, as a constitutional violation).

[32] Johnson-El v. Schoemehl, 878 F.2d 1043, 1055 (8th Cir. 1989) ("The keeping of medical records is also a necessity."); Coleman v. Wilson, 912 F. Supp. 1282, 1314 (E.D. Cal. 1995) ("A necessary component of minimally adequate medical care is maintenance of complete and accurate medical records."); Montgomery v. Pinchak, 294 F.3d 492, 500 (3d Cir. 2002) (negligent misplacement of medical records not deliberate indifference, but ten-month refusal to recreate medical file followed by alleged falsification of recreated records states a claim).

[33] Arnett v. Webster, 658 F.3d 742 (7th Cir. 2011) (providing inmate only with pain medication and not medication to treat underlying condition of rheumatoid arthritis for ten months); Brown v. Johnson, 387 F.3d 1344, 1351-52 (11th Cir. 2004) (withdrawal of prescribed medications for HIV and hepatitis C); Wakefield v. Thompson, 117 F.3d 1160, 1165 (9th Cir. 1999) (refusal to provide prisoner with necessary medication upon release as ordered by his doctor); Seller v. Henman, 41 F.3d 1100, 1102-03 (7th Cir. 1994) (failure to provide special diabetic diet can state a claim).

[34] Stewart v. Murphy, 174 F.3d 530, 535 (5th Cir. 1999); Meuir v. Green County Employees, 487 F.3d 1115, 1118 (8th Cir. 2007); Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006); White v. Napoleon, 897 F.2d 103, 110 (3d Cir. 1990) ("[C]ertainly no claim is stated when a doctor disagrees with the professional judgment of another doctor.").

[35] 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"); LeMarbe v. Wisneski, 266 F.3d 429 (6th Cir. 2001) (allegation that doctor closed abdomen incision despite leaking bile sufficient to survive summary judgment); 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).

[36] See Rodriguez v. Plymouth Ambulance Serv., 577 F.3d 816, 832 (7th Cir. 2009) (allegation that treatment not based on legitimate medical judgment sufficient to state a claim), citing Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006) (deliberate indifference can be inferred when the physician's treatment decision is "so far afield of

Dental Care

Dental care of prisoners is governed by the same constitutional standard of deliberate indifference as is medical care.[37]

"Dental care is one of the most important medical needs of prisoners."[38] Prisoners must be provided with both routine and emergency dental care.[39] Dental care that consists of pulling teeth that can be saved may be constitutionally inadequate.[40] Delays in dental care can also violate the Eighth Amendment, particularly if the prisoner is suffering pain in the interim.[41] Dental ailments that cause pain and risk of or active infection constitute a serious medical condition.[42] Prolonged deprivation of toothpaste can violate the Eighth Amendment.[43] One court has held that some minimal level of prophylactic dental care is constitutionally required.[44]

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accepted professional standards as to raise the inference that it was not actually based on a medical judgment").

[37] Flanory v. Bon, 604 F.3d 249 (6th Cir. 2010); Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

[38] 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).

[39] Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980) internal citations omitted (state's constitutional obligation to provide adequate medical care includes duty to make available routine and emergency dental care)

[40] Harrison v. Barkley, 219 F.3d 132, 137-38 (2d Cir. 2000); Chance v. Armstrong, 143 F.3d 698, 700-02 (2d 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).

[41] McGowan v. Hulick, 612 F.3d 636, 640-41 (7th Cir. 2010); Hartsfield v. Colburn, 371 F.3d 454, 457 (8th Cir. 2004) (six weeks); Farrow v. West, 320 F.3d 1235 (11th Cir. 2003) (fifteen-month delay in providing dentures); 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); but see Holden v. Hirner, 663 F.3d 336, 342-43 (8th Cir. 2011) (no serious medical need where toothache did not result in bleeding, swelling, infection, or other symptoms of tooth pain and prisoner was observed eating without difficulty despite roughly a year elapsing between injury and extraction of tooth).

[42] Berry v. Peterman, 604 F.3d 435, 440 (7th Cir 2010) ("Tooth decay can constitute an objectively serious medical condition because of pain and the risk of infection."); Boyd v. Knox, 47 F.3d 966, 969 (8th Cir. 1995) (three week delay in treating prisoner's infected, painful tooth states a claim for Eighth Amendment violation).

[43] Flanory v. Bonn, 604 F.3d 249, 254 (6th Cir. 2010); Board v. Farnham, 394 F.3d 469 (7th Cir. 2005).

[44] Barnes v. Government of Virgin Islands, 415 F. Supp. 1218, 1235 (D.V.I. 1976); but see, e.g. Hallett v. Morgan, 296 F.3d 732, 746 (9th Cir. 2002) (lack of routine teeth cleaning does not violate Eighth Amendment, at least where doctor refers patient to dental hygienist when periodontal disease requires it).

Mental Health Care

Mental health care of prisoners is governed by the same constitutional standard of deliberate indifference as is medical care.[45] A "severe" mental health condition is one "that has caused significant disruption in a prisoner's everyday life and which prevents his functioning in the general population without disturbing or endangering others or himself."[46]

Elements of an adequate mental health care system

The Eighth Amendment requires that prison officials not be deliberately indifferent to the serious mental health needs of prisoners. A mental health care system that meets the serious needs of prisoners is composed of many parts. First, there must be a systematic program for screening and evaluating prisoners in order to identify those who require mental health treatment. Second, treatment must entail more than segregation and close supervision of the prisoner 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 prisoners 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 prisoners with self-injurious behavior is a necessary component of any mental health treatment program.[47]

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[45] Hoptowit v. Ray, 682 F.2d 1237, 1254 (9th Cir. 1982); Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1976).

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

[47] 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. 1982), amended in part and vacated in part, 688 F.2d 266 (5th Cir. 1982); accord Balla v. Idaho State Bd. of Corrs., 595 F.Supp. 1558, 1577 (D. Idaho 1984); Coleman v. Wilson, 912 F.Supp. 1282, 1298 n.10 (E.D. Cal. 1995); see also Gates v. Cook, 376 F.3d 323, 343 (5th Cir. 2004) (affirming district court injunction to cure inadequate mental health care, requiring comprehensive annual mental health evaluations, monitoring of medication levels, private setting for mental health counseling and evaluations); Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1189 (9th Cir. 2002) (screening on intake); Steele v. Shah, 87 F.3d 1266, 169-70 (11th Cir. 1996) (condemning discontinuation of psychotropic medication to prisoner considered a suicide risk after only one short interview and without reviewing prisoner's medical records).

Some examples of inadequate mental health care that may place patients at a substantial risk of serious harm include:

- Lack of adequate mental health screening on intake.[48]
- Failure to follow up on prisoners with known or suspected mental health disorders.[49]
- Failure to provide adequate numbers of qualified mental health staff.[50]
- Housing mentally ill prisoners in segregation or "supermax" units.[51]
- Failure to transfer seriously mentally ill prisoners to more appropriate facilities.[52]
- Improper use of restraints.[53]

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[48] Woodward v. Corr. Med. Servs., 368 F.3d 917 (7th Cir. 2004); Gibson v. County of Washoe, 290 F.3d 1175, 1189 (9th Cir. 2002); 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).

[49] Woodward v. Corr. Med. 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. 2003) (failure to respond to warnings that prisoner was suicidal); Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001); Sanville v. McCaughtrey, 266 F.3d 724, 738 (7th Cir. 2001); Waldrop v. Evans, 871 F.2d 1030, 1036 (11th Cir. 1989); Arnold ex rel. H.B. v. Lewis, 803 F. Supp. 246, 257-58 (D. Ariz. 1992).

[50] 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).

[51] 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").

[52] 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).

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

- Excessive use of force against mentally ill prisoners.[54]
- Lack of training of custody staff in mental health issues.[55]
- Inadequate crisis intervention [56]

Medical Costs and Payments

Many prisons and jails across the country charge prisoners for basic medical care as a way to cut costs and discourage prisoners who abuse sick call. One court has expressed the belief that medical billing policies requiring prisoners to pay for care may be unconstitutional.[57] But most courts have found co-payments and over-the-counter medication (OTC) policies constitutional as long as prisoners are not deprived of needed care because of their inability to pay.[58] 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.[59]

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[54] Thomas v. Bryant, 614 F.3d 1288, 1312 (11th Cir. 2010) (non-spontaneous use of chemical agents on inmates with severe mental illness); Coleman, 912 F. Supp. at 1321-23; Kendrick v. Bland, 541 F. Supp. 21, 25-26 (W.D. Ky. 1981).

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

[56] Sanville v. McCaughtry, 266 F.3d 724, 740 (7th Cir. 2001) (allegation that guards knew that prisoner had written last will and testament, had attempted suicide in the past and threatened to attempt suicide, had a long history of mental illness, was not eating and lost forty pounds stated a claim for deliberate indifference to serious risk of suicide).

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

[58] See Reynolds v. Wagner, 128 F.3d 166 (3d Cir. 1997) (charging inmates for medical care is not per se unconstitutional; deterrent effect did not violate the Eighth Amendment or Due Process Clause); Breakiron v. Neal, 116 F. Supp. 2d 1110, 1114-16 (N.D. Tex. 2001) (deducting payment for medical services from prisoners' accounts does not violate the Eighth or Fourteenth Amendments, nor is charging inmates for medical care per se unconstitutional); Jones-Bey v. Cohn, 115 F. Supp. 2d 936, 939-40 (N.D. Ind. 2000) (co-pay policy constitutional, as access to medical treatment is not denied to prisoners who do not have money in their trust accounts); 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. Dep't of Pub. Safety & Corr. 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).

[59] 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.").

Summary:

- The Eighth Amendment prohibits officials from being *deliberately indifferent to the serious medical needs* of prisoners and detainees.
- The Eighth Amendment prohibits officials from knowing about and failing to take reasonable steps to protect prisoners and detainees from a *substantial risk of serious harm*.
- To state a claim for deliberate indifference, you must show that officials had subjective knowledge of the risk of serious harm.
- Serious medical needs are those that are obvious to a lay person or have been diagnosed by a doctor as requiring treatment. A condition does not need to be life-threatening to be a serious medical need.
- Medical malpractice or negligence alone is insufficient to show deliberate indifference.
- You do not necessarily have the right to a particular medication or medical treatment.
- A mere disagreement between doctors is not deliberate indifference.
- Mental health conditions may be serious medical needs, for example where an inmate is suicidal.
- Dental problems may be serious medical needs, for example where there is pain and risk of infection.
- Pain may be a serious medical need.
- Officials may not deny you care just because you cannot pay.
- An adequate medical care system is one where prisoners can make their medical needs known and have access to regular sick call, have access to qualified staff, are given care and appropriate follow-up as prescribed by their physicians, and where medical records are maintained.
- An adequate mental health care system is one where prisoners are screened for mental health issues, receive treatment prescribed by qualified personnel, and are not medicated in ways that would be dangerous.