HOSPITAL LIABILITY ISSUES IN THE TREATMENT OF JAIL AND PRISON INMATES

Presented and Prepared by:
John D. Hoelzer
jhoelzer@heyroyster.com
Springfield, Illinois • 217.522.8822
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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.
EXPOSURE TO THE DIFFERENCES IN THE TREATMENT OF JAIL AND PRISON INMATES

I. THE EIGHTH AMENDMENT’S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT

Most physicians understand that they could be sued for malpractice. But what about being sued for cruel and unusual punishment? That is a real possibility when the patient happens to be a prisoner.

Prisoners must rely on the government to treat their medical needs. If the government fails to do so, those needs will not be met. And thus the Eighth Amendment comes into play. The Eighth Amendment’s prohibition against cruel and unusual punishment prohibits the government from inflicting punishments which are incompatible with “the evolving standards of decency that mark the progress of a maturing society.” Estelle v. Gamble, 429 U.S. 97, 102 (1976). In that vein, the Eighth Amendment requires the government to provide “medical care for those whom it is punishing by incarceration,” and it safeguards prisoners against a lack of medical care that “may result in pain and suffering which no one suggests would serve any penological purpose.” Estelle, 429 U.S. at 103. Accordingly, “deliberate indifference to [the] serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain,’ proscribed by the Eighth Amendment.” Id. at 104.

Deliberate indifference means ‘that the official actually knew of’ and disregarded a substantial risk of harm. This requires a plaintiff to show more than medical malpractice. Even objective recklessness – failing to act in the face of an unjustifiably high risk that is so obvious that it should be known – is insufficient to make a claim. Additionally, if the defendant took reasonable measures to respond to a risk, then he was not deliberately indifferent, even if the plaintiff was ultimately harmed.

Deliberate indifference can take many forms. Most commonly, deliberate indifference claims are based on allegations that (1) a prison official ignored a request for medical assistance, (2) a prison official persisted in a course of treatment known to be ineffective, or (3) there was an inexplicable delay in treatment which served no penological interest.

To succeed on a claim of failure to provide medical attention, a plaintiff must prove by a preponderance of the evidence that:

- The plaintiff had a serious medical need;
- The defendant was deliberately indifferent to the plaintiff’s serious medical need;
- The defendant’s conduct caused harm to the plaintiff; and
- The defendant acted under color of law. (more on this later)
There are significant differences between a medical malpractice claim and a deliberate indifference claim. To highlight just a few:

- Medical malpractice claims are based on state law and are usually litigated in state court. Conversely, deliberate indifference claims are based on federal law and are usually litigated in federal court. Each forum has its own rules of civil procedure.
- Unlike a medical malpractice claim, a deliberate indifference claim does not require the plaintiff to obtain a report from a reviewing healthcare professional prior to filing suit, nor must the plaintiff present expert testimony at trial.
- Deliberate indifference requires a greater showing of culpability than medical malpractice. Whereas medical malpractice is a form of ordinary negligence and merely requires a plaintiff to show a deviation from the standard of care, deliberate indifference requires a plaintiff to show that the defendant intentionally disregarded the plaintiff’s serious medical need.
- Punitive damages are typically unavailable on a medical malpractice claim, but they are available on a deliberate indifference claim.
- If a plaintiff prevails on a deliberate indifference claim, the defendant may be responsible for paying the plaintiff’s attorney’s fees.

II. 42 U.S.C. § 1983

Section 1983 of Title 42 of the United States Code provides a means for individuals to enforce their constitutional rights, such as their above-described Eighth Amendment rights. The statute provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

42 U.S.C. § 1983. In essence, there are two key elements that a plaintiff must prove in order to prevail on a § 1983 claim: (1) a person subjected the plaintiff to conduct that occurred under color of state law, and (2) this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the United States Constitution.

A considerable amount of § 1983 litigation is filed by prisoners or other persons in state custody. According to the 2016 caseload statistics published by the United States Courts, prisoners and civil detainees filed over 27,000 lawsuits under § 1983 alone. Needless to say, there is an extensive body of case law on § 1983 liability. The material below is limited to the circumstances under which a privately-employed physician providing medical care to inmates outside of a correctional center can be deemed a state actor for purposes of § 1983 liability.
III. COLOR OF STATE LAW

In order to prevail on a § 1983 civil rights claim, the plaintiff must be able to demonstrate that the defendants acted under color of state law. In most § 1983 cases, the defendants are officers or state government employees and, therefore, it is an easy determination that the defendants acted under color of state law.

However, private companies and their employees can also act under color of state law and thus be sued under § 1983. Why is that? “The theory is that if the government must satisfy certain constitutional obligations when carrying out its functions, it cannot avoid those obligations and deprive individuals of their constitutionally protected rights by delegating governmental functions to the private sector. The delegation of the function should be accompanied with a delegation of constitutional responsibilities.” Martin A. Schwartz, 1 Section 1983 Litigation Claims and Defenses § 5.14 [A] at 5-100 (4th ed. 2003).

Determining whether a private entity acted under color of state law is “one of the more slippery and troublesome areas of civil rights litigation.” Rodriguez v. Plymouth Ambulance Service, 577 F.3d 816, 823 (7th Cir. 2009). The Supreme Court has yet to decide whether a privately-employed physician providing medical care to inmates outside of a correctional center is a state actor, and there is considerable disagreement among the lower courts. When considering this issue, lower courts must make a fact-intensive inquiry that focuses on the trilateral relationship between the state, the physician, and the prisoner. West v. Atkins, 487 U.S. 42, 56 (1988).

In Rodriguez, the Seventh Circuit identified four factors to assist lower courts in determining whether a privately-employed physician is a state actor for purposes of § 1983 liability.

A. The setting where the medical care was provided.

If the medical care was provided at a state facility, such as a prison or mental health facility, then it is more likely that the physician was acting under color of state law. Conversely, if the medical care was provided at a private hospital or clinic, it is less likely that the physician was acting under color of state law.

The rationale is that physicians in a correctional setting are inevitably affected by that setting in the performance of their medical function. The state controls the circumstances and sources of a prisoner’s medical treatment, and the nuances of prison life necessarily influence the nature, timing, and form of medical care provided to inmates.

However, in the context of modern American medical practice, it is not feasible to render a great deal of medical care within the confines of a prison. Thus, it is expected that inmates will be treated by physicians at outside facilities. Because of this, courts have been quick to note that not all medical care rendered outside prison walls is immune from liability under § 1983. As discussed below, the degree of state control over the medical care is more important than the setting where the care was provided.
B. The degree of state control or coercion.

In assessing whether a physician was acting under color of state law, courts will give significant weight to the degree to which the physician's professional decisions were influenced by the status of the patient as a prisoner and the directives of the state with respect to the manner and mode of care. In other words, the degree of state control over the medical care is key. If the physician's treatment decisions were so influenced by the plaintiff's status as a prisoner or a directive of the state that a reasonable jury could conclude that the physician was acting under color of state law, then the physician may be treated as a state actor for purposes of § 1983 liability.

In considering this factor, courts have assessed the contacts between the prison doctor and the private doctor, the reasons for the visit, what care was authorized by the state prior to the visit, whether treatment required state approval, and whether medical appointments were arranged by the correctional center.

C. Whether the healthcare provider's relationship with the state was voluntary.

In determining whether the medical care can be attributed to the state and thus fall under color of state law, courts also consider whether the healthcare provider's relationship with the state was voluntary. A private entity cannot be burdened with the responsibilities of the state for the care of its prisoners unless the entity assumes that responsibility voluntarily. The principal way by which a private entity would undertake such a responsibility is by entering into a contractual relationship.

When a party enters into a contractual relationship with the state penal institution to provide specific medical services to inmates, that party voluntarily assumes the state's obligation to provide medical care. Similarly, when a person accepts employment with a private entity that contracts with the state, he understands that he is accepting responsibility to perform his duties in conformity with the Constitution.

In contrast, private organizations and their employees that have only an incidental and transitory relationship with the state's penal system usually cannot be said to have voluntarily assumed the state's responsibility for incarcerated persons. For example, an emergency medical system that has a preexisting obligation to serve all persons who present themselves for emergency treatment hardly can be said to have entered into a specific voluntary undertaking to assume the state's special responsibility to incarcerated persons.

As a word of caution though, a contractual relationship is not the only means by which an individual may voluntarily assume the state's obligation to provide medical care. For instance, courts have also considered the relationship between the physician's employer and the treating hospital, whether the hospital was a public hospital, whether the hospital had a contract with the state or correctional facility or the facility's onsite medical providers, or whether the hospital was equipped to handle prisoners on a regular basis. Based on these factors, some courts have concluded that it is possible for a private medical provider to voluntarily enter into a relationship with the state even without a contract.
D. The relationship between the healthcare provider and the plaintiff.

Finally, courts will consider the relationship of the private provider to the prisoner. In order to be liable as a state actor for the provision of medical services, the private provider must have a direct, not attenuated relationship with the prisoner-patient.

To the extent that a private entity does not replace, but merely assists the state in the provision of healthcare to prisoners, the private entity’s responsibility for the level of patient care becomes more attenuated, and it becomes more difficult to characterize its actions as the assumption of a function traditionally within the exclusive province of the state. However, if the assistance is undertaken under the affirmative direction of the state, or in collaboration with the state, the activity may be considered to be a state action.

As can be seen, there is no bright-line rule to determine whether a privately-employed physician is a state actor for purposes of § 1983 liability. Rather, that determination must be made on a case-by-case basis, with the above-described factors serving as guideposts.
John’s practice focuses on defending law enforcement officers and correctional service providers against charges of constitutional rights violations, business owners against claims of negligence involving personal injury and property damage, and healthcare professionals in cases alleging medical malpractice.

A Springfield native, John joined Heyl Royster after seven years of public service – first as an Assistant Attorney General for the State of Missouri, and then as a Special Agent with the United States Drug Enforcement Administration. While serving with the Missouri Attorney General’s Office, John represented state employees and entities at both the trial and appellate levels, with an emphasis on federal civil rights litigation and habeas corpus proceedings.

As a DEA agent, John conducted criminal investigations pursuant to the United States Controlled Substances Act. John’s fieldwork included surveillance operations, tactical operations, and a variety of federal judicial proceedings.

John received his law degree from Saint Louis University, where he was a member of the national trial advocacy team and the national moot court team. While a law student, John received the Academic Excellence Award for legal ethics.

Prior to graduating from law school, John clerked in the Civil Division of the United States Attorney’s Office for the Central District of Illinois, and in the Criminal Division of the United States Attorney’s Office for the Eastern District of Missouri. John also clerked for the Saint Louis County Prosecuting Attorney, the Sangamon County State’s Attorney, and the Springfield law firm of Posegate & Denes.

Professional Associations
- Illinois State Bar Association
- Sangamon County Bar Association
- The Missouri Bar Association

Court Admissions
- State Courts of Illinois and Missouri
- United States District Court, Central District of Illinois
- United States District Court, Eastern and Western Districts of Missouri
- United States Court of Appeals, Eighth Circuit

Education
- Juris Doctor, Saint Louis University School of Law, 2007
- Bachelor of Arts-Political Science (cum laude), Carleton College, 2004

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