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LEGAL BULLETIN 8.1

Medical Rights

Set 8: Medical Care
Bulletin 8.1
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This bulletin introduces the medical rights of prisoners and the legal remedies available when those rights have been violated. While this bulletin provides general information and guidance on finding law that may be useful, you'll need to research the law that applies to your case. (At the time of last revision, the cases below were current for the propositions cited, but since the law is always changing, be sure to check cases before relying on them.) We recommend you consult related bulletins (for example, 8.2: Disabled/Psychological Rights (currently being updated), 8.3: AIDS in Prison, and Litigation Bulletins (Set 1)). You may also wish to contact the Southern Center for Human Rights, 83 Poplar Street, N.W., Atlanta, Georgia 30303-2122, an organization that has prisoner self-help books available for inmates. The American Civil Liberties Union (ACLU) National Prison Project publishes a quarterly journal with excellent analysis of legislation and litigation affecting prisoners, and is available to prisoners at an annual cost of \$2. You can write the National Prison Project at 915 15th St., NW, 7th Floor, Washington, DC 20005, or call them at (202) 393-4930.

I. Overview

All inmates are entitled to adequate medical care. The Eighth Amendment to the U.S. Constitution states that "Excessive bail shall not be required, nor excessive fines required, *nor cruel and unusual punishments inflicted.*" (emphasis added) The prohibition against cruel and unusual punishment is understood to guarantee a prisoner's right to necessary medical treatment. Pre-trial or pre-sentence inmates have Eighth Amendment protection through the Fourteenth Amendment due process clause. *Bell v. Wolfish*, 441 U.S. 520 (1979). You should be aware that despite the constitutional guarantees of medical care, the fact is that enforcing these rights requires major commitment and persistence. This bulletin should give you some basic tools with which to get started. While we focus here mainly on federal remedies, we strongly encourage you to thoroughly investigate all legal possibilities, which typically will include state tort claims like negligence and malpractice.

II. Obtaining Medical Care in Prison/Jail

A. What type of care is available, and how do I get it?

Generally speaking, you should have access to all necessary medical treatment, including emergency, mental health, dental, and eye care. Courts have held that an adequate medical system will conduct an initial health screening of inmates, and have a reasonable sick call procedure. *Casey v. Lewis*, 834 F. Supp. 1477 (D. Ariz. 1993) (constitutional violation where

long line at sick-call discouraged use); *Inmates of Occoquan v. Barry*, 717 F.Supp. 854 (D. D.C. 1989) (lack of adequate initial screening contributed to constitutional violation). Normally you will first see a nurse or physician's assistant (PA), who may then refer you to a doctor, dentist, psychologist, etc. You should be patient, persistent, and clear in explaining to this person what your symptoms are and why you need to see a doctor. When an institution can't itself provide the necessary treatment, it will need to provide access to outside treatment. For example, the 5th Circuit found an Eighth Amendment violation where an inmate requiring oxygen for his emphysema was not transferred to an equipped facility. *Payne v. Lynaugh*, 843 F.2d 177 (5th Cir. 1988).

If you can't get what you need (for example, a referral or medication), you'll need to present a grievance as soon as possible, to preserve evidence of the seriousness of your need. And if your grievance isn't effective, you'll need to go to the next level of the process within the system. In this and all cases, *keep documentation of your contacts with medical and facility personnel.*

B. Can I be charged for medical care?

You can be; *however*, you can't be denied treatment you need because you can't afford it. About half the states have inmate co-payment systems, and in many cases, the co-payment is withdrawn from the inmate's account. Some services, like an intake health screen or emergency care, are free, probably because the stated goal of such programs is to discourage abuse of the medical system. New Jersey's system is typical: co-payments are required for some services unless an inmate is unable to pay. *Mourning v. Correctional Medical Services*, 692 A.2d 529 (N.J. Super. 1997). The state supreme court found this practice constitutional, relying on *Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239 (1983). In *Revere*, the U.S. Supreme Court held that prisons and jails need only ensure that care is provided, and that the cost of care is a state law matter. Thus, for example, the 3rd Circuit approved as constitutional a system requiring a small fee for certain treatments in *Reynolds v. Wagner*, 128 F.3d 166 (3d Cir. 1997), but the 10th Circuit found that a Colorado law that didn't make exceptions for chronically ill inmates could violate the Eighth Amendment by denying poor inmates care. *Collins v. Romer*, 962 F.2d 1508 (10th Cir 1992).

C. Do I have access to my medical records?

In the federal system, prisoners have the right to medical, but not psychiatric, records. The *Benavides* case established that the Justice Department could require federal inmates to seek records through a physician he or she was allowed to designate, and could impose other special procedures concerning obtaining medical records, as long as it "guarantee[d] the ultimate disclosure" of the records to the prisoner requesting them. *Benavides v. U.S. Bureau of Prisons*, 995 F.2d 269, 273 (D.C. Cir. 1993). In state institutions, policies vary, and you may be required to pay for records. For your protection, you should create your own medical record, keeping a detailed account of all medical incidents, including dates, names, symptoms, medications, side effects, etc.

Your medical information is private, which means that it can't be disclosed to non-medical staff, and some courts have objected to using inmates as record clerks for this reason. See, for example, *Woods v. White*, 689 F. Supp. 874 (W.D. Wis. 1988), *affirmed*, 899 F.2d 17

(7th Cir. 1990). This privacy right applies to the information in your records, as well. For example, in a recent case, an officer revealed in the presence of staff and other inmates that an inmate had undergone a sex change operation and was HIV-positive, with the result that the inmate was harassed by guards and prisoners. The court held that the inmate had a constitutional right to privacy in her medical status if there was no valid safety issue requiring release of the information, and that the guard and supervisor were deliberately indifferent to her safety. *Powell v. Schriver*, 175 F.3d 107 (2d Cir. 1999). Some courts have recognized exceptions, though, and the court in *Powell* noted that this privacy interest will vary with the condition. One court has distinguished between “deeply personal” and “mundane” information, with only the former being protected. *Khalfani v. Secretary, Dep’t of Veterans Affairs*, 1999 WL 138247, *6 (E.D. N.Y. 1999) (memorandum and order). Another has made the following exception to the medical privacy right: disclosure of medical information at sentencing is in the interest of the inmate in order to send the inmate to the appropriate facility. *Faison v. Parker*, 823 F. Supp. 1198 (E.D. Pa. 1993).

D. If you’re having trouble with medical treatment, be sure to:

1. Keep all records. This can’t be over-emphasized. Document your involvement with medical staff, your symptoms, the circumstances of any injuries, your attempts to get treatment, any diagnoses made: in short, document and keep records of everything. Note whom you dealt with, when, what was said and done, etc. This documentation will be critical if you decide to file a legal claim. Send copies to someone on the outside for safekeeping, keeping copies for yourself.

2. File administrative remedies. This means, pursue the grievance process available in your institution. Doing this is crucial because the Prison Litigation Reform Act, discussed below, requires that civil rights plaintiffs exhaust all administrative remedies before they file a lawsuit. If all available remedies are not exhausted, the court will dismiss a complaint at the outset. You may also consult our legal bulletin on exhaustion of administrative remedies (1.4) that will soon be available.

III. The Basics of Taking Legal Action

First, you should understand that legal action can take many months or even years to resolve. This is another reason to pursue administrative remedies: you may be able to resolve your situation within the system. If you decide to sue, there are three main sources of law that can provide a means to get your case to court; statutory, common, and constitutional law.

Statutes are laws passed by a legislature and are found in a state’s published collection of “revised statutes” or in its “code.” Federal statutes are found in the United States Code. For purposes of this discussion, state statutes and cases (the law from court cases is sometimes called common law) address tort law (civil suits for damages), and federal statutes establish procedure governing civil rights law. When you’re having trouble with medical treatment, you will want to look at state tort law, discussed further below, and the Federal Tort Claims Act (FTCA), if you’re a federal prisoner. If you file your case as an FTCA suit, you’ll need to look at state tort law too, as it will determine the grounds for your suit despite the fact that you’ll file in federal court. Obviously, part of the complexity of a prisoner’s lawsuit is untangling the relationship between these various laws.

The constitutions of your state and the federal government represent another body of law that can get your case heard in court. Some states have constitutional protections that exceed those found in the federal constitution. If you are a state prisoner with a federal constitutional claim (the focus of this bulletin), you will need to bring the suit using the federal statutory procedure found in 42 U.S.C. § 1983 (called a “section 1983” suit). If you’re a federal prisoner with an Eighth Amendment claim, you’ll bring what’s called a “Bivens” action. Because there isn’t a statute corresponding to § 1983 that authorizes suits to vindicate federal prisoners’ rights, the U.S. Supreme Court authorized the right in the *Bivens* case. *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Federal jurisdiction is established for *Bivens* claims in 28 U.S.C. § 1331. (If you’re a federal prisoner, you should watch for a U.S. Supreme court decision that may come out by summer 2001, deciding whether a private prison can be sued under *Bivens*. The lower court decision being reviewed is *Malesko v. Correctional Services Corp.*, 229 F.3d 374 (2d Cir. 2000), which held that private prisons can be sued.)

Title II of the Americans with Disabilities Act (ADA) is another mechanism for bringing suit when an inmate has a disability and believes he or she is getting inadequate care based on discrimination because of that disability. “Disability” has been broadly defined under the ADA to include HIV/AIDS status and mental illness. The ADA is found beginning at 42 U.S.C. §12131; see *Pennsylvania Dep’t of Corrections v. Yeskey*, 524 U.S. 206 (1998) for a recent case applying the ADA to the prison context. (Note that on remand, in *Yeskey v. Pennsylvania*, 76 F.Supp.2d 572 (M.D. Pa. 1999), the district court found that *individual* defendants could not be sued under the ADA, and that in any event the plaintiff had failed to show a disability.) The Rehabilitation Act (RA) is another federal statute that prohibits discrimination based on disability in federal and other agencies receiving federal funds. See 29 U.S.C. § 794 and subsequent sections.

If you decide to file a lawsuit, you’ll start by writing to the Clerk of the U.S. District Court of the district you’re in (most states have several districts), and requesting forms for the action you want to file. Your lawsuit officially begins with your “complaint” to the court, in which you allege the facts of your case (facts are “alleged” until proven) and that your constitutional right to adequate medical treatment has been violated. Of course, you need to be sure you meet the filing deadlines that apply to your claim.

A. Prison Litigation Reform Act

While the Prison Litigation Reform Act is discussed at length in a separate publication (*A Guide to the Prison Litigation Reform Act*), we’ll lay out the basics here, since the statute applies to all federal suits by inmates, and has a number of major implications for your lawsuit that you need to understand before you file.

1. Filing fees: 28 U.S.C. § 1915(f)(2). The filing fee in federal court actions is \$150. Prisoners planning to file as indigent (*in forma pauperis*) need to submit certified statements of their prison accounts for the last six months, because the fee will be drawn from these accounts over time. Inability to pay up front is not cause for your suit to be dismissed. Note though that if you file your case and it is dismissed before you have paid the fee, the amount is still due.

2. “Three Strikes”: 28 U.S.C. § 1915(g). Under the PLRA, the district court first reviews

prisoners' lawsuits to see if they are frivolous, malicious, or if they fail to state a valid legal claim. If a suit is found to be one of the three, it will be dismissed and count as one "strike." If an individual gets three strikes (has three suits dismissed on one of these grounds), he or she will be unable to file any future suits *in forma pauperis*, "unless the prisoner is in imminent danger of serious physical injury" when the case is filed. In practical terms, this means you should carefully plead (set out) your case to ensure that you state a valid claim that the court can address, and that the defendants you name are not immune from suit. (More below on this).

3. Exhaustion of administrative remedies: 42 U.S.C. § 1997e(d)(2). Exhaustion means raising your issues in the grievance system in your institution, and pursuing them to the fullest extent there. You'll need to raise all the issues you would in a lawsuit, since courts have held that failure to raise particular issues at the administrative level prohibits you from litigating them. As noted above, failure to exhaust before filing can get your case dismissed. Dismissal for failure to exhaust should be without prejudice, enabling you to re-file after you've pursued administrative remedies. Even if the incidents in your case occurred before the PLRA's passage in 1996, if you filed your complaint after that date, this requirement applies.

4. "Prior showing of physical injury": 42 U.S.C. § 1997e(e). This provision (which also applies to the FTCA and ADA) requires that all Eighth Amendment suits must now include a claim of physical harm in order to also sue for emotional harm. The physical harm must be more than minimal but not necessarily substantial. So far, federal courts have held that the physical injury requirement doesn't apply to remedies, like injunctive relief, designed to get a defendant to do or stop doing a particular thing. So far this requirement *does* seem to apply to suits for money damages.

5. Revocation of Earned Time: 28 U.S.C. § 1932. If a court finds that a claim is malicious or filed to harass a party, or that you knowingly present false information, it may revoke your earned time credit. This is obviously another provision designed to discourage prisoners' litigation, and just another reason to plead your case with great care.

6. Diversion of damages: provision appears after 18 U.S.C. § 3626. Compensatory damages are "diverted" from payment to the successful prisoner plaintiff to satisfy restitution owed. Any remainder then goes to the prisoner.

As you can see, the restrictions of the PLRA are critical to understand before you file. These notes are just to give you some sense of what's involved, so look closely at the Act, and review the publication that addresses it. The U.S. Code Annotated (U.S.C.A.) provides cases that illustrate the provisions that make up the PLRA.

B. Other general litigation issues:

1. Immunity: who can you sue?

For purposes of § 1983 (or *Bivens* claims), you'll need to assert that defendants were acting "under color of state law," meaning, under governmental authority. (Included here are

agents of a city or county.) Defendants can be either government entities or employees, or private contractors with the government (for example, a doctor under contract to provide services to a prison.) An employee may be acting under authority of the government even if the particular conduct isn't authorized, and of course it's often this bad conduct you'll be suing about.

The potential problem for your lawsuit is that often people acting on behalf of the government are entitled to some immunity, which means an individual or entity is protected from being sued. The general principle is that prison officials usually get "qualified immunity" from suit, meaning they are protected from suit *for damages* if their conduct doesn't violate constitutional rights which they should have known about. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Officials acting on reasonable advice from medical personnel will not be liable. See, for example, *Miltier v. Beorn*, below. The kinds of actions on the part of officials that may give rise to liability include failure to provide adequate staff (in terms of number or training), or to maintain policies that make adequate care possible. See *Ramos v. Lamm*, below, for a case in which various policies and practices contributed to system-wide constitutional violations.

The Supreme Court has held that private guards working for a jail or prison may be liable under § 1983 if they were acting "under color of state law" when they committed a constitutional violation. *Richardson v. McKnight*, 521 U.S. 399 (1997). This case also established that private guards do not have immunity from suit. The Court has also held that private physicians under state contract may be liable under § 1983. *West v. Atkins*, 487 U.S. 42 (1988). You can count on defendants claiming they're immune.

Officials may be liable for your injury despite the fact that they weren't directly involved. This is obviously a little more tricky to prove. For example, an official may be liable for "failure to train" prison employees when you can show training would have prevented the constitutional violation, and the official deliberately chose not to institute training. *Erwin v. County of Manitowoc*, 872 F.2d 1292 (7th Cir. 1989). The way it might work is, where a warden and deputy are aware of an inmate's injury and aware of a guard's failure to get the inmate necessary treatment, the officials may be held liable for failure to adequately supervise and train the guard. *Petrichko v. Kurtz*, 52 F.Supp.2d 503 (E.D. Pa. 1999). You can see that what's crucial is not just that a problem of constitutional dimension existed, but that a responsible official knew about it.

2. Tort suits: negligence and malpractice

Tort suits are the causes of action (grounds for a suit) that may be available in state law (and for federal prisoners via the FTCA). (*Tort* is a French word meaning "wrong") You aren't limited, generally, to bringing *either* constitutional *or* tort claims: "supplemental" jurisdiction makes it possible for federal courts to hear state claims arising from the same basic facts as your federal claim. When you seek supplemental jurisdiction, and in fact whenever you want the court to do a particular thing, in your pleadings you have to specifically ask the court to do it.

Negligence, in general terms, is an act or omission that breaches the "duty of care" that a reasonable person would exercise under the circumstances. Malpractice is basically professional negligence. The "elements" (or components of the claim) that have to be proven to establish negligence will be:

1. That the defendant/s owed you a duty of care, and
2. That the defendant/s breached this duty.
3. That the breach caused the harm you're complaining of, and
4. That you suffered damage as a result.

In the context of medical treatment, the underlying concept is that individuals entrusted to care for medical needs are responsible for exercising reasonable care and meeting established professional standards in doing their work. If you are suing on a theory of medical malpractice, you will need to allege that medical personnel did not have or did not use the skill or professional judgment that is the norm in the medical field in question. In other words, to succeed on your claim you'll need to demonstrate both the applicable standard of care, and that the defendant/s breached it.

Whether you are suing medical personnel or prison officials, you will be required to show "proximate cause" between the harm you've suffered and the act or omission of the defendant/s.

This means you have to show that the defendant's act *produced* the harm you suffered, without the intervention of some other actor or event, and that except for the defendant's act or omission, the harm would not have occurred. For example, a prisoner charging a doctor with negligence failed to state a claim where he did not allege that the doctor deviated from accepted medical practice (that he had breached a duty of care) or that any alleged treatment proximately caused his injury. *Parker v. State*, 661 N.Y.S. 2d 868 (App. Div. 3d Dep't 1997). The *Restatement of Torts*, published by the American Law Institute, or a torts "hornbook" (explaining the basics of the law) like that by Prosser and Keaton or the *Nutshell* series, will be useful. Of course ultimately the law that will apply is that of your state.

Institutions should have written regulations specifying standards of care for prisoners. (In addition to the rules that apply to your particular institution, the U.S. Department of Justice has set forth "Federal Standards for Prisons and Jails," and the American Correctional Association, which accredits institutions, also have standards that will be persuasive to cite.) These tort actions will require that you submit evidence of the type of care you should have received, which will typically be the standard of care that applies to your geographic area and/or the field of medicine in question in your case, and evidence of the specific nature of the injury you suffered. Very often tort actions in the medical context require expert testimony, which can be costly.

3. Summary Judgment (judgment before or without trial):

Whatever type of suit you file, you'll almost certainly be faced with the defendant's motion for summary judgment, which will allege that there are no disputed facts in the case, and the court should decide against you as a matter of law. Once again, you'll need to plead your case carefully and specifically, highlighting factual disputes. If the court can see that there are questions of fact that are central to your case, you can withstand the summary judgment motion. For instance, the difference between malpractice and deliberate indifference is factual, and so can't be resolved at the summary judgment stage, which would mean your case could go forward. *Kaminsky v. Rosenblum*, 737 F. Supp. 1309 (S.D. N.Y. 1990). For a case offering a thorough discussion of summary judgment, see *Starbeck v. Linn County Jail*, 871 F. Supp. 1129 (N.D. Iowa 1994). In a case that illustrates a number of the issues this bulletin discusses, a

prisoner claimed that the medical director of the Bureau of Prisons was deliberately indifferent to her serious medical need by failing to insure she got the treatment she needed. (An Eighth Amendment claim must state an *official's deliberate indifference*, with respect to a *serious medical need*: we cover this standard in detail below.) The medical director asserted qualified immunity, arguing that he had complied with the bureau's policy, which the prisoner admitted was constitutional. The court found both that the defendant wasn't the right person to address the plaintiff's requests, and that while she had asserted she had a medical condition, she hadn't demonstrated a specific need, so the director's response couldn't have violated the Eighth Amendment. The court granted the defendant summary judgment. *Farmer v. Moritsugu*, 163 F.3d 610 (D.C. Cir. 1998).

4. Class Actions

Class actions are not discussed here, since a decision to undertake a class action requires an attorney. (The rationale here is that a prisoner suing *pro se* is not a lawyer who can represent the legal interests of class members.) Prisoners' rights organizations may take on class actions, which can be powerful ways of changing widespread problems in a facility. *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980) provides an overview of a successful suit alleging various constitutional problems with a correctional system as a whole, including medical treatment.

IV. The Eighth Amendment's Cruel and Unusual Punishment Standard as Applied to Medical Care

Estelle v. Gamble is the fundamental Eighth Amendment medical treatment case, establishing that "deliberate indifference to the serious medical needs of prisoners" violates the Eighth Amendment and creates liability under § 1983. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). The Court there set out 3 general types of prohibited conduct: "indifference . . . manifested by prison doctors in their response to the prisoner's needs[,] or by prison guards . . . intentionally denying or delaying access to medical care[,] or intentionally interfering with the treatment once prescribed." *Id.* As the language of the case makes plain, the first component of a successful claim will require establishing deliberate indifference. A prisoner will then have to establish that his or her medical need was serious. Obviously, neither of these requirements is self-explanatory, and courts have provided some clarification in the cases below.

A. Deliberate Indifference

Clearly, not all harmful acts or omissions result from *deliberate* indifference. Acts, even if they inflict pain, that result from mistake or neglect may create liability for negligence or malpractice, but will usually not be deliberate indifference. *Wilson v. Seiter*, 501 U.S. 294 (1991). (While this is generally true, the 2nd Circuit has found that some instances of medical malpractice may rise to the deliberate indifference level. *Hathaway v. Coughlin*, 99 F.3d 550 (2d Cir. 1996)). At the same time, you don't have to show malice or purpose to harm to establish deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825 (1994). The U.S. Supreme Court has held that to create liability for Eighth Amendment purposes, "the official [must] know of and disregard an excessive risk to inmate health or safety." *Id.* at 837. Deliberate indifference can be demonstrated by an act or omission that was either a one-time incident or part of an ongoing situation. The analysis will be sensitive to the particular circumstances of each case. Thus, the

7th Circuit recently found that a plaintiff's focus on lapses in treatment in the last few *days* of an inmate's life distorted the evidence, since officials were attentive to his medical needs in his final *weeks*: hence, there was no deliberate indifference. *Dunigan ex rel. Nyman v. Winnebago County*, 165 F.3d 587 (7th Cir. 1999). The 5th Circuit has provided a useful overview: one episode of gross misconduct is not necessarily excused by an overall pattern of attentiveness, since the issue is whether the conduct is cruel and unusual because it involves deliberate indifference, rather than an accident or a medical judgment call. *Murrell v. Bennett*, 615 F.2d 306 (5th Cir. 1980).

In most cases, a disagreement about treatment won't constitute deliberate indifference. Courts have said that while inmates are entitled to adequate medical treatment, this doesn't mean they must receive their preferred treatment. At the same time, a doctor may be liable if he or she "consciously chooses an easier and less efficacious treatment plan." *Chance*, below, at 703, quoting *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974). In addition to cases in which an inmate is denied care, deliberate indifference may be shown where there is interference with treatment or significant delay in providing treatment. The amount of delay that will rise to the level of constitutional violation typically depends on the urgency and magnitude of the need. The 10th Circuit has recently held that delay constitutes deliberate indifference where the plaintiff can show that the delay caused substantial harm; this harm can include unnecessarily prolonged pain and suffering. *Sealock v. Colorado*, 218 F.3d 1205 (10th Cir. 2000).

Beyond these general principles, the cases below should help give you a sense of how courts understand deliberate indifference.

1. Cases generally illustrating the *state of mind requirement* for deliberate indifference:

- High-level prison officials were not entitled to dismissal of prisoner's complaint where inferences could be drawn from the pleadings that a prison officer threw away inmate's doctor-prescribed orthopedic shoes and canes, that inmate could not get treatment from prison doctor, that standard prison-issue shoes cause him constant pain, and where inmate had written to officials about these problems. *Saunders v. Horn*, 960 F. Supp. 893 (E.D. Pa. 1997). Compare the following case: a pregnant inmate didn't establish sheriff's supervisory liability for allegedly failing to provide her with adequate medical treatment. She didn't offer evidence to rebut sheriff's statements that he had no personal involvement in depriving her of treatment, that the jail's policy was to provide reasonable medical care, and that he had neither received a request for treatment nor knew of any denial of treatment. *Ludlam v. Coffee County*, 993 F. Supp. 1421 (M.D. Ala. 1998).
- Prison doctors who knew of inmate's hernia, which required surgery, and who nonetheless allowed the inmate to go 2 years without surgery were deliberately indifferent. *Barry v. Ratelle*, 985 F. Supp. 1235 (S.D. Cal. 1997).
- Evidence suggested that officials who deprived inmate of glasses and vision treatment knew of the seriousness of his condition. *Koehl v. Dalsheim*, 85 F.3d 86 (2d Cir. 1996).

- Doctors failed to respond to inmate’s complaint of chest pain, blackouts, and breathing problems, and inmate later died of a heart attack. *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990).
- Although prisoner told guards fumes were entering his cell, he was made to stay in the cell and passed out as a result. *Kelley v. Borg*, 60 F.3d 664 (9th Cir. 1995).
- Evidence of falsification of medical records showed deliberate action. *Green v. Branson*, 108 F.3d 1296 (10th Cir. 1997).
- Prison officials, aware that paraplegics in solitary confinement were denied medical care, showed deliberate indifference. *Simmons v. Cook*, 154 F.3d 805 (8th Cir. 1998).
- Failure to treat an inmate with cancer who is in great pain is deliberate indifference bordering on “barbarous.” *Ralston v. McGovern*, 167 F.3d 1160 (7th Cir. 1999).
- Where evidence showed officials were not aware of inmate’s pain due to a dislocated shoulder, there was no deliberate indifference. *Higgins v. Correctional Medical Services of Ill.*, 178 F.3d 508 (7th Cir. 1999).
- Upon a prison psychologist’s recommendation that inmate should be denied access to objects that could be used for violence, he was prevented from using a wheelchair, but since officials didn’t have knowledge of this deprivation, there was no deliberate indifference. *Shakka v. Smith*, 71 F.3d 162 (4th Cir. 1995). Compare *Beckford v. Irvin*, 49 F.Supp.2d 170 (W.D. N.Y. 1999), in which prisoner sued under ADA & § 1983 because he was prevented from using his wheelchair for lengthy periods, was unable to shower, developed bedsores, and was prevented from using a cup to take water from the toilet to bathe. The court found punitive damages against supervisory officials were not excessive, since the plaintiff showed that they had knowledge of both his serious needs and the fact that injury would result if he wasn’t treated.
- Caution: the court found a claim frivolous (which would mean a potential PLRA “strike”) where guards confiscated the special mattress an inmate used, but inmate didn’t allege evidence that his kidney stones required mattress, or that guards knew of his need. *Kayser v. Caspari*, 16 F.3d 280 (8th Cir. 1994).

2. Situations that will generally *not* constitute deliberate indifference:

a. Negligence/malpractice (not deliberate indifference)

- Negligence at most where prisoner with stomach problems was treated monthly and

received special diet and medication. *Stroud v. Roth*, 741 F. Supp. 559 (E.D. Pa. 1990).

- No § 1983 claim and at most negligence where inmate alleged dentist should have taken x-rays before extracting 4 teeth. *Hogan v. Russ*, 890 F. Supp. 146 (N.D. N.Y. 1995).
- Negligence or mistake rather than Eighth Amendment violation when inmate given wrong dose of medication and no evidence of deliberate indifference presented. *Callaway v. Smith County*, 991 F. Supp. 801 (E.D. Tex. 1998).
- But: A prison doctor's *repeated* negligence *can* establish deliberate indifference. *Brooks v. Celeste*, 39 F.3d 125 (6th Cir. 1994).
- Caution: in a case from 1970, a claim was held frivolous because it alleged at most malpractice rather than facts that would support a § 1983 action. (Recall that a finding of a claim's frivolousness can mean a PLRA "strike.") *Isenberg v. Prasse* 433 F.2d 449 (3d Cir. 1970).

b. Disagreement about treatment

- Doctor's exercise of professional judgment is never deliberate indifference. *Gindraw v. Dendler*, 967 F. Supp. 833 (E.D. Pa. 1997).
- Inmate alleged nurse failed to prescribe adequate pain medication over 21 days; the court found this was merely a difference of opinion about treatment between inmate and prison officials, and granted defendant summary judgment. *Reeves v. Caldwell*, 1999 WL 375580 (D. Or. 1999).
- Where there is a medical reason for a given treatment, an inmate's disagreement will not state an Eighth Amendment claim. *Perkins v. Kansas Dep't of Corrections*, 165 F.3d 803 (10th Cir. 1999).
- Summary judgment for defendants, despite prisoner's intense pain, where it was not clear from the pleadings that there was an issue beyond disagreement with treatment. *Cameron v. Sarraf*, 2000 WL 33128615 (E.D. Va.2000).
- No deliberate indifference where doctor didn't biopsy what he diagnosed as inmate's basal cell carcinoma; matter of professional judgment and carcinoma is slow-growing and not life-threatening. *Gonzalez v. McGue*, 2001 WL 13341 (S.D. N.Y. 2001).

c. Misdiagnosis

- Inmate's claim that prison medical personnel misdiagnosed/mistreated his or her condition is a state malpractice, not a constitutional, matter. *Lewis v. Angelone*, 926 F. Supp. 69 (W.D. Va. 1996).

- A doctor's misdiagnosis of a tumor which later caused an inmate's blindness was, at most, negligence. *Johnson v. Quinones*, 145 F.3d 164, 168 (4th Cir. 1998).
- Jail inmate who complained for several months of severe stomach pain was diagnosed with colon cancer after his release, but the jail's misdiagnosis of his condition was negligence, at most. *McElligott v. Foley*, 182 F.3d 1248 (11th Cir. 1999).

3. Situations more likely to be seen as representing deliberate indifference:

a. Inadequate facilities/system as a whole

Adequate equipment and facilities are required. Courts have found 8th Amendment violations where institutions have not provided:

- X-ray equipment, *Inmates of Occoquan v. Barry*, 717 F. Supp. 854 (D. D.C. 1989).
- medical supplies or medical room, *Dawson v. Kendrick*, 527 F. Supp. 1252 (S.D. W.Va. 1981).
- lab, lab records, pharmacy records or supervision, *Williams v. Edwards*, 547 F.2d 1206 (5th Cir. 1977).
- adequate transportation, when inmates required transfer for some services, *Ramos v. Lamm*, above.
- sanitary medical unit, or observation when sick inmates left in cells, *Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill. 1980).
- segregation of contagious inmates, *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972).
- proper AIDS treatment, prevention, & counseling, *Franklin v. District of Columbia*, 960 F. Supp. 394 (D. D.C. 1997). The circuit court, however, held that failure of the institution to always provide interpreters in medical exams, or to hire bilingual medical personnel, was not an Eighth Amendment violation in the absence of proof of intention to deny inmates medical access. *Franklin*, 163 F.3d 625 (D.C. Cir. 1998).
- Prisoner with multiple sclerosis had Eighth Amendment claim that officials failed to provide adequate medical care where he showed he had not seen a doctor since entering the facility 18 months earlier, had received no physical therapy or assistance with daily needs, and was housed in cell with malfunctioning call-button. *Yarbaugh v. Roach*, 736 F. Supp. 318 (D. D.C. 1990).
- System inadequate where inmate missed 2 hospital appointments because prison officials were late in transporting her. *Women Prisoners v. District of Columbia*, 877 F. Supp.

634 (D. D.C. 1994).

b. Inadequate staff (numbers &/or training)

- Eighth Amendment violation where untrained staff performed emergency medical treatment. *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).
- Municipality liable for hiring untrained doctor who caused severe sinus damage to inmate. *Simpkins v. Bellevue Hosp.*, 832 F. Supp. 69 (S.D. N.Y. 1993).
- Section 1983 cause of action against head of corrections where unlicensed doctor was hired to treat inmates and doctor displayed gross negligence in his amputation of inmate's leg. *Williams v. Ward*, 553 F. Supp. 1024 (W.D. N.Y. 1983).
- Staff unqualified to identify mental illness violated Eighth Amendment. *Carty v. Farrelly*, 957 F. Supp. 727 (D. V.I. 1997); *Casey v. Lewis*, 834 F.Supp.1477 (D. Ariz. 1993).
- Eighth Amendment violation where mentally ill inmates were put in lockdown because there wasn't staff qualified to make a diagnosis. *Casey v. Lewis*, above.
- One psychologist, with other prison responsibilities, insufficient for 90 inmates. *Klinger v. Nebraska Dep't of Corrections*, 824 F. Supp. 1374 (D. Neb. 1993).
- BUT, treatment by physician assistant rather than doctor after assault not deliberate indifference. *Harris v. Roberts*, 719 F. Supp. 879 (N.D. Cal. 1989).

c. Interference with/interruption of treatment

- No deliberate indifference (negligence, at most) where psychologist instructed guards to check vital signs every 4-6 hours and guards failed to do so over about 7 hours. *Williams v. Kelso*, 201 F.3d 1060 (8th Cir. 2000).
- A nurse's interruption of prescribed treatment constituted deliberate indifference, despite the fact that the inmate's wound eventually healed. *Boretti v. Wiscomb*, 930 F.2d 1150 (6th Cir. 1991).

d. Delay

- Ten-fifteen minute delay in doctor's response to an inmate's cardiac arrest is deliberate indifference. *Bass by Lewis v. Wallenstein*, 769 F.2d 1173 (7th Cir. 1985).
- Two-hour delay in treating stab wounds shows deliberate indifference. *Reed v. Dunham*, 893 F.2d 285 (10th Cir. 1990).
- Deliberate indifference where inmate with symptoms of a heart attack and severe pain

suffered delay of several days before being taken to a hospital, where he was found to have in fact suffered a heart attack. *Sealock*, above.

- However, one court granted summary judgment to defendants when inmate with kidney failure, who was prevented from obtaining scheduled dialysis treatment, failed to show the delay's negative effect. *Napier v. Madison County, Kentucky*, 2001 WL 8334 (2001).
- Inmate temporarily denied treatment for 2 infected toes didn't raise § 1983 claim, since toes presented no substantial potential for harm if not treated, and no serious harm was suffered. *Andrews v. Glenn*, 768 F. Supp. 668 (C.D. Ill. 1991).

B. Serious Medical Need

As you can imagine, this determination will be very fact- and case-specific, although there are a few general principles that apply. Serious conditions need not be life-threatening. *Washington v. Dugger*, 860 F.2d 1018 (11th Cir. 1988). Serious medical need will have been diagnosed by a doctor as requiring treatment, or will be so obvious that even a layperson would see that treatment is needed. *Hunt v. Uphoff*, 199 F.3d 1220 (10th Cir. 1999). A condition may also be serious if it significantly affects an inmate's daily activities. *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1992), *overruled on other grounds*. Generally then, a condition will be a serious medical need for Eighth Amendment purposes if it causes pain or discomfort. For example, a hernia, while not necessarily fatal, is painful and so it is "serious." *Johnson v. Lockhart*, 941 F.2d 705 (8th Cir. 1991). Conditions that threaten future health may also be serious enough to create liability. In a case where an inmate was denied prescription medication, a court found that he was not required to show more than a 50% risk of developing TB, but only that the risk had increased due to his being denied the medication. *Hill v. Marshall*, 962 F.2d 1209 (6th Cir. 1992). Also see an important U.S. Supreme court case on future risk, *Helling v. McKinney*, 509 U.S. 25 (1993).

Finally, there are serious conditions for which there are no known effective treatments, and in these cases it will be hard, if not impossible, to establish that medical or correctional personnel should have taken any particular course of action. For example, in an 8th Circuit case, a prisoner who had sought sex offender treatment had his claim fail because there was no known "cure." *Bailey v. Gardebring*, 940 F.2d 1150 (8th Cir. 1991). (For other cases regarding failure to provide medical treatment for sexual offenders, in which courts found no deliberate indifference, see *Riddle v. Mondragon*, 83 F.3d 1197 (10th Cir. 1996); *Richmond v. Cagle*, 920 F. Supp. 955 (E.D. Wis. 1996)). Medical dietary requirements can be serious, in, for example, the case of diabetes. *Taylor v. Anderson*, 868 F. Supp. 1024 (N.D. Ill. 1994).

"Serious medical need" is probably easier to understand through examples than definitions. The cases below, categorized by type, should give you some sense of how the courts have interpreted the concept.

1. Harm created by conditions: asbestos, smoking, etc.

- Exposure to environmental tobacco smoke was a matter both of present and possible future harm, stating an Eighth Amendment claim. *Helling*, above.

- Prison officials' deliberate indifference to inmate's exposure to environmental tobacco smoke can violate Eighth Amendment. *Warren v. Keane*, 196 F.3d 330 (2d Cir. 1999).
- Though officials didn't provide treatment until 3 days after inmate's asbestos exposure, cold-like symptoms he presented were not serious enough to invoke Eighth Amendment. *Smith v. Montefiore Med. Center Health Services*, 22 F.Supp.2d 275 (S.D.N.Y. 1998).

2. TB & AIDS

- *Taylor v. Barnett*, 105 F.Supp.2d 483 (E.D. Va. 2000). Good source for opinions related to HIV/AIDS in prison.
- Prisoner's having contracted tuberculosis not result of deliberate indifference, since prison had implemented standards approved by the Center for Disease Control and American Thoracic Society. (This is an example of the importance of knowing what the standard of care is in the medical area you're dealing with, and being prepared to argue your institution hasn't met it.) *Forbes v. Edgar*, 112 F.3d 262 (7th Cir. 1997).
- No deliberate indifference where officials tested yearly for tuberculosis and provided care within a week of his positive test, including treatment with his drug of choice, in compliance with accepted medical standards. *Maldonado v. Terhune*, 28 F.Supp.2d 284 (D. N.J. 1998).
- No deliberate indifference regarding risk of TB where testing occurred upon intake and prison had policy for treatment and isolation of infected inmates. *Jeffries v. Block*, 940 F. Supp. 1509 (D. Cal. 1996).
- Inmate with positive TB test forced to undergo preventive treatment didn't state an Eighth Amendment claim. *McCormick v. Stalder*, 105 F.3d 1059 (5th Cir. 1997).
- No valid claim where inmate double-celled with inmate who showed exposure to but not active contagion with TB. *Karlovetz v. Baker*, 872 F. Supp. 465 (N.D. Ohio 1994).
- Requiring HIV test before administering HIV drugs is not deliberate indifference. *Walker v. Peters*, 989 F. Supp. 971 (N.D. Ill. 1997).
- Class action by HIV+ inmates challenged their segregation in terms of prison programs as both unconstitutional and violating Rehabilitation Act. The court found integration might produce violence, and that forcing the prison to hire additional guards to deal with this was an undue burden; they also found that transmission of HIV was a real risk in programs. *Onishea v. Hopper*, 171 F.3d 1289 (11th Cir. 1999).
- Defendants who knew inmate had AIDS & needed daily medication responded to her condition only when she lay in a coma in her cell. The court condemned this treatment as

virtually criminal, noting defendants had “put themselves out on a limb and refuse to appreciate the sawing sound underneath them.” *Rivera v. Sheehan*, 1998 WL 531875 (N.D. Ill. 1998).

- Restriction of outdoor exercise and forcing HIV+ inmate to wear a face mask could be deliberate indifference, though refusing to give inmate protease inhibitor when he had been treated with other HIV medication could not. *Perkins v. Kansas Dep’t of Corrections*, 165 F.3d 803 (10th Cir. 1999).

3. Dental needs

- Official who refused to treat an inmate’s cavity unless he consented to the removal of another tooth was liable. *Harrison v. Barkley*, 219 F.3d 132 (2d Cir. 2000).
- Cavity, resulting in great pain and trouble eating, represented a serious medical need. *Chance v. Armstrong*, 143 F.3d 698 (2d Cir. 1999).
- Defendant’s failure to extract plaintiff’s infected tooth for over 7 months demonstrated deliberate indifference. *Moore v. Jackson*, 123 F.3d 1082 (8th Cir. 1997).
- No § 1983 claim where prisoner failed to show private dentist was acting “under color of state law” and where prisoner’s treatment appeared lengthy and inconvenient, at worst. *Vester v. Murray*, 683 F. Supp. 140 (E.D. Va. 1988).

4. Eye care

- Inmates are entitled to corrective glasses without undue delay. In *Mitchell v. Maynard*, 80 F.3d 1433 (10th Cir. 1996), the court found a factual issue precluding summary judgment where an inmate alleged he’d been denied glasses. Denial of glasses for 10 days (while in solitary) has been found not to be serious, as has denial when visual impairment was “very slight.”
- Refusal to provide replacement glasses to severely nearsighted (20-400) inmate was deliberate indifference. *Benter v. Peck*, 825 F. Supp. 1411 (S.D. Iowa 1993). *But see Martin v. DeBruyn*, 880 F. Supp. 610, 614 (N.D. Ind. 1995), in which the court held that “nothing in the Eighth Amendment . . . requires a state to provide an inmate, free of charge, with a necessary commodity that would not be free outside the prison walls and which the inmate has the legal means to obtain.”
- Regular delays in refilling glaucoma medication states a claim. *Charles 2x v. District of Columbia*, 834 F. Supp. 439 (D. D.C. 1992).

5. Women’s health

- Inmates have Eighth Amendment right to adequate gynecological and obstetric services. *Women Prisoners of DC Dep’t of Corrections v. District of Columbia*, 899 F. Supp. 659 (D. D.C. 1995).

- Refusal to allow inmates to receive elective abortions violated Eighth Amendment. *Monmouth County Correctional Institution Inmates v. Lanzaro*, 643 F.Supp.1217 (D.C. N.J. 1986). This decision was affirmed on appeal in the Third Circuit, where the court held that inmates could not be required to get a court-ordered release for an abortion, and where the county regulation requiring inmates to finance the procedure impinged on their right to choose, it was unconstitutional. *Monmouth*, 834 F.2d 326 (3d Cir. 1987).
- Eighth Amendment violation where institution provided no prenatal care, had shackled a woman in labor, and confined in lock-up a woman having a pregnancy emergency. *Women Prisoners v. District of Columbia*, 877 F. Supp. 634 (D. D.C. 1994).
- Prison nurse violated Eighth Amendment by delaying laboring woman's transfer to hospital. *Coleman v. Rahija*, 114 F.3d 778 (8th Cir. 1996).

6. Psychiatric

- The U.S. Supreme Court has held that psychotropic medication (which is used to treat psychological conditions) can be administered against an inmate's will to ensure the inmate or the institution's safety, *Washington v. Harper*, 494 U.S. 210 (1990), or to render an inmate competent to stand trial, *Riggins v. Nevada*, 504 U.S. 127 (1992). There are a number of constitutional concerns and protections that are discussed in the "Right to Refuse Treatment" section below.
- Psychological problems, such as desire to commit suicide, can be "serious medical needs." *Clinton v. County of York*, 893 F. Supp. 581 (D. S.C. 1995).
- Transexualism has been found to be a serious medical need. *White v. Farrier*, 849 F.2d 322 (8th Cir. 1988).
- Unmedicated epilepsy is a serious threat to health. *Hudson v. McHugh*, 148 F.3d 859 (7th Cir. 1998).
- Hog-tying pre-trial inmate who had tried to commit suicide was unrelated to any reasonable penal objective, and was a 14th Amendment violation. *Jones v. Thompson*, 818 F. Supp. 1263 (S.D. Ind. 1993); but see *Rehbein v. Terry*, 836 F.Supp. 677 (D. Neb. 1992), in which a psychiatrist was not liable for keeping inmate in restraints for 39 hours because this decision was a matter of professional judgment.
- Prison doctor's prescribing inmate new medication and suspending his prescription from a doctor no longer treating the inmate was not denial of adequate psychiatric treatment. *Vaughan v. Lacey*, 49 F.3d 1344 (8th Cir. 1995). But compare *Wakefield v. Thompson*, 177 F.3d 1160 (9th Cir. 1999), in which a prison official was alleged to have refused to provide inmate with prescribed psychotropic medication to be dispensed upon inmate's

release. Refusal to make any effort to provide medication for inmate supported a § 1983 claim, given inmate's inability to get the medication on his own immediately after his release.

- Transfer to a mental hospital implicated due process protections, requiring notice and an adversary hearing prior to transfer. *Vitek v. Jones*, 445 U.S. 480 (1980).

7. Addiction

- Prisoner who alleged he informed officials of his drug addiction and requested treatment, and was treated only 10 days later and then inadequately, stated an Eight Amendment claim. *United States ex rel. Walker v. Fayette County*, 599 F.2d 573 (3d Cir. 1979).
- There is no constitutional right to smoke in prison. *Reynolds v. Bucks*, 833 F. Supp. 518 (E.D. Pa. 1993).
- Suit alleging failure to implement an alcohol detoxification program, failure to provide prescribed medication immediately, etc., was found not to raise an 8th Amendment claim where an addicted inmate died in custody. *Jinks v. McAuley*, 163 F.3d 598 (4th Cir. 1998) (unpublished opinion).

8. Disabilities

- Handicapped inmates must have facilities that fully accommodate their needs, regardless of funding. *Casey v. Lewis*, 834 F. Supp. 1569 (D. Ariz. 1993); but see *Phillips v. United States*, 836 F.Supp. 965 (N.D. N.Y. 1993), holding that Braille materials for blind inmate are not required.
- Denial of adequate shower facility to an inmate with leg brace and crutches raised § 1983 issue. *Frost v. Agnos*, 152 F.3d 1124 (9th Cir. 1998).
- Prison authorities could be liable for failing to provide interpretive and assistive communication devices for deaf and hearing-impaired inmates. *Clarkson v. Coughlin*, 898 F. Supp. 1019 (S.D. N.Y. 1995).
- Plaintiffs in a class action claimed mentally and physically disabled inmates were denied, because of their disabilities, the opportunity to earn the maximum good time, and an appeals court approved a settlement on these grounds. *Raines v. State of Florida*, 987 F. Supp. 1416 (N.D. Fla. 1997).
- In an especially incredible case, an inmate's artificial leg was confiscated when he was arrested and not returned to him after his conviction on the theory that it might be evidence in an appeal. The result for the inmate was his confinement to his cell, and the court found both an 8th Amendment violation and a 14th Amendment violation of deprivation of property without due process. *Parkinson v. Columbia County District*

Attorney, 679 N.Y.S.2d 505 (Sup. Ct. Columbia Cty. 1998).

- Hearing-impaired inmate sued state department of corrections and prison officials, alleging violation of Title II of the ADA and the Rehabilitation Act. The inmate had major hearing loss that left him unable to understand speech spoken at normal volume, and he had been denied a sign language interpreter at a disciplinary hearing. The court held that this denial constituted a violation of the ADA & RA. *Randolph v. Rogers*, 170 F.3d 850 (8th Cir. 1999).
- Where facts could not support a § 1983 claim, an ADA claim could be raised in the case of a semi-quadruplegic prisoner subject to unhygienic conditions and denied access to various programs. *Noland v. Wheatley*, 835 F. Supp. 476 (N.D. Ind. 1993).

9. Right to refuse treatment

The Fifth and Fourteenth Amendments' Due Process Clauses protect the right of federal and state prisoners to be free from unjustified bodily intrusions. This protection includes the right to refuse medical treatment and the right to sufficient information to intelligently exercise these rights. *White v. Napoleon*, 897 F.2d 103 (3d Cir. 1990). Courts have found in addition that there may be First and Sixth Amendment rights involved in special contexts (discussed below). The Supreme Court has noted though that constitutional protections may be qualified when prison regulations that impinge on them are "reasonably related to legitimate penological interests." *Washington v. Harper*, 494 U.S. 210 (1990).

Harper held that "the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will if the inmate is dangerous to himself or others *and* the treatment is in the inmate's medical interest." *Harper* at 227 (emphasis added). The Court addressed a related but different situation two years later, in the case of a non-dangerous pre-trial detainee who objected to medication designed to render him competent for trial. *Riggins v. Nevada*, 504 U.S. 127 (1992). The Court there reaffirmed *Harper* in stating that for forcible medication to be constitutional there must be a finding of both an overriding justification for the treatment and of its medical appropriateness. The justification may be either to preserve the inmate and/or the institution's safety, or to render an inmate competent for trial. (Use of medication for purposes of punishment is not justified.) In *Riggins*, the Court added that the government would also need to address whether there were less intrusive alternatives available to satisfy its interest.

The Court in *Harper* found that an administrative hearing on the involuntary treatment was required to satisfy procedural due process. Compare *United States v. Brandon*, 158 F.3d 947 (6th Cir. 1998), in which the court held that medication could be administered to render an inmate competent for trial, but a judicial hearing was required to satisfy due process. In *Brandon*, the court found it relevant that the inmate wasn't dangerous, and that the medication was only for the purpose of rendering him competent for trial, rather than, for example, ensuring his safety. He was thus entitled to a judicial (rather than an administrative) hearing, which would afford him greater protection of his constitutional rights. The court recognized that First Amendment rights (to form ideas and communicate) and a Sixth Amendment right to fair trial were implicated, as well as Fifth Amendment rights to due process. The government would have

to show by clear and convincing evidence that medication was the “least restrictive means” to meet its objective of rendering the inmate competent for trial. Also compare *Woodland v. Angus*, in which giving an inmate psychotropic drugs to make him competent for trial was unjustified, because it wasn’t clear the drugs would work. *Woodland v. Angus*, 820 F. Supp. 1497 (D. Utah 1993).

a. Other Right to Refuse Cases

- Guardian of “incompetent” inmate could give effective consent to medication on inmate’s behalf (so no due process claim). *Holley v. Deal*, 948 F. Supp. 711 (M.D. Tenn. 1996).
- No right to refuse TB screening for religious or other reason: state had compelling interest in containing infection. *Karolis v. New Jersey Dep’t of Corrections*, 935 F. Supp. 523 (D. N.J. 1996).
- Prisoner not allowed to refuse medication for the purpose of proving he didn’t need it. *Sullivan v. Flanagan*, 8 F.3d 591 (7th Cir. 1993).
- Prison doctors can give an un-consenting mentally ill inmate a sedative in an emergency without violating due process. *Hogan v. Carter*, 85 F.3d 1113 (4th Cir. 1996). However, an inmate who is loud and uncooperative is not an emergency. *Kulas v. Valdez*, 159 F.3d 453 (9th Cir. 1998).
- Courts have held that inmates may be force-fed if their health is found to be in danger. In *Laurie v. Senecal*, 666 A.2d 806 (RI 1995), a court found that an inmate who was not terminally ill did not have the right to end his life by starving himself. Several other courts have found that whether an inmate is on a hunger strike for political or religious or other reasons, if an inmate’s health is in danger, he or she may be force-fed. *Grand Jury Subpoena John Doe v. United States*, 150 F.3d 170 (2d Cir. 1998); *State ex rel. Schuetzle v. Vogel*, 537 N.W.2d 358 (ND 1995). Compare though *Thor v. Superior Court*, 855 P.2d 375 (Cal. 1993): an inmate who became a quadriplegic in prison, rendering him totally dependent on medical personnel, decided to refuse food and medication. The California Supreme Court held that where an inmate was competent to decide to refuse treatment, and where there were no prison security implications, he could refuse medical care, even if this meant a risk of death.