

KNOW YOUR RIGHTS: MEDICAL CARE IN GEORGIA PRISONS AND JAILS

Basics: The Eighth Amendment to the U.S. Constitution prohibits “cruel and unusual punishments,” which imposes a duty on prison officials to ensure that people in prisons and jails receive “adequate food, clothing, shelter, and medical care.”¹ Generally, state and local governments contract with private entities to provide medical care to people in prisons and jails.

Legal Standard: The Eighth Amendment imposes a duty on prison officials to provide adequate medical care to prisoners and jail detainees.² Adequate medical care includes mental health and dental care.³ Courts have defined “adequate” medical services as “services at a level reasonably commensurate with modern medical science and a quality acceptable within prudent professional standards.”⁴ If you are filing a lawsuit in federal court regarding medical care, you must prove that prison officials were “deliberately indifferent” to your “serious medical needs.” The deliberate indifference standard is a difficult standard to meet. It is *not* enough that prison officials were “negligent.”⁵ Instead, you must prove each of the following:

1. **A serious medical need.** You must show that you have a serious medical need.⁶

2. **Deliberate indifference.** You must show that each prison official you are suing was deliberately indifferent to your serious medical need. This means that you must show both that

¹ *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

² *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that a prison official’s “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ . . . proscribed by the Eighth Amendment” (citations omitted)). The Eighth Amendment applies to prisoners, while the rights of pre-trial detainees exist under the Fourteenth Amendment’s due process clause. However, claims raised by pre-trial detainees concerning medical care and prison/jail conditions “are subject to the same Eighth Amendment scrutiny as if they had been brought as deliberate indifference claims under the Eighth Amendment.” *McDowell v. Brown*, 392 F.3d 1283, 1290 n. 8 (11th Cir. 2004). *See also Hamm v. Dekalb County*, 774 F.2d 1567, 1574 (11th Cir. 1985).

³ *See, e.g., Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986) (deliberate indifference to serious mental health needs violates the Eighth Amendment); *Farrow v. West*, 320 F.3d 1235, 1243-44 (11th Cir. 2003) (“the need for dental care combined with the effects of not receiving it may give rise to a sufficiently serious medical need to show objectively a substantial risk of serious harm”).

⁴ *Fernandez v. U.S.*, 941 F.2d 1488, 1493 (11th Cir. 1991).

⁵ *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (“[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.”); *see also Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004) (prisoner raising failure to provide constitutionally adequate medical care must demonstrate deliberate indifference, which includes showing that an official disregarded a serious medical need “by conduct that is more than mere negligence.”)

⁶ *See Hill v. Dekalb Reg’l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994) (defining a serious medical need as “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention”). *See also, Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004) (holding HIV and hepatitis were serious medical needs); *Farrow v. West*, 320 F.3d 1235, 1243-45 (11th Cir. 2003) (holding that pain due to bleeding and swollen gums, and teeth cutting into gums of prisoner in need of dentures helped to demonstrate serious medical need).

(a) each prison official had actual knowledge of your serious medical need, and (b) that each prison official failed to respond reasonably by providing you adequate medical treatment.⁷

You can prove that the official knew about the risk to your health by showing that you told him/her about it. Or, you may prove that the official knew about the risk due to a history or pattern of the prison/jail's administrator's indifference to the serious medical needs of prisoners/detainees.⁸

3. Causation. You must also show that the official's deliberate indifference caused you an injury or is likely to injure you in the future. Normally, demonstrating these factors to the court in a case regarding medical care involves presenting a doctor's testimony.

4. Physical Injury. If you are suing for money damages, the Prison Litigation Reform Act (the "PLRA") requires you to show a "physical injury." 42 U.S.C § 1997e(e).

Review the U.S. Supreme Court's decision in *Estelle v. Gamble*, 429 U.S. 97 (1976), to learn more about the deliberate indifference standard as it applies to prison/jail medical cases.

RELATED MATTERS

Statute of Limitations: In Georgia, civil rights claims brought under 42 U.S.C. § 1983 are subject to a 2-year statute of limitations, but violations of state law may have earlier limitations periods and notice requirements.⁹

Exhaustion of Grievance Procedure: Under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), no legal action may be brought "with respect to prison conditions" under section 1983 or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility "until such administrative remedies as are available are exhausted." In other words, if the prison/jail you are in has a grievance procedure, you must complete the grievance procedure in a timely manner before filing a lawsuit raising federal claims.¹⁰ The law is strict on this point: failure to properly exhaust the available grievance procedures in the prison or jail that you are in will result in the dismissal of your case. You should request a copy of the prison or jail's grievance procedure from a prison/jail administrator.

⁷ See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

⁸ See *Rogers v. Evans*, 792 F.2d 1052, 1059 (11th Cir. 1986) ("Repeated examples of delayed or denied medical care may indicate a deliberate indifference by prison authorities to the suffering that results.")

⁹ Section 1983 of Title 42 of the United States Code ("42 U.S.C § 1983") is part of the Civil Rights Act of 1871. Section 1983 is the primary means of remedying constitutional violations by state actors. Section 1983 provides a mechanism for seeking redress for an alleged deprivation of a person's federal constitutional and federal statutory rights by persons acting under color of state law. State prisoners and jail detainees may use 42 U.S.C. §1983 to sue prison/jail medical providers as well as private contractors for their failure to provide adequate medical care. See *West v. Atkins*, 487 U.S. 42 (1988).

¹⁰ See *Ngo v. Woodford*, 548 U.S. 81, 90-91 (2006) ("[p]roper exhaustion demands compliance with an agency's deadlines and other critical procedural rules").

Georgia Department of Corrections' Grievance Procedure:¹¹ Georgia has a two-step grievance procedure that applies to medical and other types of grievances. Step 1: Complete an informal grievance and give the completed form to your counselor within 10 days of the incident/problem you are complaining about. The counselor will give you a receipt. You should get a response within 10 days of filing the grievance form. Step 2: After getting a response to your informal grievance, you have 5 days to file a formal grievance. Complete the form and give it to your counselor within 5 days. You will get a written response from the Warden or Superintendent within 30 days. If you don't receive a response within this time, you can appeal to the Commissioner's office (unless a one-time 10-day extension has been authorized and the Grievance Coordinator tells you about it).

If you have an *emergency* that threatens your health or safety, file an emergency grievance on the informal grievance form. If the Grievance Coordinator or Duty Officer decides your complaint is a real emergency, immediate action will be taken. You should receive a written response within 5 days. *However*, if officials decide your complaint is not an emergency, you will get it back, at which point you can file an informal grievance and proceed with the grievance process.

Correspondence Regarding Medical Care: If you have completed the grievance process and/or you have an urgent medical problem, you or a loved one can direct correspondence to:

Georgia State Prisons
Ms. Shervonda Fields
Office of the Ombudsman
& Family Advocacy
Georgia Department of Corrections
2 Martin Luther King Jr. Drive, S.E.
East Tower, Suite 954
Atlanta, GA 30334
(404) 657-7588 (T)
(404) 651-6537 (F)
Email: ombudsman@dcor.state.ga.us

Georgia State Prisons
Dr. Sharon Lewis
Office of Health Services
Georgia Department of
Corrections
2 Martin Luther King, Jr.
Drive, S.E.
Suite 952, East Tower
Atlanta, GA 30334

Federal Prisons
Mr. Raymond Holt
Regional Director
Southeast Regional Office
Federal Bureau of Prisons
3800 Camp Creek Pkwy.
SW/BDG 2000
Atlanta, GA 30331

Local Jails
Contact the Sheriff and/or
County Commission

If you or a loved one writes a letter to a prison or jail administrator about your medical care, the letter should briefly describe the medical problem you are experiencing and ask for a specific response from the prison or jail. In addition, you should explain how you have tried to solve the problem at the institutional level. If you have been treated for this medical problem outside of prison or jail, you or your loved one may want to include this fact as well as the treatment and medical advice you received.

Resources: You may request a free copy of *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* by writing to The Center for Constitutional Rights at: Jailhouse Lawyers Handbook c/o The Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

Please Note: This document provides general information, but is not intended to be an exhaustive summary of the law. In addition, the law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.

¹¹ The grievance procedure described herein applies to state prisons, private prisons, county prisons, and transitional centers. If you are being held in a jail or a federal prison, you should ask a staff member for a copy of the institution's grievance procedure.