

Nurse's Med Error: No Deliberate Indifference.

According to the court record, an inmate in a county jail was given the wrong medication by the jail nurse. The nurse quickly discovered her error and told the inmate. The medication caused itching and a full-body rash for which the patient was then given Benadryl and topical creams per the jail physician's orders.

The inmate sued for violation of his Constitutional rights. The US District Court for the Northern District of Iowa ruled that a negligent mistake by a health-care provider does not amount to deliberate indifference to a serious medical need, the catch-phrase for prisoners' Eighth Amendment Federal lawsuits. He may well have the right to sue for common-law malpractice, but that was not the issue in this case. **Mallett v. Naph Care, Inc.**, 2005 WL 327545 (N.D. Iowa, February 9, 2005).

Correctional Nursing: Nurse Not Deliberately Indifferent, Prisoner's Suit Dismissed.

The Eighth Amendment to the US Constitution forbids cruel and unusual punishments.

Denial of necessary medical treatment or necessary nursing care is considered a form of cruel and unusual punishment.

A prisoner, like anyone else, can use the US Civil Rights Act to sue for damages when a government official deprives the prisoner of a recognized Constitutional right like the right to be free from cruel and unusual punishment.

The definition of a government official in this context applies to doctors, nurses and other healthcare professionals working with prisoners or responsible for supervising or managing delivery of healthcare services to prisoners.

A prison official is not liable unless the official knows of and disregards an excessive risk to the inmate's health or safety, that is, not unless the official is guilty of deliberate indifference.

Deliberate indifference is the legal touchstone in these prisoners' lawsuits.

UNITED STATES DISTRICT COURT
TEXAS
March 3, 2005

A prisoner in a state correctional institution filed suit against the medical director, a treating physician and the staff nurse over the treatment, or lack thereof, he received while incarcerated.

The prisoner suffered from keloid scarring on his scalp. The condition existed before his incarceration.

Even though the prisoner told him previous treatments with tetracycline, clindamycin, Bactrim and doxycycline had been ineffective and that he had had side effects with tetracycline, the prison physician prescribed tetracycline.

The prisoner had GI side effects in prison that were linked to the tetracycline. In his lawsuit he claimed he should have been prescribed Accutane instead of tetracycline.

Deliberate Indifference Required

To sue in Federal court for a violation of the Constitutional right to be free from cruel and unusual punishment the touchstone is deliberate indifference. A prisoner must prove a prison caregiver knew of the prisoner's serious health condition and was guilty of deliberate indifference to the prisoner's condition.

Prison Nurse Exonerated

The US District Court for the Northern District of Texas dismissed the nurse from the lawsuit along with the medical-doctors. The court ruled the nurse's actions were medically reasonable in all respects and certainly no deliberate indifference occurred.

The nurse listened to the prisoner's complaints and made careful note so that his situation could be accurately presented to the physician.

The nurse recommended a dermatologist referral to the physician on the prisoner's behalf. It was not the nurse's judgment call to order such a referral or to decide what medication would be chosen to treat him, although the court did not fault the physician for his choice of one antibiotic over another. **Thompson v. Basse**, 2005 WL 524966 (N.D. Tex., March 3, 2005).