



ISSN 1935-0007

*Cite as:* 2017 (2) AELE Mo. L. J. 101

Civil Liability Law Section – February 2017

## Civil Liability and Medical Care of Arrestees

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### ❖ Introduction

When officers take an arrestee into custody, a constitutional duty arises to see that necessary medical care is made available, especially for serious medical needs, and civil liability may attach for a failure to summon assistance or to transport the arrestee to a medical facility, as well as for unnecessary delay. This article takes a brief look at how courts have addressed this issue, examining the duty to provide care, consent issues, interference with care, and release of arrestees without providing medical care. At the end of the article, there is a listing of relevant and useful resources and references.

### ❖ Duty to Provide Care

When an arrestee taken into custody obviously needs medical attention, especially urgent medical attention, officers in charge of them have a constitutional duty to take necessary steps to see that it is provided.

This is illustrated by [Carter v. City of Detroit](#), #04-1005 408 F.3d 305 (6th Cir. 2005), involving a police officer who allegedly failed to order the arrestee be taken to the hospital when she was exhibiting symptoms of a heart attack. He was not entitled to qualified immunity in her estate's wrongful death lawsuit. If these actions occurred in this manner, the court found, they violated her clearly established constitutional right to receive necessary medical attention.

The case involved the estate of a pre-trial detainee who died from a heart attack while in custody suing a police officer, claiming that he acted with deliberate indifference to the detainee's serious medical needs by failing to order that she be taken to the hospital and failing to tell his replacement that she was ill and needed transportation.

A federal appeals court upheld the refusal of the trial court to grant the officer's motion for qualified immunity.

Taken in the light most favorable to the plaintiff, the officer knew that the woman, who had been arrested during a fight she had with her sister, was experiencing chest pains and shortness of breath, some of the classic symptoms of a heart attack, and believed at the time that she was three days behind in taking her heart medication, and yet failed to have her transported to the hospital and failed to inform his relief of her illness.

These actions, if true, were sufficient to permit a jury to infer that the officer was deliberately indifferent to the detainee's serious medical needs, in violation of her clearly established constitutional right to receive necessary medical attention.

The duty to see that medical care is provided is also clear when the use of force caused the need for medical care. In *Valderrama v. Rousseau*, #13-15752, 780 F.3d 1108 (11th Cir. 2015), three officers were sued for their involvement in the warrantless arrest of a vehicle passenger for possession of cocaine and drug paraphernalia, charges which were later dropped.

A federal appeals court held that summary judgment on the basis of qualified immunity was proper on a false arrest claim, as the officers had probable cause for the arrest because one officer saw the plaintiff throw a crack pipe out of his car window. Two of the arresting officers, however, were not entitled to qualified immunity because they allegedly delayed seeking medical care when the passenger was shot in the genitals, acting with deliberate indifference and reporting his injury as a "laceration." The third officer, who arrived later, was entitled to qualified immunity, however, as there was no indication that he knew that the other officers caused a delay in medical care.

A delay in providing care can result in death or substantial damage. In *Ortiz v. the City of Chicago*, #04-C-7423, U.S. Dist. Ct. (N.D. Ill. Nov. 4, 2013), the family of a female arrestee who died while held in a cell in a police station without needed medical attention for over 24 hours was awarded \$1 million in damages by a jury. According to the plaintiffs, the woman's lawyer and several family members repeatedly let officers know that she was seriously ill, and she herself informed them of this also. She was obese, diabetic, and had asthma. The jury found that a police practice of holding detainees in cells in police stations without medical attention for up to two days was unconstitutional. See the prior appeals

court decision in the case, [\*Ortiz v. the City of Chicago\*](#), #10-1775, 656 F.3d 523 (7th Cir. 2011).

Juries are allowed to use their common sense as to the natural consequences of a denial or delay in treatment. In [\*Miedzianowski v. City of Clare\*](#), #13-101, 735 F.3d 383 (6th Cir. 2013), officers who shot and killed a man were sued for excessive force and deliberate indifference to a known serious medical need, the need for treatment of his wounds. The jury found in favor of the officers after being instructed that the plaintiffs had to prove that deliberate indifference caused the man's death.

A federal appeals court upheld the trial judge's grant of a new trial on the medical indifference claim. In such a delay of treatment case, it is not necessary to show that the delay in providing medical care caused the death when a layperson would find it obvious that a delay in treatment created a risk of serious harm. The defendants failed to show that a substantial ground for a difference of opinion existed on the correctness of the trial decision.

Sometimes, however, the serious need for medical care may not be so obvious to an officer, and liability will not attach. In [\*Florek v. Village of Mundelein\*](#), #10-3696, 649 F.3d 594 (7th Cir. 2011), for example, after officers made a controlled purchase of pot in front of an apartment, officers entered the premises, and arrested a female occupant who was smoking marijuana. After she told them that she felt ill, they allegedly denied her requests for a baby aspirin. She subsequently has a heart attack, but the officers are not liable for denying her medical attention, since they were not on notice, based on her appearance, of her serious medical condition, and were not directly made aware that she was experiencing chest pains.

Similarly, in [\*Best v. Town of Clarkstown\*](#), #02-7664, 61 Fed. Appx. 760, 2003 U.S. App. Lexis 6411 (Unpub. 2nd Cir. 2003), evidence was insufficient to support jury's award in favor of motorist claiming that officer was deliberately indifferent to his serious medical needs following a vehicle accident, as it did not support the conclusion that the motorist suffered from a cerebral edema. Trial court properly set aside jury's award of \$50,000 in compensatory damages and \$250,000 in punitive damages to the plaintiff.

Damages awarded must be supported by proof. In [\*Rosario v. City of Union City Police Department\*](#), #00-3702, 263 F. Supp. 2d 874 (D.N.J. 2003), a lawsuit claiming that police officers failed to provide adequate medical care to arrestee, resulting in his death, jury engaged in improper speculation in awarding \$3 million to decedent's children without evidence to support a finding that the economic value of the loss of his services, advice, and counsel was worth that amount, and therefore was set aside by trial judge. A separate award of \$2.5 million to decedent's estate for his pain and suffering was not disturbed.

In some instances, the arrestee himself may have caused his own injuries, for which officers should not be held responsible. In [\*Land v. City of New York\*](#), #90-01982, 575 N.Y.S.2d 690 (A.D. 1991), for instance, the city was not liable to a man for his quadriplegia suffered after he intentionally jumped out of a window. The jury could reasonably conclude that any negligence by police officers in transporting him or failing to obtain medical assistance did not cause his injuries.

Officers are not medical personnel, and their duty is ordinarily to summon medical assistance or transport the arrestee to it, not to provide the medical aid themselves. In [\*Wilson v. Meeks\*](#), #94-3179, 52 F.3d 1547 (10th Cir. 1995), an officer was entitled to qualified immunity for shooting armed suspect who held out a hand containing a gun in response to officer's demand that he show his hand, as he reasonably feared for his life, regardless of exactly what direction displayed weapon was pointed. The court ruled that the officers had no clearly established duty to provide medical aid to a suspect prior to arrival of EMTs. See also the later decision in the case rejecting municipal liability. [\*Wilson v. Meeks\*](#), #95-3390, 98 F.3d 1247 (10th Cir. 1996).

#### ❖ Consent Issues

Arrestees, like any other person, if they are competent and conscious, have the right to withhold consent to medical treatment. If they are judged not competent, however, medical personnel may impose treatment even over objection.

In [\*Estate of Allen v. City of Rockford\*](#), #02-1873, 349 F.3d 1015 (7th Cir. 2003), the court ruled that an officer acted reasonably in not interfering with forcible blood and urine tests imposed on a DUI arrestee by a hospital doctor after he concluded that she was not competent to refuse consent and needed medical treatment to prevent the possibility of a drug overdose.

In this case, after placing a motorist under arrest for driving under the influence of drugs, a police officer drove her to a nearby hospital for the purpose of obtaining a urine sample. She refused to provide a urine sample or to consent to a drug-screening test requested by the emergency room doctor. The doctor, however, after declaring the motorist not competent, without the assistance of the arresting officer, forcibly extracted blood and urine samples from her.

The motorist subsequently sued the city and several police officers for violation of her constitutional right to due process based on the imposition of unwanted medical treatment, as well as asserting various state law claims against them and hospital employees. The

federal trial court granted summary judgment to the city and police officers on the federal civil rights claims, and declined to exercise jurisdiction over the state law claims.

A federal appeals court upheld this result, ruling that the plaintiff motorist did not establish that the officers either breached a duty of care towards her or placed her in a dangerous situation by not preventing her forced treatment.

The appeals court noted that the motorist had admitted, to the officer, taking a drug called Soma, which had been prescribed for her sister, and had difficulty walking unassisted. The doctor at the hospital also observed that the motorist's speech was slurred, that she was intermittently sleepy and alert, and that she had borderline low blood pressure, and was disoriented, stating that it was January instead of July.

Based on all this, the doctor became concerned that the motorist may have overdosed on the Soma, with potentially fatal consequences, and may have ingested other drugs as well that would have exacerbated the effects of the Soma. The doctor believed that she was then incompetent to make decisions about her medical treatment, and told the officer that he planned to extract the blood and urine samples in order to determine the type and amount of drugs she had ingested. Additionally, hospital staff told the officer that they were concerned about potential liability if they allowed the motorist to leave the hospital and she overdosed.

The officer did not have any medical training beyond CPR and basic first aid. Further, once the decision to proceed with the tests was made by the doctor, the officer played no role in the medical treatment, and she did not participate in whatever use of force was necessary to extract the samples. The tests ultimately revealed that the motorist had taken other drugs besides the Soma, such as benzodiazepines, marijuana, and opiates. The motorist was given counteracting agents designed to prevent overdoses and was then released back into police custody.

Under [\*DeShaney v. Winnebago County Dep't of Social Services\*](#), #87-154, 489 U.S. 189 (1989), there is an exception to the general rule that officers have no constitutional duty to protect specific individuals from harm when those individuals are either in custody or the actions of an officer "creates" an enhanced danger to them.

In this case, the motorist was a "pretrial detainee" while at the hospital, so the officer did have some duty to provide a certain level of care and safety.

The facts, however, did not support the plaintiff's contention that the officer was aware of a substantial risk of injury to the motorist in the form of a battery (the forced medical treatment), but failed to prevent this known danger. "Rather, the evidence suggests that it is

precisely because” the officer did not intervene with the medical treatment that any obligations to the plaintiff were met.

The officer acted reasonably in choosing not to question a licensed physician’s determination that treatment was necessary and that the motorist was not competent to decide otherwise. Indeed, the court commented, had an officer prevented the treatment, and the motorist suffered negative health consequences as a result, this might have constituted failure to provide appropriate medical care to a pretrial detainee.

The actions by the officer which were complained of, the court concluded, were a reasonable attempt to “minimize danger” by allowing a licensed physician to exercise his judgment rather than substituting the judgment of an officer.

Similarly, in *Davidson v. City of Jacksonville*, #3:03-CV-343, 359 F. Supp. 2d 1291 (M.D. Fla. 2005), the court found that a city’s emergency medical technicians did not violate a patient’s Fourth Amendment rights or his due process rights when they restrained him during an emergency call and “hogtied” him because he was resisting their efforts to diagnose and treat him. The patient was then resisting them because of a diabetic episode, and the court ruled that he was not then “mentally present,” and therefore could not possibly have communicated a refusal of treatment.

When a presumably competent and conscious arrestee refuses assistance, an officer will not be held liable. In *Mantz v. Chain*, #00-1032, 239 F. Supp. 2d 486 (D.N.J. 2002), there was a genuine issue of fact as to whether an officer’s use of pepper spray was reasonably necessary to subdue a man being arrested for disorderly conduct, but the officer did not engage in deliberate indifference to the arrestee’s serious medical needs by failing to immediately call an ambulance after the use of the spray, in the absence of any evidence that the delay caused any harm. The evidence further showed that the arrestee declined the officer’s offer to give him a towel and water to flush out his eyes.

Similarly, in *Doerner by Price v. City of Asheville*, #872SC992, 367 S.E.2d 356 (N.C. App. 1988), officers were held not liable for failure to provide first aid to an assault victim. The victim was not bleeding and explicitly asked to be returned to the motel room.

### ❖ Interference With Care

Transporting an arrestee to a medical facility may not be enough if an officer intentionally engages in actions designed to interfere with the providing of medical care.

In *Nielsen v. Rabin*, #12-4313, 746 F.3d 58 (2nd Cir. 2014), for instance, a man claimed that he was beaten by police officers and sustained a fractured collarbone, a SLAP-type

labral tear, and facial injuries leaving permanent scarring and requiring two nose surgeries. He also became legally deaf in one ear and has reduced hearing in the other.

A federal appeals court reversed the dismissal of a deliberate indifference denial of medical care claim against the doctor at a hospital emergency room, finding that if the complaint were amended to allege two things claimed in the plaintiff's opposition to the doctor's motion to dismiss, it would show a sufficiently culpable state of mind for a constitutional violation. Those two things were that the officers falsely told the female doctor that one of the officers he allegedly attacked was a woman, and that he should therefore be "ignored and left alone."

### ❖ **Release Without Medical Care**

When arrestees clearly need care, there may be liability, under some circumstances, simply for releasing them without providing it.

In [\*Paine v. Cason\*](#), #10-1487, 678 F.3d 50 (7thCir. 2012), a bipolar woman who had ceased taking her medication was arrested for disruptive actions at an airport. She allegedly received no medical attention while detained, and was released in a high-crime area of town where she was first raped and then either was pushed or fell out of a high-rise building, causing her to suffer permanent brain damage.

While there is no general right to have police protection against the criminal acts of third parties, police can be liable for damage if they create or enhance the danger of such crimes. While the woman had no due process right to be kept in custody for her protection, it was "clearly established that the police may not create a danger, without justification, by arresting someone in a safe place and releasing her in a hazardous one while unable to protect herself."

A number of individual defendants were not entitled to qualified immunity for their role in the woman's release in a dangerous area or failure to provide her with medical care while in custody. The court stated that "they might as well have released her into the lion's den at the Brookfield Zoo," since "she is white and well off while the local population is predominantly black and not affluent, causing her to stand out as a person unfamiliar with the environment and thus a potential target for crime."

### ❖ **Resources**

The following are some useful resources related to the subject of this article.

- [Medical Care](#). AELE Case Summaries.
- [Financial responsibility for costs of medical care provided to arrestees after detainment but before booking into jail](#), Washington State Attorney General, AGO 2005 No. 8 - July 7 2005.

❖ **Prior Relevant Monthly Law Journal Articles**

- [Mental Health Care of Prisoners](#), 2009 (11) AELE Mo. L. J. 301.
- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.
- [Public Protection: Arrestees](#), 2011 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101.

❖ **References:** (*Chronological*)

1. [Fourth Amendment Protections Applied to Medical Care Provided to Pre-Gerstein Arrestees](#), by David A. Perkins and Brad A. Elward, Illinois Association of Defense Trial Counsel (2014).
2. [The High Cost of Arrestee Medical Treatment: The Effects of F.S. §901.35 on Local Government Coffers](#), by Joseph G. Jarret, Florida Bar Journal, Volume LXXVIII, No. 10 (November 2004).

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**AELE Monthly Law Journal**

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