190 50th Ave. NW, Salem, OR 97304
T: 541.241.4019 F: 541.641.7154
www.malaerlegalnurseconsulting.com

Locking Down Correctional Healthcare Litigation

The days of breaking rocks with sledge hammers, chain gangs and guards with bullwhips are long over. Today we have super-max prisons, cells enclosed with shatter proof glass instead of bars, tasers, restraint chairs and pepper spray. While the structural design of jails and prisons have become high-tech, changes in laws to protect inmate rights have not kept pace.

Until the 1960's, inmates had few rights and states were permitted to operate prisons and jails in whatever manner they wished. The precedent for the federal government's "hands off" stance regarding the operation of state prisons resulted from the court's ruling on two significant cases.

- In the first case, *Pervear v. Massachusetts (1866)*, the Supreme Court ruled that the Supreme Court "had no standing to interfere with state punishments, not even when 8th Amendment protections against cruel and unusual punishment were being violated. (Pervear was sentenced to three months of hard labor for failure to maintain a state liquor license).

- The second case, *Ruffin v. Commonwealth (1871)*, stated a prisoner "has as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which humanity accords him. He is for the time being a 'slave of the state.'" The precedent set by these cases remained essentially unchanged until the 1970s.

Since the early '70s there have been multiple cases brought before the courts which have not only changed jurisdiction over the operations of jails and prisons in this country but have provided guidance for much needed reform. In-depth discussion of all relevant case law would be impossible in this short article, so we will touch upon cases which have had a profound effect on inmate rights.

The Right to Medical Care

It wasn't until 1972 that inmates were given the right to basic medical care under *Newman v. Alabama*, when "Federal District Court Judge Frank M. Johnson found 8th and 14th Amendment violations relating to the inadequate medical care and treatment of state inmates, granting declaratory and injunctive relief," according to the Alabama Sentencing Commissions.

This was followed by *Estelle v. Gamble* in 1976. Estelle represents one of the most important rulings regarding an inmate's right to medical care to come out of the 20th century. This case clearly and concisely addressed a number of very important concepts regarding the provision and delivery of medical care to inmates. First and foremost, Estelle states that "indifference to a prisoner's serious medical needs is cruel and unusual punishment." The Supreme Court goes on to state, "these elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs. If the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical 'torture or a lingering death'… This is true whether the indifference is manifested by prison doctors in their response to the prisoner's medical needs or by the prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed."

Some other important issues addressed by Estelle include:

- A healthcare system must be provided that meets minimum standards of adequacy.
- Reasonable access to medical care is essential.
- Competent, diligent medical personnel will ensure that the prescribed care is delivered.
- The state has an obligation to hire or contract with physicians who meet the minimum standards of competency or diligence.
- The physician cannot have an excessive caseload that would prevent him from providing adequate care, and the practitioner must have adequate facilities in which to practice.

Estelle also clearly states that a complaint of negligence regarding the diagnosis and treatment of a medical condition does not necessarily constitute a valid claim of deliberate indifference,

"medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." A serious medical need exists if it is in part "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 of a doctor's attention." Since Estelle, numerous cases have gone to the courts, and judgments regarding mental healthcare and dental care have helped to further define the prisoner's 8th Amendment rights.

Reform

As these cases were heard by the courts the number of lawsuits filed by inmates exploded. A number of these lawsuits were brought for "frivolous" reasons, such as partially melted ice cream in the cafeteria. In 1996, the Prison Litigation Reform act was signed into law. This act requires that: inmate lawsuits be held to a higher standard, establishes caps on attorney fees, requires proof of an actual violation before a decree or injunction be issued, recommends courts take public safety into consideration and suggests a panel of three judges must agree before any inmate is released by lawsuit.

Developing Standards

Around the time that these landmark cases began to progress through the courts, small groups of dedicated correctional healthcare professionals began to meet and develop standards of care to improve the delivery of healthcare to incarcerated inmates. While there are a number of excellent correctional organizations, three were instrumental in developing standards of care regarding the delivery of healthcare in correctional institutions. The American Correctional Health Services Association (ACHSA) is a professional organization for correctional healthcare professionals. ACHSA "serves as a forum for current issues and needs confronting correctional healthcare. It provides education, skill development and support for personnel, organizations, and decision makers involved in correctional health services, thus contributing to a sense of community and creating positive health changes for detained and incarcerated individuals," according to North Carolina Wesleyan College. In 1991, ACHSA collaborated with the American Nurses Association to develop "The Scope and Standards of Nursing Practice in Correctional Facilities." These guidelines published by the ANA have been adopted as ACHSA policy.

The National Commission of Correctional Health Care (NCCHC) and the American Correctional Association have not only developed national standards for jails, prisons and juvenile facilities but provide a certification for healthcare professionals and a national accreditation program. These organizations have also provided position statements on a number of issues including: administrative management of HIV in corrections, charging a fee for healthcare services, correctional healthcare and prevention of violence, and healthcare funding for incarcerated youth.

Career Challenges

Health professionals who have chosen the field of correctional healthcare as a career face many challenges. In 2015, more than seven million people in the U.S. were under some type of correctional supervision. In general, incarcerated individuals tend to be poor and under-educated. Ethnic minority populations are disproportionately represented in correctional institutions. The inmate's lower socioeconomic status and lack of medical insurance limits access to healthcare services. Inmate lifestyle choices including the abuse of drugs and alcohol, and non-compliance and ignorance all contribute to higher than average risk for heart disease, hypertension, diabetes and mental illness. Because of a significant history of substance abuse, inmates have higher than average rates of infection for human immunodeficiency virus (HIV), tuberculosis, hepatitis B and sexually transmitted diseases.

Correctional medical professionals find it increasingly difficult to provide adequate care and maintain standards as the inmate population rapidly increases, straining available resources. As the criminal population ages, practitioners must deal with increasingly complicated medical and mental health conditions. More and more inmates with serious, debilitating conditions requiring skilled nursing care and hospice care are housed in overcrowded, outdated facilities. Administrators must deal daily with budget constraints, lack of resources and difficulty in hiring and retaining competent staff.

Litigation Potential

Potential for litigation involving inmate populations begins from the time of arrest. To effectively work with an attorney on such cases, a legal nurse consultant (LNC) specializing in corrections must have knowledge not only of correctional standards of care, but must maintain a working knowledge of emergency room standards, hospital standards and the standards of care for a myriad of chronic diseases such as diabetes, hypertension, cardiac disease, neurological disorders, substance abuse and psychiatric disorders. The LNC evaluating correctional cases must be familiar with other issues such as standards of care for communicable diseases like HIV, hepatitis C and TB, and laws regarding exposure and isolation of infected inmates. The LNC who specializes in corrections must be familiar with a wide range of specialties including geriatrics, orthopedics, hospice, infection control, trauma, disaster medicine, long term care, HIPPA and medical administration.

In reviewing correctional cases, the LNC must look at each facet of incarceration including injuries sustained during the arrest, emergency room care, the intake process and day-to-day care received while in custody as well as upon discharge from the facility to another facility or back to the community. Evaluation of the medical record must also include analysis of issues such as medical autonomy, access to care and timeliness of care.

Future Litigation

Future litigation will likely center on issues regarding care of chronic diseases such as diabetes and HIV, issues regarding inmates with disabilities under the Americans with Disabilities Act (ADA), hospice and palliative care, long-term and geriatric care, discharge planning and executions. In the past 50 years, both the courts and the correctional community have worked toward providing the incarcerated population in this country with adequate, timely healthcare. As incarcerated populations continue to grow, the challenges encountered in delivering healthcare will likely become more complicated.

The LNC can be instrumental in applying medical knowledge obtained as a nurse to honestly and objectively evaluate the medical record and to render a fair and unbiased opinion regarding each case. The LNC who accepts the challenge presented by correctional cases provides an invaluable service to both the attorney and to the public.

Malaer Legal Nurse Consulting

As a Master's-Prepared Registered Nurse with over 20 years of clinical, administrative, and national auditing experience of correctional healthcare organizations including jail, intake, minimum security, maximum security, super segregation, and rehab facilities across the United States, Robert Malaer serves as an expert in the field of correctional healthcare, mental health, and rehabilitation. He maintains an active membership with the American Correctional Association (ACA), National Commission on Correctional Health Care (NCCHC) and American Correctional Health Services Association (ACHSA), and continues to serve as a National Auditor for the ACA. Having authored, reviewed, and enforced correctional healthcare standards across the country and possessing an in-depth comprehension of how correctional facilities provide healthcare to the inmates either as direct employees or contractual agreements with healthcare organizations, Robert possesses firsthand knowledge and experience with correctional healthcare and operations. Correctional healthcare is a specialty field of practice, and Robert's extensive knowledge and experience can prove highly beneficial to any plaintiff or defense attorney with cases in this specific area. Robert maintains a highly professional, candid, and insightful method of addressing issues and a basic, common sense way of explaining the complexities inherent in these types of cases.

Malaer Legal Nurse Consulting has played a critical role in over 175 cases across the United States. In addition to correctional healthcare cases, Robert has served as the lead investigator for two criminal defense cases involving traumatic brain injury (TBI) and mental health complications. He has also served as an expert in nursing home, assisted living, medical malpractice, personal injury, rape, divorce, worker's compensation, and adoption cases. In addition to LNC services, Robert provides Life Care Planning and Vocational Assessments and provides expert testimony in these areas as well.

Contact Malaer Legal Nurse Consulting today to have Robert on your side of the aisle!!

Contact Robert Malaer, MSN, RN, CLNC today for the expert your clients deserve and the success you expect.