



COMMANDER'S LOG

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Inmates' Suits Based Upon an Alleged Denial of Medical Care

QUESTION: What kind of evidence is needed to overcome an inmate's lawsuit alleging a denial of medical care?

ANSWER: The detention center's records documenting the inmate's medical treatment are the primary evidence needed to defeat a claimed denial of medical care. Affidavits from key personnel, including supervisors and administrators, may also be needed. Finally, video evidence from closed circuit monitors and other photographic evidence may be pertinent in certain cases.

CASE: *Jason Feist v. Howard County Detention Center, et al.*
U.S. District Court – District of Maryland
Decided July 22, 2014

The Lawsuit: Jason Feist, a pretrial detainee at the Howard County Detention Center (HCDC), filed a lawsuit containing a list of complaints against HCDC personnel, ranging from denial of an opportunity to place criminal charges against HCDC staff, to his placement in solitary confinement. Concerning his medical care, Feist claimed that staff had failed to provide treatment for his seizure disorder and asthma. Feist also sued Conmed, Inc., the contractual health care provider for the HCDC. The Court preliminarily dismissed all claims with the exception of the claimed denial of medical care.

Specifics of the Medical Claim: Feist claimed that, at the time of his commitment, he told HCDC staff that "health issues could result in the loss of his life." He also alleged that his request to keep his inhaler was denied. In fact, Feist claimed that, on the night of his arrest, he suffered a seizure and woke up in pain on the floor of his cell, where a nurse briefly examined him and refused to help. He said that he had a second seizure when he was returned to his cell and his requests for help were ignored. Feist's lawsuit continued with allegations that, although he was taken to the medical department several times over the next few days and given Librium, his repeated requests for an inhaler were denied, as was his request to be hospitalized. Feist claimed that he had filed many grievances while in custody, all of which were ignored, and that he, at one point, had to be "resuscitated" by another inmate who let him use his inhaler. When examined, Feist alleged that the nurse told him that there was nothing wrong with him. Finally, Feist claimed that he was routinely denied his medications and that he received no treatment for a dislocated shoulder, which he had to "set" himself.

Defendants' Response to the Lawsuit: Defendants provided Feist's medical records from the HCDC to support their argument that his claims were baseless. The records showed that Feist had received ongoing medical care beginning the day after he was arrested and had been seen by the medical staff 39 times over a five month period. In addition to medical progress notes, Defendants also provided physicians' orders, lab orders, medication records, and x-ray results. Defendants' records also established that, on numerous occasions, Feist had refused medical treatment.

The Court's Decision: In reaching its decision in favor of the Defendants, the Court found that the medical records, combined with an affidavit from Jack Kavanaugh, the Director of the HCDC, amply established that there had been no "deliberate indifference" to any of Feist's medical needs. In fact, the Director's affidavit showed that, when Feist claimed that he had not received his medications, the Director had personally reviewed a videotape showing a correctional officer attempting, without success, to get Feist out of bed to go to the medical unit to take his scheduled medications. As a result of the video, the Director ordered that Feist be temporarily placed in the medical observation unit, located within the HCDC medical suite, which allows patients with medical issues to be more closely monitored. During the six day period Feist was in the medical unit, he had no medical complaints. The Director's affidavit also established that, during this time, Feist's vital signs were checked daily, and that the medical records noted several instances where Feist declined treatment. Mr. Kavanaugh's Affidavit stated that Feist also was monitored through HCDC's chronic care program, which is aimed at providing ongoing medical care to inmates with chronic illnesses by setting appointments with medical staff at least every three months for follow up for their chronic medical conditions. Finally, the 76 page evidentiary record submitted by Defendants also documented that Feist had received albuterol nebulizer treatments in the medical unit when he experienced breathing problems, and received an inhaler to keep with him on at least one occasion.

In sum, the Defendants established, in the words of the Court, that there "was no basis for Feist's claim that his constitutional rights were violated."

NOTE: As in most inmate suits, records, records, and more records usually provide the path to victory. This is true in claims based upon a denial of medical care, as well as excessive force, denial of legal access, failure to protect, and the whole host of lawsuits that are limited only by the inmate's imagination. At the front end, ensure that you document each and every grievance an inmate makes and the outcome for each. Also, if the inmate has not made any grievances, it is important to be able to provide evidence of that fact. This is because inmates often falsely claim to have filed grievances to avoid administrative exhaustion requirements imposed by the PLRA. **In this regard, you may want to have the inmate execute a form prior to release or transfer verifying the grievance(s) that he/she actually submitted while incarcerated and that the record is complete.**

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