



PRIVATE HEALTH CARE CONTRACTORS MAY ALSO BE LIABLE FOR A CIVIL RIGHTS VIOLATION

Failure To Provide Medical Care for a Serious Medical Need

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The Constitution as a general matter only applies to government actors due to the fact that its creation by the founding fathers was to restrict the power of government. Lawsuits related to violation of constitutional rights generally only apply to those persons who act under color of law such as correctional officers, deputies, and police officers. However, when the government hires some outside vendor to fulfill what is generally a governmental function, those non-government actors may also be sued for violation of constitutional rights.

One type of non-government actor that is regularly sued in conjunction with sheriffs and jails is health care providers hired by the jail to provide health care for prisoners. A state court case from Georgia provides an excellent example.

So viewed, the evidence shows that Carol was arrested on a probation violation on January 23, 2012, and booked into the Effingham County jail. The jailer on duty completed a medical questionnaire, noting that Carol was exhibiting signs of alcohol withdrawal and had experienced seizures in the past. Shortly after Carol's arrival, Defendant Wanda Brady, the THRX nurse assigned to provide medical services during the week, conducted an intake evaluation. Nurse Brady noted that Carol had injured her foot, and she vomited on intake. Brady also noted that Carol was an alcoholic who drank 12 to 18 beers a day, she had emphysema, she had a history of alcohol-related seizures, and she was taking Dilantin for seizures. Carol was placed in an isolation cell in the section of the jail called the "horseshoe" so that the defendants could monitor her for any signs of detoxification. Nurse Brady also referred Carol to mental health services and alerted THRX's assigned physician, Defendant Myra Pope, by phone.

The next day, January 24, 2012, Nurse Brady examined Carol and took her vital signs. That same day, Dr. Pope wrote a progress note indicating that Carol was starting to sober up and

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would need to begin detoxing medications “because of impending DTs.” Pope instructed the THRX medical staff to order the detoxing medications so that they would be available when Carol was in need. Pope, however, did not prescribe Dilantin or any other seizure medication for Carol, and she did not personally examine or observe Carol, even though she was in the facility at that time.

Carol refused to take any medications on January 24 and again on January 25. When Nurse Brady observed Carol during her rounds, she noted that Carol was pacing and refusing to communicate with staff. On January 26, Carol again refused to take her medication, and Brady noted that Carol was speaking loudly and had refused lunch. That same day, Defendant Rhonda Brown, who was hired by THRX to do administrative tasks and distribute medications over the weekend, observed Carol beating her head and shoes against the window of her cell. Brown spoke with her supervisor at THRX and, based on this discussion, Brown ordered that everything be removed from Carol's cell for her own safety. Carol was given only a paper gown and a mattress.

On Friday, January 27, Nurse Brady observed Carol pacing in her cell and talking to herself. She notified Dr. Pope that Carol refused medications again, and as a result, Pope discontinued Carol's medications. Carol refused dinner that evening.

Nursing staff was not in the facility over the weekends, but Brown was on site to distribute medications. Although Carol was not receiving any medications at that point, Brown nevertheless checked on Carol over the weekend. On Saturday, January 28, Brown observed Carol in her cell in no apparent distress, and Carol again refused her meals.

The following day, Brown observed Carol walking around her cell and noted that Carol was not speaking. Jail staff monitoring Carol noted that she was sitting or standing throughout the morning. That afternoon, Brown noted that Carol was standing in a corner of the cell, and Carol refused to acknowledge or respond when others spoke to her.

Beginning at 5:00 p.m. on Sunday, January 29, officers Merlin Ward, John Reinhart, and William Gibson were on duty. Gibson was assigned to the horseshoe unit and was responsible for checking on Carol. Gibson marked his observations on a visual check sheet posted on Carol's door, and he checked on Carol by glancing through the slit window in the door to her cell, but he did not mark down all of his observations. From 8:45 p.m. until 10:45 p.m., Gibson did not enter any observations. At 10:45 p.m., Gibson noted that Carol was quiet and sitting on the floor. Gibson also observed that Carol was naked and shivering, and he witnessed her hand shake as she reached out to touch the wall, but he did not alert anyone to Carol's condition. Gibson further noted that the cell was dirty and smelled of body odor.

At about 11:30 p.m., Gibson moved to the control room. From there, he observed Carol from a window that looked down into her cell. At about 1:30 a.m., Gibson suggested that a female guard take Carol for a shower, which would enable staff to clean the cell. When the female guard approached Carol's cell, Carol was naked and slumped over. The guard called Carol's name several times, with no response. The guard and another officer then entered the cell

and, when the female guard reached for Carol, she found that Carol's entire body was stiff, Carol had no pulse, and Carol's lips were turning blue. None of the guards performed CPR, and Carol was pronounced dead at 2:15 a.m. The medical examiner concluded that the cause of death was cardiac arrest, chronic ethanolism, hypertensive heart disease, and coronary vascular disease.¹

Under state law, the plaintiff was required to have a qualified expert to prove their medical malpractice claim. The court found that plaintiff's expert was not qualified and therefore upheld the trial court's dismissal of that claim. The court also dismissed all of the jail personnel and other medical people on the Constitutional Claim of being deliberately indifferent to the serious medical needs. However, the court found that the lawsuit for being deliberately indifferent to serious medical needs by Doctor Pope should go forward.

The court noted:

- Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983...
- **“A serious medical need is 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.”** Bingham v. Thomas, 654 F3d 1171, 1176 (11th Cir. 2011); Youmans v. Gagnon, 626 F3d 557, 564 (II) (B) (11th Cir. 2010).
- **There is no dispute that alcohol withdrawal is a serious medical need...**
- Thus, a prison official may be “deliberately indifferent” so as to give rise to a 42 USC § 1983 action if the official intentionally denies or delays a prisoner's access to medical care and the official's conduct results in substantial harm.

The court noted that it was troubled by some of the actions with respect to some of the correctional officers, particularly one that was on duty when Carol McKuhen died. The court noted that this officer failed to fill out the log documenting his checks on McKuhen. But, because the lower court determined that this officer did not know the risk of alcohol withdrawal, he was not deliberately indifferent.

In finding that there was enough evidence for the lawsuit to go forward against Doctor Pope, the court cited Pope's conduct with respect to Carol McKuhen as follows:

¹ *McKuhén v. TransformHealthRX, Inc.*, 338 Ga. App. 354 * (Ga. Ct. App. 2016).

Dr. Myra Pope worked for THRX providing on-site chronic and sick care to inmates for half a day each week. Pope was in the facility on January 24, the day after Carol was placed in an isolation cell. Based on the intake information from Brady, Pope determined that they needed to begin a detoxification regimen “because of impending DTs” and withdrawal, which she suspected Carol would experience. Pope, however, did not know that Carol had a history of seizures or that Carol had taken Dilantin in the past, although she admitted that this would have been important to know. Had she known, Dr. Pope would have prescribed Dilantin while Carol was incarcerated. Although Pope never actually saw or physically examined Carol herself, and she made no clinical assessment, on January 27, Pope discontinued Carol's medications due to Carol's refusal to take them.

Pope explained that an inmate experiencing alcohol withdrawal would likely suffer symptoms that, if untreated, could transition into DTs, which were a serious and life-threatening condition. Dr. Pope knew that a patient experiencing DTs could become incoherent, lose bodily function abilities, and suffer hallucinations requiring hospitalization and sedation. Other symptoms included lack of appetite, agitation, incoherency, and loss of bowel and bladder control. Additionally, difficulty communicating, beating one's head against a window, pacing, disorientation, and talking to one's self were also signs that an inmate was experiencing DTs.

THRX had protocols for handling inmates experiencing alcohol withdrawal, including prescribing medications in decreasing amounts to minimize the symptoms. THRX's policy also required that detoxification be carried out only under medical supervision with physician overview. THRX required its doctors to see and review any inmate showing signs of withdrawal. Doctors were also required to continuously monitor inmates using the Clinical Institute Withdrawal Assessment scale. Medical staff relied on jail staff to help monitor those inmates on a detoxification program, and jail staff could complete the assessment form. It was also important to have routine vital signs taken and noted in the inmate's records.

The trial court granted summary judgment to Pope, finding that her conduct did not rise to the level of deliberate indifference and instead sounded in medical malpractice. We disagree.

The evidence shows that Pope was on-site after Carol was placed in the isolation cell, yet she did not read Brady's full intake notes, and she never actually saw or assessed Carol's status. Even after learning that Carol was refusing medications, Pope failed to personally examine or evaluate Carol's condition.

Pope also assumed that jail staff would monitor Carol without ensuring that jail staff knew what signs and symptoms were cause for concern. Pope also ignored the fact that no routine withdrawal assessments were done and that no one took vital signs routinely.

On these facts, we conclude that there is a genuine issue of material fact as to whether Dr. Pope's inaction constituted deliberate indifference. Pope knew of the life-threatening risks

associated with DTs, she anticipated that Carol could experience such symptoms, and yet she failed to follow up with any medical care. Moreover, although THRX policies required physician supervision over detoxification, Pope assumed that jail staff could provide monitoring. Such action — or inaction — rises above mere negligence, and a jury could find that it constitutes grossly inadequate care or was so cursory that it effectively amounted to no treatment at all. See Bingham, supra, 654 F3d at 1176 (“grossly inadequate care” and “medical care that is so cursory as to amount to no treatment at all” constitute more than mere negligence). We therefore find that the McKuhens have raised a genuine issue of material fact with regard to Pope's conduct.

Thus, because the doctor failed to take appropriate action with respect to reading the nurse's full intake notes and her failure to examine Carol McKuhen even after learning of her refusal to take medication a jury could find that she was deliberately indifferent to Carol McKuhen serious medical needs.

Of note is the fact that throughout the court's decision, it reported that Dr. Pope's position was that she thought the correctional officers would supervise McKuhen and take appropriate action if necessary. The court noted that the doctor's assumption that the correctional officers would monitor McKuhen's condition, was made without Pope determining if the correctional officers even knew what to look for.