

The district court granted summary judgment in favor of the defendants. The court held that a one and one-half day delay between the prisoner's first complaints of flu-like symptoms and his treatment and diagnosis of pneumonia by a physician did not constitute deliberate indifference by prison officials. (Albemarle Correctional Institution, North Carolina)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE

*Ziemba v. Armstrong*, 430 F.3d 623 (2nd Cir. 2005). A state prison inmate brought a civil rights action alleging that prison officials failed to provide constitutionally-adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the officials, in part, and they appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to establish that a state corrections commissioner exhibited deliberate indifference to the inmate's constitutional rights or was grossly negligent in training subordinates, and that evidence was sufficient to impose supervisory liability on a prison warden. The inmate was allegedly placed in four-point restraints for 22 hours, beaten, and denied medical care. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse and medic were deliberately indifference to the inmate's serious medical needs. (Connecticut State Prison)

2006

U.S. District Court  
SMOKE-FREE  
ENVIRONMENT

*Abdullah v. Washington*, 437 F.Supp.2d 137 (D.D.C. 2006). An inmate brought a pro se civil rights action under § 1983 against the District of Columbia and certain jail officials, in their individual and official capacities, seeking damages related to his alleged exposure to second-hand tobacco smoke while confined at a jail. The district court granted the officials' motion to dismiss in part, and denied in part. The court held that the inmate's allegations that he was subjected to an intolerable level of second-hand tobacco smoke while confined at the jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). The court found that the inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to the inmate's future health was clearly established, and thus, the officials were not entitled to qualified immunity. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. Appeals Court  
DELIBERATE INDIF-  
FERENCE  
FAILURE TO PROVIDE  
CARE

*Alberson v. Norris*, 458 F.3d 762 (8th Cir. 2006). A state prisoner's mother, on the prisoner's behalf and as the special administrator of his estate, brought a § 1983 action against prison officials, alleging deliberate indifference with respect to the medical treatment of the prisoner, who died from complications arising from Goodpasture Syndrome. The district court granted summary judgment to the defendants and the mother appealed. The appeals court affirmed, finding that Goodpasture Syndrome was a sophisticated medical condition, and thus, the estate, which was alleging inadequate medical treatment, was required to present expert testimony proving causation. The court noted that after the prisoner complained of earaches and other afflictions, he received extensive medical treatment, including treatment from a physician on six separate dates in a period of about two months, followed shortly thereafter by admission to the infirmary ward. (Wrightsville Unit, Arkansas Department of Corrections)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE  
FAILURE TO PROVIDE  
CARE

*Ammons v. Lemke*, 426 F.Supp.2d 866 (W.D.Wis. 2006). A state inmate filed a § 1983 action alleging that a prison's medical officials were deliberately indifferent to his serious medical conditions. The district court held that the inmate's wrist injury constituted a "serious medical condition," for the purposes of his Eighth Amendment claim against prison medical officials for deliberate indifference, where the injury was diagnosed as a fracture of his ulnar styloid process, the injury caused his bone structure to split, the wrist sustained permanent injury and bone disfigurement, and the injury continued to cause him pain. The court found that a physician's failure to immediately prescribe pain medication for the inmate or to make an appointment for the inmate to see an orthopedic specialist after examining the inmate's fractured wrist did not demonstrate deliberate indifference to inmate's serious medical condition necessary to establish claim under Eighth Amendment, where the physician examined the inmate twice in one month's time, reviewed an x-ray of his wrist, determined initially that no treatment was possible because the injury was the result of old fracture, but later prescribed pain medication and arranged for the inmate to see an orthopedic specialist. (Stanley Correctional Institution, Wisconsin)

U.S. District Court  
TRANSPORTATION  
TRANSFER

*Anderson-Bey v. District of Columbia*, 466 F.Supp.2d 51 (D.D.C. 2006). Prisoners transported between out-of-state correctional facilities brought a civil rights action against the District of Columbia and corrections officers, alleging common law torts and violation of their constitutional rights under First and Eighth Amendments. The prisoners had been transported in two groups, with trips lasting between 10 and 15 hours. The defendants brought motions to dismiss or for summary judgment which the court denied with regard to the District of Columbia. The court held that: (1) a fact issue existed as to whether the restraints used on prisoners during the prolonged transport caused greater pain than was necessary to ensure they were securely restrained; (2) a fact issue existed as to whether the officers acted with deliberate indifference to

the prisoners' health or safety in the transport of the prisoners; (3) a causal nexus existed between the protected speech of the prisoners in bringing the civil lawsuit against the corrections officers and subsequent alleged retaliation by the officers during the transport of prisoners; (4) a fact issue existed as to whether the officers attempted to chill the prisoners' participation in the pending civil lawsuit against the officers; and (5) a fact issue existed as to whether conditions imposed on the prisoners during the transport were justified by valid penological needs. The court found that the denial of food during a bus ride that lasted between 10 and 15 hours was insufficiently serious to state a stand-alone cruel and unusual punishment civil rights claim under the Eighth Amendment. The court also found that the denial of bathroom breaks during the 10 to 15 hour bus trip, did not, without more, constitute cruel and unusual punishment under the Eighth Amendment. The court stated that the extremely uncomfortable and painful shackles applied for the numerous hours during transports, exacerbated by taunting, threats, and denial of food, water, medicine, and toilets, was outrageous conduct under District of Columbia law, precluding summary judgment on the prisoners' intentional infliction of emotional distress claim against the corrections officers. (District of Columbia)

U.S. District Court  
HEARING IMPAIRED  
ADA- Americans with  
Disabilities Act

*Arce v. O'Connell*, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE  
FAILURE TO PROVIDE  
CARE

*Burgos v. Alves*, 418 F.Supp.2d 263 (W.D.N.Y. 2006). A prisoner brought an action against physicians employed by the New York State Department of Correctional Services (DOCS), alleging that they violated his constitutional rights in connection with their treatment of a knee injury. The physicians moved for summary judgment and the district court granted the motion. The court held that the prisoner's dissatisfaction with the care that he received for his knee injury did not give rise to an Eighth Amendment claim, where there was no evidence of any kind that the physicians were deliberately indifferent to the prisoner's medical condition, nor any proof that they acted with a culpable state of mind or intended in some way to inflict pain on the prisoner. The court concluded that "there is no evidence that defendants simply ignored his complaints, or that they deliberately allowed plaintiff to suffer...with the benefit of hindsight, plaintiff simply contends that they should have done more sooner." (New York State Department of Correctional Services)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
MEDICATION  
RECORDS  
DELAY IN CARE

*Burkett v. Wicker*, 435 F.Supp.2d 875 (N.D.Ind. 2006). A prisoner, proceeding pro se, brought a civil rights action under § 1983 against a jail nurse and others, alleging that he was denied medical treatment while he was a pretrial detainee. The inmate alleged that a jail nurse made a false entry into the prisoner's medical record, denied him doses of his prescribed medication, prevented him from seeing a doctor, and delayed filling his prescription, that the nurse knew that his hand was injured and that it would get worse without treatment, and that because of her deliberate indifference to his serious medical need, he developed an infection, his hand did not heal properly, he had permanent disfigurement, and he was in prolonged, unnecessary pain. The district court held that the allegations supported a claim for violation of Eighth Amendment's prescription against cruel and unusual punishment. But the court found that no liability existed against the nurse in her official capacity, for allegedly denying the prisoner medical treatment while he was a pretrial detainee, in violation of the Eighth Amendment, absent any allegation that the nurse was acting pursuant to a policy or custom. (Cass County Jail, Indiana)

U.S. Appeals Court  
CONTAGIOUS  
DISEASES

*Butler v. Fletcher*, 465 F.3d 340 (8th Cir. 2006). A prisoner who was transferred from a county jail to a prison after his conviction, where he tested positive for tuberculosis (TB), filed a § 1983 action against a county sheriff, alleging the sheriff violated his substantive due process rights by failing to adopt and implement adequate safeguards protecting county jail inmates from TB infection. The district court entered summary judgment in favor of the sheriff and the prisoner appealed. The appeals court affirmed. The court held that the sheriff did not act with deliberate indifference to a serious health risk that TB posed to detainees in the county jail. The prisoner alleged that he spent most of his time at the jail in two-person cells and in larger holding cells, where as many as twenty-six short-term detainees were held under deplorable sanitary conditions. He asserted that the sheriff's policy of placing short-term detainees in multi-person cells without an initial TB screening inadequately protects detainees from the serious health risk of TB. (Ramsey County Adult Detention Center, Minnesota)

U.S. Appeals Court  
WHEELCHAIR  
DELIBERATE  
INDIFFERENCE

*Callahan v. Poppell*, 471 F.3d 1155 (10th Cir. 2006). A state prisoner filed an action under § 1983, alleging that corrections' officials' failure to provide him with a wheelchair following an injury violated his rights under the Eighth Amendment. The district court granted the defendants' motion for summary judgment, and the prisoner appealed. The appeals court affirmed. The court held that medical personnel's alleged conduct of denying the prisoner a wheelchair following an injury did not amount to deliberate indifference, as required for the prisoner's Eighth Amendment deliberate indifference claim. The court noted that medical staff denied his use of a wheelchair because they feared his leg muscles would atrophy, and, although an orthopedist initially recommended a wheelchair for the prisoner, the orthopedist altered that assessment upon learning that the prisoner would not need to walk far while he was housed in the medical department. (Lawton Correctional Facility, Oklahoma)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Carter v. Newland*, 441 F.Supp.2d 208 (D.Mass. 2006). A federal inmate brought a pro se civil rights claim against various prison medical personnel alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court held that allegations that the government thwarted the inmate's attempt to exhaust administrative remedies that were required by the Prison Litigation Reform Act (PLRA), precluded dismissal for lack of subject matter jurisdiction. The court found that the inmate's allegations were sufficient to state a claim for deliberate indifference to inmate's medical needs when they failed to operate on his diseased toe, failed to address his complaints of pain, and transferred him to a non-medical facility. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE

*Cirilla v. Kankakee County Jail*, 438 F.Supp.2d 937 (C.D.Ill. 2006). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging violations of his due process rights. The district court granted the defendants' motion for summary judgment. The court held that the county jail and jail personnel were not aware of, and deliberately indifferent to, a specific, impending, and substantial threat to the pretrial detainee's safety, as required for liability under § 1983 for failure to protect detainee from other inmates in violation of detainee's right to due process. According to the court, even if the detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, he claimed only some bruising and a bloody nose as result of the altercations, and although the detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. The court found that the county jail and jail personnel did not act with deliberate indifference after he was injured in a fight with another inmate in a holding cell, and that he received appropriate medical care after the fight. Jail personnel drove the detainee to a hospital where he received three stitches in his head, a splint for his wrist, and x-rays, which found no fractures. Upon his return from the hospital, the detainee was placed in the jail's medical dormitory, where he remained until his transfer out of the jail. While in the medical dormitory, the detainee received medical attention and was never beaten by anyone. The detainee subsequently saw medical or nursing personnel on six occasions without complaining of any serious medical condition or medical crisis. (Kankakee County Jail, Illinois)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
PLRA- Prison Litigation  
Reform Act

*Clark-Murphy v. Foreback*, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. District Court  
FEMALE PRISONERS  
PLRA- Prison Litigation  
Reform Act

*Clifton v. Eubank*, 418 F.Supp.2d 1243 (D.Colo. 2006). An inmate brought a § 1983 action alleging violations of the Eighth and Fourteenth Amendment against a prison nurse and corrections officers, arising out of the stillbirth of her fetus. The court denied the defendants' motion for summary judgment. The court held that the inmate's delayed labor, resulting in the stillbirth of an otherwise viable fetus, constituted a physical injury to the mother sufficient to satisfy the Prison Litigation Reform Act's (PLRA) physical injury requirement, and that PLRA did not bar her constitutional claims under the Eighth and Fourteenth Amendments. The inmate had told an officer that she was in labor and needed medical assistance but the officer sent her back to her housing unit. Later she told another officer that she was in labor and needed help but the officer declined to provide her with medical assistance and told her to return to her unit. Upon her third request for medical assistance, another officer sent her to the facility's medical unit where the nurse examined the inmate and found no evidence that her water had broken. During the examination the nurse did not use a fetal heart monitor to evaluate the status of the fetus, apparently because she did not know how to use the monitor. The inmate was sent back to her housing unit without treatment, even though she told the nurse that she had difficulties with prior deliveries. The next day, another officer noticed Clifton's distress and sent her to the medical unit. She was sent from the prison to a hospital, where it was determined that her fetus was dead. (Women's Correctional Facility, Canon City, Colorado)

U.S. District Court  
MEDICATION  
DELIBERATE INDIFFERENCE

*Cook v. Pueppke*, 421 F.Supp.2d 1201 (E.D.Mo. 2006). A prisoner brought a § 1983 action against a prison nurse supervisor, alleging she prevented him from receiving needed medication following a tooth extraction, in violation of his federal constitutional rights. The nurse supervisor filed motion for summary judgment which was granted by the district court in part, and denied in part. The court held that a genuine issue of material fact as to whether the nurse supervisor directed other nurses not to provide the inmate with his prescribed pain medication because of his attempted escape, precluded summary judgment in favor of the supervisor. The court granted summary judgment for the defendant on the alleged deprivation of antibiotic medication. The court found that the deprivation of an antibiotic prescribed for eight days could not support an Eighth Amendment violation in a § 1983 action where there was no medical evidence that the inmate developed an infection or that failure to administer the antibiotic resulted in any infection or other negative medical condition, and the inmate's only complaint was of the pain resulting from the alleged failure to administer pain medication. (Southeast Correctional Center, Missouri)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE  
DELAY IN CARE  
MEDICATION

*Davis v. Carter*, 452 F.3d 686 (7th Cir. 2006). A plaintiff filed an action on behalf of an inmate's estate, alleging that county jail officials failed to provide adequate medical assistance to the inmate. The inmate's death in the county jail was due to sudden withdrawal from his prescribed methadone medication. The district court entered summary judgment in favor of the officials and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that fact issues remained as to whether the county had a widespread practice or custom of inordinate delay in providing methadone treatment to inmates. The court found that a county jail officer was not deliberately indifferent to the inmate's methadone withdrawal symptoms, and thus was not subject to liability under § 1983 for an Eighth Amendment violation following the inmate's death, even though the officer received a call from the inmate's wife informing her that the inmate had not yet received methadone treatment and was in excruciating pain. The officer responded that the county "don't work that fast," but appropriately transferred the call to a person responsible for the inmate's medical care. There was no evidence that the officer's job duties included anything more than answering the telephones. (Cook County Jail, Illinois)

U.S. District Court  
PRETRIAL DETAINEE  
PLRA- Prison Litigation  
Reform Act

*Davis v. Township of Paulsboro*, 421 F.Supp.2d 835 (D.N.J. 2006). The parents of an arrestee brought a federal civil rights claim against a county, a township, and various law enforcement officers, arising from arrestee's death which occurred after he had been struck in the head by a bottle during a fight and then taken into police custody. The defendants moved for summary judgment and the district court granted the motion. The court held that the officers did not use excessive force in spraying the suspect with pepper spray, where he was visibly agitated, was acting aggressively, was yelling profanities, banged walls in his house, and shoved an officer three times, and no lasting injury occurred. According to the court, the officers did not use excessive force in waiting to wash the pepper spray from the suspect's eyes until after he had been transported from the site of the spraying to a police station because the suspect continued to physically resist officers and persisted in yelling and cursing after being sprayed. The court found that an officer did not use excessive force in removing the arrestee from his cell, where the officer nudged the arrestee several times on his lower leg in an attempt to rouse him, stepped into the cell and grabbed the arrestee by the arm, smoothly pulled the suspect by the arm off the bench and onto his hands and knees, pulled him a few feet across the floor, and placed handcuffs on him. The court held that Township officers were not deliberately indifferent to the serious medical needs of the arrestee who had been hit on the head with a bottle in a fight prior to arrest, and thus due process principles were not violated, where an ambulance arrived to transport the arrestee to a hospital within minutes of the arrestee's arrival at police headquarters, a doctor examined the arrestee and determined he was fit for incarceration, and the arrestee was

periodically checked once back at the police station. According to the court, the fact that the arrestee vomited and was still bleeding upon his return to the police station did not establish deliberate indifference. (Gloucester Co. Sheriff's Dept., Township of Paulsboro, New Jersey)

U.S. District Court  
HEARING IMPAIRED  
REHABILITATION ACT  
ADA- Americans with  
Disabilities Act

*Degrafinreid v. Ricks*, 417 F.Supp.2d 403 (S.D.N.Y. 2006). A deaf inmate sued the superintendent of a state correctional facility and other officials, claiming violation of his constitutional and statutory rights when his hearing aid was confiscated during a search of his cell and then destroyed. The district court held that the inmate stated a claim for monetary damages against the state under the Americans with Disabilities Act (ADA), through allegations that constituted a showing of deliberate indifference to the inmate's medical condition in violation of the Eighth Amendment. The inmate claimed that officials destroyed his hearing aid during a search of his cell, knowing he was deaf, and delayed replacement for many weeks. According to the court, because the Rehabilitation Act (RA) was enacted pursuant to the Spending Clause of Article I, Congress can require states to waive their sovereign immunity as a condition of accepting federal funds. New York State's continued acceptance of funding, under the Rehabilitation Act, resulted in a waiver of sovereign immunity as to claims of the deaf prison inmate. (Upstate Correctional Facility, New York)

U.S. District Court  
REHABILITATION ACT  
ADA- Americans with  
Disabilities Act  
AIDS- Acquired Immune  
Deficiency Syndrome  
TRANSPORTATION

*Dukes v. Georgia*, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a "program or service provided by the public entity" for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

U.S. District Court  
HEARING IMPAIRED  
ADA- Americans with  
Disabilities Act

*Duquin v. Dean*, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Correctional Facility, New York)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
DELAY IN CARE

*Feeney v. Correctional Medical Services, Inc.*, 464 F.3d 158 (1st Cir. 2006). A former inmate brought a § 1983 action against state correctional health care professionals, alleging they acted with deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the professionals and the former inmate appealed. The appeals court affirmed, finding that the health care professionals were not deliberately indifferent to the former inmate's serious medical needs. The former inmate suffered from plantar faciitis, and alleged that there was a lengthy delay in providing him with orthopedic footwear after it was first prescribed. The court noted that the inmate was examined many times after he first reported his symptoms, numerous diagnostic tests were performed on the inmate, outside specialists-- including a podiatrist, neurologist, neurosurgeon, and physical therapist-- were consulted, the inmate was given other treatments for his symptoms, and that uncertainty existed about the source of his pain prompting causes other than plantar faciitis to be investigated. (Correctional Medical Services, Inc., Old County Correctional Center, Massachusetts)

U.S. District Court  
HEARING IMPAIRED  
ADA- Americans with  
Disabilities Act

*Figueroa v. Dean*, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE

*Flanyak v. Hopta*, 410 F.Supp.2d 394 (M.D.Penn. 2006). A state prison inmate filed a § 1983 Eighth Amendment action against the supervisor of the unit overseeing prison jobs and against the prison's health care administrator, alleging that he had been subjected to unsafe conditions while working as a welder. The inmate also alleged that the administrator had been deliberately indifferent to his medical needs arising from those conditions. The defendants moved for summary judgment and the district court granted the motion. According to the court, the supervisor of the state prison unit overseeing prison jobs was not shown to have known of and disregarded a risk to the inmate who had chronic obstructive pulmonary disease, from dust and smoke accompanying his work as a welder, precluding recovery in the inmate's § 1983 Eighth Amendment action against the supervisor alleging unsafe working conditions. The inmate did not complain directly to the supervisor about his working conditions or file a grievance relating to those conditions and declined to wear a dust mask he was given. The court noted that the prison's accreditation required compliance with safe-working-area standards. The court held that the prison's health care administrator could not be liable in the inmate's § 1983 Eighth Amendment action alleging deliberate indifference to serious medical needs because the administrator was neither a prison doctor nor on the medical staff. The inmate was diagnosed and treated by others without ever seeing the administrator, and the inmate never filed any grievances that would have alerted the administrator to any alleged mistreatment. (State Correctional Institution at Mahanoy, Pennsylvania)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Fleming v. LeFevere*, 423 F.Supp.2d 1064 (C.D.Cal. 2006). An inmate who was denied treatment for Hepatitis C sued a prison's staff psychiatrist who reported that the prisoner was a fairly poor candidate for treatment of Hepatitis C with Interferon, alleging state and federal constitutional violations. The psychiatrist filed a motion for summary judgment which the court granted. The district court held that the inmate failed to establish that the psychiatrist was deliberately indifferent to the inmate's serious medical need in violation of his rights under the Eighth Amendment, because the prisoner's claim was based solely on his disagreement with the psychiatrist's medical evaluation, and he failed to provide any competent evidence to satisfy his burden of showing that the psychiatrist chose a medically unacceptable course of treatment in conscious disregard of any risk to the inmate's health. The court held that the inmate failed to state a claim under the Fourteenth Amendment, and that even assuming the psychiatrist violated the inmate's constitutional rights, the psychiatrist was entitled to qualified immunity. According to the court, the inmate could not state a claim for personal injury damages against the psychiatrist based on the equal protection clause of the California Constitution, and the inmate could not state a claim against the psychiatrist based on a clause of California Constitution providing that state constitutional rights were not dependent on those guaranteed by the United States Constitution. (California Men's Colony)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE

*Forton v. County of Ogemaw*, 435 F.Supp.2d 640 (E.D.Mich. 2006). The estate of a deceased jail inmate brought suit against a county and various employees, claiming deprivation of the inmate's Eighth Amendment right to medical care. The female inmate had been serving a sentence in the jail and died from a cancerous tumor that encircled her esophagus. The district court granted summary judgment in favor of the defendants. The court held that the inmate had an objectively serious medical condition, as required for an Eighth Amendment claim. The court found that the jail nurse supervising medical care of the inmate did not display deliberate indifference to the inmate's medical condition, in violation of Eighth Amendment, where the nurse twice had the inmate sent to a clinic for a physician's evaluation, provided the inmate with an inhaler and instructed the inmate in its use, had the inmate moved to an observation cell, and left orders that the inmate be transported to a medical facility if her condition worsened. The court found that a jail officer who was observing the inmate was not deliberately indifferent to the inmate's medical condition, where the officer had no knowledge of the inmate's condition, administered the inhalator dose, checked on the inmate frequently, and declined the inmate's request that she be taken to hospital, supported by another inmate, only because of the non-hospitalization order left by nurse. According to the court, the alleged failure of the jail administrator, who was not on duty on the day in question, to relay a friend's concern regarding the physical condition of inmate, left as telephone message, did not establish that the administrator was deliberately indifferent to the medical situation of inmate. The court also found that correctional officers did not show deliberate indifference to the inmate, although the inmate was screaming while in an observation cell, wanting to return to her own cell, and not eating, because the officers observed her frequently and took her back to her cell at her request, where she instantly fell to the floor unconscious. (Ogemaw County Jail, Michigan)

U.S. District Court  
SMOKE-FREE  
ENVIRONMENT

*George v. Smith*, 467 F.Supp.2d 906 (W.D.Wis. 2006). A state prisoner sued prison officials under § 1983, alleging deprivation of his free speech rights and deliberate indifference to his serious medical needs. The officials moved for summary judgment and the district court granted the motion in part and stayed in part. The court held that: (1) the officials' ban on the prisoner's receipt of a newsletter on the ground that the newsletter solicited gifts did not violate the prisoner's free speech rights; (2) a prohibition against the prisoner possessing an atlas did not violate his free speech rights; (3) the officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang and thus was prohibited by regulation; and (4) the prisoner was not exposed to unreasonably high levels of environmental tobacco smoke. The court found that the prisoner was not exposed to unreasonable levels of environmental tobacco smoke, where the only smoking allowed in the prison was outdoors, and he was not required to stand or sit next to staff or inmates while they were smoking outdoors. The court noted that medical records revealed that the prisoner was seen for complaints relating to asthma only four times in three years, and that he did not claim second-hand smoke was a potential cause of the first three flare-ups. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court  
INADEQUATE CARE  
PLRA- Prison Litigation  
Reform Act

*Glass v. Rodriguez*, 417 F.Supp.2d 943 (N.D.Ill. 2006). A state inmate brought an action against a doctor at a county jail, alleging deliberate indifference to his back problems while he was a pretrial detainee. The doctor moved for summary judgment and the district court granted the motion. The court held that the doctor was not deliberately indifferent to the serious medical condition of the detainee with back pain, as would violate the Due Process Clause, even though the detainee never underwent an MRI and he was not able to see a physician every week as he would have wished. The court found that doctors, orthopedic specialists, and physical therapists used x-rays and CAT scans to diagnose the detainee's condition and to develop a treatment plan, and the detainee was provided with pain medication, physical therapy, and visits to an outside clinic. The court noted that neither simple medical malpractice nor mere dissatisfaction with a doctor's prescribed course of treatment is actionable as Eighth Amendment deliberate indifference under § 1983. (Cook County Correctional Center, Illinois)

U.S. Appeals Court  
INADEQUATE CARE  
NEGLIGENCE  
WORK ASSIGNMENT

*Gobert v. Caldwell*, 463 F.3d 339 (5th Cir. 2006). A former inmate whose leg was injured while he was on work release brought a § 1983 action against a state prison physician, alleging constitutionally inadequate medical care. The physician moved for summary judgment. The district court denied qualified immunity, and the physician appealed. The appeals court reversed, finding that the physician was aware of a substantial risk of serious harm to the inmate from the nature of the wound itself, but the inmate failed to demonstrate that the physician disregarded the substantial health risk about which he knew, as required to establish deliberate indifference to a serious medical need. The inmate's leg was crushed while he was on work release when the garbage collection truck on which he worked as a "hopper" collided with another vehicle. The inmate's injury consisted of an open wound. According to medical records, the inmate was given extensive medical treatment for the injury throughout his imprisonment term, and the court held that, at most, there might have been negligence in the one-week lapse in antibiotic treatment. (Elayn Hunt Correctional Center, Gabriel, Louisiana).

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Gordon ex rel. Gordon v. Frank*, 454 F.3d 858 (8th Cir. 2006). The widowed spouse of an inmate who died in a county jail brought an action against the county and jail personnel under § 1983 and Minnesota tort law. The district court denied the defendants' summary judgment motion, and the defendants appealed. The appeals court affirmed. The court held that: (1) the corrections officer was not entitled to qualified immunity on a § 1983 claim; (2) the supervisor was not entitled to qualified immunity; (3) the officers were not entitled to official immunity on the tort claim under Minnesota law; and (4) the supervisor was not entitled to official immunity on the tort claim under Minnesota law. The court held that a corrections officers acted with deliberate indifference to the inmate's serious medical need in her response to his intercom call for medical help, and thus, the officer was not entitled to qualified immunity on the spouse's § 1983 claim. According to the court, at roll call before her shift, the officer learned the inmate had medical issues that placed him on high observation, she knew the inmate had been released from the jail a year before due to heart problems, and she was present when the inmate asked for help climbing the stairs to his cell and saw him struggling up the stairs. When the inmate called and told her he could not breathe and was in pain, she delayed medical treatment and threatened to discipline him. The court held that a corrections officer acted with deliberate indifference to the inmate's serious medical needs by failing to initiate medical treatment, and thus, the officer was not entitled to qualified immunity on the spouse's § 1983 claim. The officer knew the inmate had medical issues that placed him on high observation, he was present when the inmate asked for help climbing the stairs to his cell and saw him struggling up the stairs, he received the intercom call from the inmate requesting a blood pressure test and overheard a call in which the inmate told another officer he could not breathe and was in pain, and the inmate told him he had trouble breathing during the officer's subsequent wellness check.

According to the court, a supervisor was not entitled to qualified immunity on the spouse's § 1983 claim. An officer told the supervisor that the inmate had complained over the intercom of breathing trouble and chest in, and the supervisor noted the incident but waited for officers to ask him to initiate medical treatment. The court found that under the Minnesota law, officers violated a ministerial duty when they failed to immediately notify their supervisor of the medical situation of the inmate, and thus, the officers were not entitled to official immunity on the tort claim brought by the inmate's widowed spouse. The county sheriff's medical emergency policies narrowed the standard of the officers' conduct in response to a medical situation to a simple and definite task of notifying the supervisor.

The inmate had been sentenced to 10 days in jail for driving without a license. He was released to a hospital to treat his heart problems. After treatment, he did not return to the jail. The county issued a warrant for him to serve his five remaining days. A year later, he returned to a hospital complaining of pain. After waiting in the emergency room, he left without receiving treatment but called the police for a ride home. Finding a warrant for his arrest, the police turned him over to a county deputy. He told the deputy he had congestive heart failure and pneumonia. At 5:23 p.m. he arrived at the jail. He immediately complained of pain and informed the jail staff that he had pneumonia, congestive heart failure, high blood pressure and diabetes. After 11:00 p.m., he was taken to his cell. He requested help climbing the stairs from two officers on duty. He did not receive help and climbed the stairs on his own. Between 11:55 p.m. and 12:00 a.m., he rang the officers' intercom three times. The officers conducted wellness checks on inmates every 30 minutes throughout the night. During two checks early in the morning, an officer spoke with the inmate, who said something about medication and trouble breathing. Officers observed him resting on his bunk throughout the night. He changed positions restlessly. At 5:15 a.m., an officer noticed that he lay partially propped against the wall, blood flowing from his mouth, eyes open, and no sign of breathing. He died of hypertensive and arteriosclerotic heart disease. (Washington County Jail, Minnesota)

U.S. Appeals Court  
INTAKE SCREENING  
SUICIDE

*Grayson v. Ross*, 454 F.3d 802 (8th Cir. 2006). The personal representative of the estate of a pretrial detainee who died following self-mutilation while incarcerated in a jail, brought a civil rights action against the county sheriff, the arresting police officer, and jailers in their individual and official capacities alleging violation of the pretrial detainee's right to medical treatment and to due process. The district court granted judgment for the defendants and the estate appealed. The appeals court affirmed in part. The court held that: (1) the detainee did not have an objectively serious medical need on intake from the perspective of the arresting police officer, as a layperson; (2) the arresting police officer did not subjectively know that the detainee required medical attention; (3) a reasonable police officer would not have known on intake that the pretrial detainee had an objectively serious medical need; (4) the detainee did not have an objectively serious medical need on intake from the perspective of the jailer, as a layperson; (5) the jailer did not subjectively know that the detainee required medical attention; (6) a reasonable jailer would not have known on intake that the pretrial detainee had an objectively serious medical need; (7) the county did not have an official practice of booking inmates who were hallucinating without providing medical care; and (8) the district court did not abuse its discretion by excluding the Arkansas State Jail Standards from evidence in the trial, as the jail standards did not represent minimum constitutional standards. (Crawford County Detention Center, Arkansas)

U.S. District Court  
MENTAL HEALTH

*Hadix v. Caruso*, 461 F.Supp.2d 574 (W.D.Mich. 2006). State prisoners filed a class action under § 1983 in 1980, alleging that conditions of their confinement violated their constitutional rights. Following settlement of claims by consent decree, and termination of the enforcement of mental health provisions of the consent decree, a prisoner moved to reopen the judgment regarding mental health care and for the issuance of preliminary injunction. The district court granted the motion. The court held that reopening the mental health provisions of the consent decree was warranted where many recurrent problems noted by physicians concerned “cracks” between medical and mental health care. The court noted that forcing separate enforcement actions on related topics would do a disservice to prisoners and administrators by forcing them to function under multiple enforcement regimes. According to the court, the prison’s failure to provide daily psychologist rounds to mentally ill prisoners in a segregation unit violated their Eighth Amendment rights, inasmuch as such prisoners often had psychiatric needs which could not be accommodated without rounds due to their lack of movement and the prisoners’ inability to request care, and that segregation often placed prisoners with mental illness at a heightened risk of mental decompensation and in conflict with correctional officers. The court held that the pattern and practice of non-treatment of prisoners with mental illness, and the uncoordinated treatment of prisoners presenting complicated cases with interdisciplinary problems, violated the Eighth Amendment, in that it deprived prisoners of necessary services for serious medical and mental health needs. The court found that the prison’s use of mechanical in-cell restraints, including “top of the bed” restraints consisting of chaining a prisoner’s hands and feet to a concrete slab, as disciplinary method and/or control mechanism constituted torture and violated the Eighth Amendment, notwithstanding a six-hour limit on bed restraints but which did not prohibit the use of other dangerous restraint devices at end of the six-hour period. (Southern Michigan State Prison, Jackson)

U.S. District Court  
RELEASE  
FAILURE TO PROVIDE  
CARE

*Hubbard v. Taylor*, 452 F.Supp.2d 533 (D.Del. 2006). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds, and a prisoner imprisoned at the same facility asserted a claim under the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment and plaintiffs appealed. The appeals court vacated and remanded. On remand, the district court granted summary judgment for the defendants. The court held that requiring the pretrial detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights, because providing sleeping accommodations on the floor was in response to overcrowding at the facility and was not intended to punish. The court noted that even if the pretrial detainees' constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the officials to qualified immunity. The court held that a former inmate's allegations that he was released from prison due to his end stage renal disease, rather than be provided with medical care, failed to establish a prima facie case of discrimination under the Americans with Disabilities Act (ADA), where the inmate was not denied adequate medical services because of his end stage renal disease and he received regular dialysis treatment while he was incarcerated. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
PLRA- Prison Litigation  
Reform Act

*Jett v. Penner*, 439 F.3d 1091 (9th Cir. 2006). A state prisoner who had fractured his thumb brought a pro se civil rights action against prison doctors, a warden, and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The court of appeals held that genuine issues of material fact precluded summary judgment in favor of two doctors and a warden, reversing and remanding. The court found that there were issues of material fact as to when a prison doctor became aware of the prisoner's fractured thumb, whether a prison doctor was deliberately indifferent to the prisoner's serious medical need to have his thumb set and cast, and whether the delay in treatment was harmful to the prisoner. The prisoner claimed that he had sent letters and grievances about his failure to receive treatment. (California State Prison-Sacramento)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Johnson v. Doughty*, 433 F.3d 1001 (7<sup>th</sup> Cir. 2006). A former inmate brought an action under § 1983 against prison doctors and officials, alleging deliberate indifference to his medical needs. The court granted summary judgment to some of the officials, and final judgment for the remaining defendants after a bench trial. The court held that the inmate failed to establish that the officials acted with a sufficiently culpable state of mind in allegedly exhibiting deliberate indifference to his medical needs. According to the court, the necessity for surgery for the inmate’s hernia was not obvious to the non-medical grievance counselor and warden, and to the reviewing administrators who determined that the inmate’s situation had been addressed appropriately. The court found that the examining doctor formed a professional opinion that surgery was not necessary and did not subsequently observe any worsening of the inmate’s condition. The court noted that other doctors concurred with the initial diagnosis and the health care administrator reasonably relied upon the doctors’ opinions. (Graham Correctional Center, Illinois)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
DELAY IN CARE

*Johnson v. Hamilton*, 452 F.3d 967 (8th Cir. 2006). A state prisoner who was involved in a physical altercation with corrections officers brought a § 1983 action, alleging violation of his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court found that the officers' use of force against the prisoner was reasonable. The prisoner pushed and punched one officer in response to an attempt to restrain him and examine his earring to determine whether the earring violated the prison rules. The prisoner continued to assault the officers even after he was restrained. The court noted that the injuries suffered by the officers were much more serious than any suffered by the prisoner, and the prisoner was criminally prosecuted and convicted as a result of his conduct during the altercation. The court held that the prisoner failed to demonstrate that prison medical personnel deliberately disregarded his serious medical needs, as would violate his Eighth Amendment rights. According to the court, although there was a delay of one month between the date that a prison nurse tentatively diagnosed the prisoner with a fractured finger and the x-ray and treatment of the fracture, there was no showing that the delay was the result of anything other than negligence. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court  
HANDICAP  
DELIBERATE INDIF-  
FERENCE

*Johnson v. Snyder*, 444 F.3d 579 (7th Cir. 2006). A state prisoner, who was an amputee, brought a civil rights action against various prison officials, alleging violation of the Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed. The court held that the director of the state Department of Corrections was not liable absent evidence that the director was actually aware of the prisoner's situation or his complaints. The court concluded that the health care administrator was not deliberately indifferent to the medical needs of the prisoner where the administrator responded in a timely manner to the prisoner's grievance, noted that the prisoner did not need a crutch because of his prosthesis, and recommended that a concrete bench be placed in the shower. The court also found that the disability coordinator was not deliberately indifferent because the coordinator investigated the prisoner's complaint, acknowledged a problem with the shower and then understood that a stronger chair would be provided, and there was no evidence that the coordinator was aware that a stronger chair was not provided or that he had an affirmative duty to investigate further. The court held that the warden was not deliberately indifferent where the warden was aware of the prisoner's request, he concurred with other officials' recommendation for a different chair, and evidence showed that he believed that his subordinates were attending to the issue. According to the court, the superintendent was not deliberately indifferent, where the superintendent contacted a subordinate prison official who supervised the shower personnel and discussed the problem, he suggested reinforcing the chair, and since he did not hear further about the problem he assumed it had been resolved. (Menard Correctional Center, Illinois)

U.S. District Court  
INADEQUATE CARE

*Jones v. Marshall*, 459 F.Supp.2d 1002 (E.D.Cal. 2006). An inmate who was attacked by other prisoners brought suit against prison employees alleging failure to protect his safety and deliberate indifference to his medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison officers were not deliberately indifferent to any risk that the inmate might be attacked by other prisoners by releasing him into an exercise yard, absent any evidence that the officers either knew or could have inferred that the new inmate, who had no known enemies, faced a substantial risk of attack from other inmates if released into the exercise yard. According to the court, the officers were not deliberately indifferent to a specific risk, as required to violate the inmate's Eighth Amendment rights by failing to protect him from attack, notwithstanding the inmate's generalized, subjective fear for his safety at the time. The court found that a medical technician was not deliberately indifferent to the serious medical needs of the inmate, who had been attacked by other prisoners in an exercise yard, when she visually examined him through holding cell bars immediately after the incident, but failed to touch him or treat him. The inmate suffered no further injury as a result of the technician's conduct, and the technician did not know of any serious medical condition and fail to treat it. (Solano State Prison, California State Prison at Corcoran)

U.S. Appeals Court  
CONTAGIOUS  
DISEASES

*Kaucher v. County of Bucks*, 455 F.3d 418 (3rd Cir. 2006). A corrections officer filed suit under § 1983 against a county and several county employees responsible for the operation of a correctional facility, alleging violation of his substantive due process rights, contending he contracted a Methicillin Resistant *Staphylococcus Aureus* (MRSA) infection as a result of the defendants' conscience-shocking behavior in creating unsanitary and dangerous conditions at the facility. The district court granted the defendants' motion for summary judgment, and the officer appealed. The appeals court affirmed. The court held that: (1) the alleged inadequate remedial and preventative measures to stop the spread of MRSA within the correctional facility did not rise to a level of deliberate indifference that could be characterized as conscience shocking, and (2) the facility's alleged failure to act affirmatively to improve conditions at the jail and alleged failure to act affirmatively to educate and warn inmates and corrections officers about MRSA infections and to train them in infection prevention were not the cause of the corrections officer's infection. The court noted that the state corrections department found the jail to be substantially in compliance with state standards, giving the defendants reason to believe their measures were adequate, only

two of 170 corrections officers tested positive for colonization of the infection, and the facility had in place policies and procedures to ensure sanitary conditions in the jail, including requirements that cells be regularly cleaned with an all-purpose detergent and that showers be disinfected with a bleach and water solution. The court also noted that the officer chose to remain employed at the jail, in a position that obliged him to work amidst MRSA infections and from the outset of his employment, he was aware of the safety risks associated with working in a prison, and he was on notice of the jail's standard operating procedures, which described proper methods of handling inmates with communicable diseases. (Bucks County Correctional Facility, Pennsylvania)

U.S. Appeals Court  
ADA- Americans with  
Disabilities Act  
FAILURE TO PROVIDE  
CARE  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Kimman v. New Hampshire Dept. of Corrections*, 451 F.3d 274 (1st Cir. 2006). A former state inmate filed an action alleging that prison officials violated Title II of the Americans with Disabilities Act (ADA) and state law by failing to properly treat his amyotrophic lateral sclerosis (ALS). The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court vacated and remanded. The court held that the officials' actions regarding the inmate's diagnosis, medical consultations, physical therapy, and medical dosages were not unreasonable. The prison medical staff sought the inmate's medical records, arranged for consultation with an outside specialist, and made reasoned medical judgments about the types of treatment and the physical therapy that they thought were appropriate in his case. According to the court, the delay in permitting the inmate to use his cane while they verified his need for it did not violate Title II of ADA, where the inmate had not used a cane when he was previously in the prison, the inmate was still able to walk without it, the inmate was confined to his cell at all times except for short daily walks to and from his shower, correction officers were available to help the inmate walk to a shower, and the inmate's doctor issued a day pass to permit the inmate to use a dayroom for recreation. The court found that summary judgment on ADA claims was precluded by a genuine issue of material fact as to: (1) whether the officials failed to deliver medications to the inmate in a timely and regular basis; (2) the using of a shower chair or accessible shower facilities despite his repeated requests; (3) the refusal to honor the inmate's front cuff pass and requests for front cuffing; and (4) the refusal to accommodate the inmate's request to be placed on the bottom tier of the facility and in a bottom bunk. The court noted that in the Eighth Amendment context, the lack of an inmate's formal compliance with a grievance procedure is not a defense to liability for those prison officials who were aware of the prisoner's serious medical needs and refused to help. (New Hampshire State Prison)

U.S. Appeals Court  
DELAY IN CARE  
TRAINING  
DELIBERATE INDIF-  
FERENCE

*Long v. County of Los Angeles*, 442 F.3d 1178 (9th Cir. 2006). The widow of an inmate in a county jail brought a § 1983 action in state court against the county and others, alleging failure to adequately train jail medical staff, leading to the denial of adequate medical care which resulted in the inmate's death. Following removal to federal court, the district court granted the county's motion for summary judgment and the widow appealed. The court of appeals reversed and remanded, finding that a genuine issue of material fact existed regarding whether the county's policy of relying on medical professionals, without offering training on how to implement procedures for documenting, monitoring, and assessing inmates in the medical unit of the jail, amounted to deliberate indifference to the inmates' serious medical needs. The court also found that summary judgment was precluded by a genuine issue of material fact regarding whether the county's failure to implement specific policies regarding the treatment of inmates in the medical unit of the jail amounted to a failure to train the jail's medical staff on how to treat inmates, and whether the policies were the moving force behind the inmate's death. The 71-year-old inmate was serving a 120-day jail sentence, and he suffered from congestive heart failure and other ailments. Over a period of eighteen days his medical condition deteriorated, and although nurses saw him several times during that period, there is no record of a doctor's examination until the morning of the 18th day, hours before he died of cardiac arrest. (Los Angeles Co. Jail, California)

U.S. District Court  
DELIBERATE INDIF-  
FERENCE  
FAILURE TO PROVIDE  
CARE

*MacLeod v. Kern*, 424 F.Supp.2d 260 (D.Mass. 2006). A prisoner brought an action against correctional and health care defendants, alleging that they violated his civil rights by displaying deliberate indifference to his medical needs relating to his Hepatitis C, a stomach mass and a testicular cyst. The defendants moved for summary judgment, and the district court granted the motion. The court held that the course of treatment provided for the prisoner's serious medical needs, even if inadequate, was not so inadequate as to shock the conscience, and thereby constitute deliberate indifference in violation of the Eighth Amendment. According to the court, although the defendants denied medication for the prisoner's Hepatitis C, denial of the medication was due to the reason that the prisoner's treatment would have been adversely affected by the prisoner's prior drug use. (University of Massachusetts Correctional Health, Old Colony Correctional Center in Bridgewater, Massachusetts)

U.S. District Court  
MEDICATION  
DELIBERATE INDIF-  
FERENCE

*Martin v. Donaghue*, 407 F.Supp.2d 984 (N.D.Ind. 2006). A state prison inmate brought § 1983 action against medical personnel and corrections officials, alleging deliberate indifference to his medical needs. The district court dismissed the case holding that: the "minimal" skin irritation from the inmate's elastic allergy did not constitute a serious medical need, and even assuming that the allergy constituted a serious medical need, there was no deliberate indifference since the inmate had been seen and treated. According to the court, because the allergy was not a serious

medical need, corrections officials' failure to supply him with medication and non-elastic underwear did not constitute deliberate indifference to the inmate's medical needs. The court noted that the inmate, who tucked his undershirt inside his underwear to avoid irritation in the absence of medication and elastic-free underwear, had been seen and treated, even though the inmate disagreed with that treatment. (Indiana)

U.S. Appeals Court  
MEDICATION

*Moots v. Lombardi*, 453 F.3d 1020 (8th Cir. 2006). A state prisoner sued various prison officials, alleging that they were deliberately indifferent to his serious mental health needs and that they retaliated against him for filing a grievance. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed and held that: (1) the failure to house the prisoner with cellmates of his choosing did not constitute deliberate indifference to his serious medical needs, where the officials had ample reasons for their action, including safety concerns, and the officials had no reason to know that their housing choices would have a serious negative impact on the prisoner's mental health; (2) any failure to ensure that the prisoner's medications were promptly transferred to solitary confinement did not constitute deliberate indifference to his serious medical needs, absent a showing by the prisoner that he suffered harm as a result; (3) a conduct violation for fighting did not constitute retaliatory discipline, where the prisoner was bruised around his eye, and the fact that a conduct violation was later expunged did not mean that there was not some evidence for its imposition; and (4) transfer to another prison did not constitute disciplinary retaliation, where he disputed neither the computation of his classification score nor the conclusion that his score made him ineligible to remain at the prison from which he was transferred. (Missouri Eastern Correctional Center)

U.S. District Court  
PRIVACY  
INFORMED CONSENT

*Niemic v. Maloney*, 448 F.Supp.2d 270 (D.Mass. 2006). An inmate in state correctional facility brought action against corrections officials and health care providers alleging that the health care providers improperly shared his medical records. The district court held that health care providers who provided medical services at the correctional facility did not violate inmate's Fourth Amendment rights when they exchanged medical information with corrections officers without the inmate's informed consent. The court found that the corrections officers had a reasonable need to know that the inmate's drug test showed use of heroin and cocaine. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court  
MEDICATION  
DELIBERATE INDIF-  
FERENCE

*Norfleet v. Webster*, 439 F.3d 392 (7th Cir. 2006). A federal prisoner with arthritis brought an action against prison officials, alleging they were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials, in part, and the prison's clinical director and physician assistant appealed. The court of appeals held that neither the clinical director nor the physician assistant were deliberately indifferent to the prisoner's serious medical needs. The clinical director had determined that the prisoner no longer needed soft-soled shoes or certain medications for his arthritis, after receiving two differing medical opinions made within four months of each other. The physician assistant had required the prisoner to wait at least ten days before getting a refill of his pain reliever, in adherence to prison's policy regarding pain relievers. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court  
DENTAL CARE  
FAILURE TO PROVIDE  
CARE  
PRIVATE PROVIDER  
DELIBERATE INDIF-  
FERENCE

*Olivas v. Corrections Corp. of America*, 408 F.Supp.2d 251 (N.D.Tex. 2006). An inmate brought a § 1983 action against a private company that managed a prison, alleging violations of his constitutional rights and a claim of negligence under state law. The corporation moved for summary judgment and the district court granted the motion. The court held that: the company was not liable for alleged deliberate indifference to the inmate's serious medical needs; even if the corporation failed to properly prioritize the inmate's dental injury, the failure did not amount to deliberate indifference to the inmate's serious medical needs; and the inmate did not suffer a "physical injury" under the Prison Litigation Reform Act (PLRA). The court noted that a private corporation that manages a prison can be sued by an inmate under § 1983 for an alleged constitutional injury, since the operation of a prison is a fundamental government function and the standards applicable to determining liability under § 1983 against a municipal corporation are applicable to determining the liability of a private corporation performing a government function. The court held that the inmate's injury, in which he broke two front teeth, was not a dental injury that required emergency care, and therefore the private prison-management company was not liable to the inmate under § 1983 for alleged deliberate indifference to inmate's serious medical needs. The inmate did not initially seek emergency care, and in the days immediately following the injury he did not suffer pain requiring more than over-the-counter medicine. According to the court, even if the private prison-management corporation failed to properly prioritize the inmate's dental injury, such failure did not amount to deliberate indifference to the inmate's serious medical needs under the Eighth Amendment, for the purposes of the inmate's § 1983 claim against the company. The inmate's allegation in the § 1983 action that he suffered some pain, and later suffered depression and emotional injury resulting from the loss of his teeth, was insufficient to establish a "physical injury" under the Prison Litigation Reform Act (PLRA). (Corr. Corp. of America, Mineral Wells Pre-Parole Transfer Facility, Texas)

U.S. Appeals Court  
RIGHT TO REFUSE  
INFORMED CONSENT  
INVOLUNTARY  
TREATMENT

*Pabon v. Wright*, 459 F.3d 241 (2<sup>nd</sup> Cir. 2006). A pro se state prisoner sued prison physicians and private consulting physicians under § 1983, alleging that they violated Eighth Amendment by providing inadequate treatment for his Hepatitis C. The district court entered summary judgment in favor of the physicians and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's due process right to refuse medical treatment carries with it a concomitant right to such information as a reasonable patient would deem necessary to make an informed decision, and that the prison officials' action of requiring the prisoner to undergo a liver biopsy before considering him eligible for Hepatitis C treatment was not a violation of his due process rights. The court also found that the prisoner's right to receive medical information was not clearly established when he had a liver biopsy. The court noted that prison officials may administer treatment to a prisoner despite that prisoner's desire to refuse treatment, without violating the prisoner's due process rights, if, in the exercise of their professional judgment, the officials reasonably determine that providing such treatment furthers a legitimate penological interest. (Green Haven Correctional Facility, New York)

U.S. District Court  
REHABILITATION ACT  
ADA- Americans with  
Disabilities Act

*Partelow v. Massachusetts*, 442 F.Supp.2d 41 (D.Mass. 2006). A state prisoner whose leg had been amputated brought an action against numerous defendants, including a county correctional center and sheriff, alleging that failure to provide him with handicapped-accessible shower facilities during the renovation of his housing unit violated his federal and state civil rights. The district court granted summary judgment in favor of the defendants. The court held that the officials provided alternative accessible facilities, precluding claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The court noted that officials provided the prisoner with a chair for use in the standard shower, assigned him to a housing unit with handicapped-accessible showers, promptly transferred him back to his original unit at his request, and ultimately made arrangements for him to shower in the medical unit. The court held that the prisoner could not establish an Eighth Amendment claim, where officials allowed the prisoner to shower in medical unit and made other such accommodations imposing only minor impediments and delays. The court found that the transfer of the prisoner to a maximum security housing unit in order to place him near a handicapped accessible shower was not in retaliation for the prisoner's exercise of constitutional rights, as would violate § 1983. (Hampden County Correctional Center, Massachusetts)

U.S. Appeals Court  
MEDICATION

*Phillips v. Jasper County Jail*, 437 F.3d 791 (8<sup>th</sup> Cir. 2006). An inmate at a county jail brought a § 1983 action against various jail employees and the jail's doctor, alleging violation of his constitutional rights. The district court granted the defendants' motions for summary judgment and the inmate appealed. The court of appeals held that the inmate was not entitled to appointed counsel where discovery had just begun at the time the inmate requested counsel and there was no conflicting testimony, there was no indication that the inmate was unable to investigate or present his case, the inmate correctly identified the applicable legal standard governing his claims and successfully amended his complaint to include essential information, his claims involved information readily available to him, the inmate was able to avoid procedural default, the complaint was sufficient to survive the first motion for summary judgment, and the inmate had been able to file more than thirty documents with the court. The court held that the jail's doctor who prescribed anti-seizure medicine to the inmate was not deliberately indifferent to the inmate's serious medical needs, even though the medication prescribed was different from the medication the inmate had taken in the past. According to the court, the doctor did not know that the medication prescribed would present a danger to the inmate or that he was prescribing less medication than was required. The court found that summary judgment was precluded by a genuine issue of material fact regarding whether jail employees assigned the inmate to a top bunk, despite the fact that he suffered from a seizure disorder. (Jasper County Jail, Missouri)

U.S. Appeals Court  
MEDICATION  
DELIBERATE  
INDIFFERENCE

*Pietrafeso v. Lawrence County, S. D.*, 452 F.3d 978 (8<sup>th</sup> Cir. 2006). A widow, as personal representative of a pretrial detainee who died of an acute asthma attack while detained in a county jail, brought a civil rights action against the county and jailers alleging deliberate indifference to the detainee's serious medical needs. The detainee had arrived at the jail at 7:10 p.m. with an envelope marked with the detainee's name, inmate number, and the following notation in bold red letters: "URGENT Colo. Inter-Correctional Medical Summary Transfer Report DELIVER TO MEDICAL DEPARTMENT AT ONCE." In an intake interview, the detainee told the jailer that he suffered from a severe asthma condition. The detainee said he was taking a "bunch" of medications, though he brought with him to the jail only an Albuterol inhaler. After a jury trial, the district court entered judgment in favor of the defendants as a matter of law. The appeals court affirmed. The court held that the head jailer was not deliberately indifferent to the detainee's medical needs in failing to take the detainee to a physician shortly after the detainee's arrival, absent any evidence that the jailer actually knew of and recklessly disregarded the risk of serious harm to the detainee posed by the lack of access to his prescribed medications over the weekend. According to the court, the head jailer's failure to take the detainee and his medical records to the physician was at most negligence. The court held that the jail administrator and the chief deputy were not deliberately indifferent, notwithstanding the chief deputy's instructions to another jailer to attempt to get the inmate's

prescriptions filled without taking the detainee to an emergency room. Although the jail administrator failed to ensure that the detainee visited a physician to secure a refill of his prescriptions, the day before the detainee died the administrator had been advised by a physicians assistant that an emergency room visit was not necessary unless the detainee made frequent use of the inhaler. The administrator was following that advice. The court noted that a jailer repeatedly asked others to obtain the detainee's medications and, on his day off, took medical notes transferred with the detainee to the physicians assistant and then visited the detainee in the jail to tell him of the physicians assistant's advice. (Lawrence Co. Jail, S.D.)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Pinkston v. Madry*, 440 F.3d 879 (7th Cir. 2006). A state inmate brought § 1983 action against two correctional officers, alleging that they violated his Eighth Amendment rights in allowing another prisoner to assault him and thereafter refusing to assist him in receiving adequate medical care. The district court granted the officers' motion for judgment on partial findings and the inmate appealed. The court of appeals held that the inmate did not show that the two correctional officers failed to protect him by allowing a fight between the inmate and another prisoner, given the testimony of three witnesses that a correctional officer, acting alone, could not have operated a locking mechanism so as to open the inmate's cell door, thereby allowing the fight to occur. The court noted an absence of evidence that bolstered the inmate's contention that an officer could have opened the cell door by himself, and an absence of evidence that another officer was present who could have assisted the first officer in opening the cell door. The court found that the officers were not deliberately indifferent to any serious medical needs of the inmate following the alleged altercation with another prisoner, and thus were not liable under the Eighth Amendment and § 1983. The inmate testified that one officer obtained medical supplies, bandaged the inmate's split lip, and subsequently changed the dressing. The court noted that the inmate waited four days to formally request medical attention, and that the inmate refused to cooperate with medical staff and accept medical assistance when it was offered to him. (Indiana Department of Corrections Maximum Control Complex, Westville, Indiana)

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE INDIF-  
FERENCE

*Plemmons v. Roberts*, 439 F.3d 818 (8th Cir. 2006). A county jail inmate who had been arrested for failing to pay child support brought a § 1983 action against a county, county sheriff, and corrections officers, alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion for summary judgment and they appealed. The court of appeals held that genuine issues of material fact as to whether the county jail inmate suffered from a serious heart condition, whether jail officials were notified of the inmate's history of heart problems, whether officials failed to recognize that the inmate was suffering from the symptoms of a heart attack that would be obvious to a lay person, whether the officials acted promptly to obtain necessary medical help, and whether the officials were properly trained to deal with such a medical emergency, precluded summary judgment in favor of the defendants. According to the court, the corrections officers' alleged delay in providing medical care to the inmate who was having a heart attack constituted conduct that violated clearly established law, and therefore the officers were not entitled to qualified immunity in the inmate's § 1983 Eighth Amendment deliberate indifference claim. The inmate alleged that two officers inexcusably delayed in summoning an ambulance even though he had told them that he had a history of heart trouble. The court noted that the medical intake form completed by one of the officers did not contain any mention of heart problems. (Pulaski County Jail, Missouri)

U.S. District Court  
INADEQUATE CARE

*Poole v. Taylor*, 466 F.Supp.2d 578 (D.Del. 2006). A former pretrial detainee filed a § 1983 action alleging unconstitutional conditions of confinement, and that he was denied adequate medical care. The district court granted the defendants' motion for summary judgment. The court held that the detainee's due process rights were not violated when he was required to sleep on a mattress on the floor for over six months in an overcrowded facility that experienced sporadic hot and cold temperatures and insect and rodent infestations. The court noted that the officials had issued numerous work orders for temperature repairs and pest control, the detainee was not denied access to toilet facilities, the officials determined that triple-celling pretrial detainees was a method to deal with their overcrowded facilities, and there was no evidence of intention on the officials' part to punish the detainee. The court found that officials were not deliberately indifferent to the detainee's serious medical needs, in violation of the Due Process Clause, even though he was not hospitalized or sent to a plastic surgeon after he sustained a large cut over his right eye. The court noted that the detainee's treatment included sutures, bandaging of his wound, and administration of medication, as well as a follow-up visit. The detainee was given instructions to contact the medical department for any perceived problems with the wound, and the detainee did not seek additional treatment. (Multi-Purpose Crim. Justice Facility, Delaware)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
PRETRIAL DETAINEE  
DELIBERATE INDIF-  
FERENCE

*Pryor v. Dearborn Police Dept.*, 452 F.Supp.2d 714 (E.D.Mich. 2006). The estate of an arrestee brought a § 1983 action against police officers and a police department, alleging failure to provide the arrestee with adequate medical care. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's condition-- a crack cocaine overdose-- constituted a serious medical need, and whether the police officers acted with deliberate indifference to the arrestee's serious medical need. The detainee was arrested, and

while he was in custody in a police vehicle he consumed an unknown quantity of cocaine. He again ingested cocaine when he was detained at the police station and subsequently collapsed on the floor of his cell and began convulsing. Paramedics were eventually called, and they transported the arrestee to a hospital, where he died three days later. (Dearborn Police Station, Michigan)

U.S. District Court  
DELAY IN CARE  
DELIBERATE INDIFFERENCE

*Rand v. Simonds*, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee's ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee's claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack Co. House of Corrections, New Hampshire)

U.S. Appeals Court  
INADEQUATE CARE

*Renkel v. U.S.*, 456 F.3d 640 (6th Cir. 2006). A detainee in a United States disciplinary barracks brought an action against the United States alleging her receipt of sub-standard medical care while incarcerated violated her rights under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The district court granted the government's motion to dismiss. The detainee appealed and the appeals court affirmed. The court of appeals held that there was no implied private right of action for violations of the Convention Against Torture. According to the court, the treaty was not self-executing and statutes criminalizing torture outside the United States did not provide civil regress for torture within the United States. (United States Disciplinary Barracks in Ft. Leavenworth, Kansas)

U.S. District Court  
ABORTION  
TRANSPORTATION

*Roe v. Crawford*, 439 F.Supp.2d 942 (W.D. Mo. 2006). An inmate brought a class action against corrections officials, challenging a policy prohibiting transportation of pregnant inmates off-site to provide abortion care for non-therapeutic abortions. The district court held that the policy violated inmates' Due Process rights and the policy violated the Eighth Amendment. The court noted that inmates who chose to terminate a pregnancy and had to be transported outside of the prison for that purpose posed no greater security risk than any other inmate requiring outside medical attention. The court held that a Missouri law prohibiting the use of State funds to assist with an abortion did not encompass transport to the location where the procedure was to take place, there was no alternative way for an inmate to obtain a non-therapeutic abortion, and abortion out counts had no measurable impact on the ongoing prison need to schedule and reschedule medical appointments. (Women's Eastern Reception, Diagnostic and Correctional Center, Missouri)

U.S. District Court  
DENTAL CARE  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
RESTRAINTS

*Samuel v. First Correctional Medical*, 463 F.Supp.2d 488 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The district court granted the prison officials' motion to dismiss. The court held that prison officials did not violate the inmate's Eighth Amendment rights by forcing him to remain handcuffed while receiving dental treatment, where the use of shackles and handcuffs during dental treatment was a routine security measure in the prison. The court took notice of the close proximity of the medical care

provider and his or her dental instruments to the inmate during dental examinations and treatments. The court found that prison officials were not deliberately indifferent to the inmate's serious medical needs, in violation of Eighth Amendment, as a result of the contract medical provider's failure to provide the inmate with dental treatment for over nine months, where the state agreed that the delay was unacceptable and awarded a contract to another provider, which provided treatment in a timely manner. (Delaware Correctional Center)

U.S. Appeals Court  
INADEQUATE CARE  
MEDICATION

*Self v. Crum*, 439 F.3d 1227 (10th Cir. 2006). A detainee brought an action against a jail's physician alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the physician and the detainee appealed. The appeals court affirmed, finding that the physician who provided medication for a respiratory infection and to reduce fever and coughing did not consciously disregard the substantial risk of serious harm arising from the detainee's symptoms. According to the court, the detainee's allegation that the physician diagnosed his heart problem but ignored it, was based on speculation and conjecture. The court noted that, at most, the physician's actions amounted to a misdiagnosis or failure to conduct further testing. (Denver County Jail, Colorado)

U.S. Appeals Court  
INADEQUATE CARE

*Senty-Haugen v. Goodno*, 462 F.3d 876 (8th Cir. 2006). A civilly-committed sex offender brought an action against the Commissioner of the Minnesota Department of Human Services, other Department officials, and sex offender program employees, alleging violations of federal and state law for being placed in isolation, receiving inadequate medical attention, and being retaliated against. The district court entered summary judgment in favor of the defendants and the offender appealed. The appeals court affirmed. The court held that the offender did not receive inadequate medical treatment in violation of his due process rights, in that the alleged delays in treatment did not worsen his conditions, he provided no expert evidence that the treatment he received was inadequate, and staff was not unreasonable in requiring him to move away from the door of his room before he could be treated for an injured leg, since they were unable to ascertain the extent of his injury until they could see that it was safe for them to enter. (Minnesota Sex Offender Program, Minnesota Department of Human Services)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE  
TRAINING

*Shaw v. Coosa County Com'n.*, 434 F.Supp.2d 1179 (M.D.Ala. 2006). A daughter, individually and as administrator of the estate of her deceased father, brought state and federal law claims against a sheriff and county commission arising from her father's death while he was an inmate in a county jail. The county commission and sheriff filed separate motions for summary judgment, which the district court granted. The court held that the county sheriff did not have the requisite knowledge to be found deliberately indifferent to the serious medical needs of the inmate who failed to disclose his medical condition or to request treatment. According to the court, the sheriff did not violate the Eighth Amendment rights of the jail inmate who died of cardiovascular disease on his second day of incarceration, absent a showing that the inmate disclosed his condition upon admission, that the sheriff otherwise knew that the inmate had a serious condition that required immediate medical treatment, or that the sheriff failed to provide the inmate with treatment with knowledge that failure to do so posed a substantial risk of serious harm. The inmate apparently was not taking his medications and did not request medical treatment. The court found that facially constitutional policies governing booking, supervision, staffing, and training of jail personnel did not, as applied, result in deliberate indifference to the serious medical needs of the inmate, where the policies provided for health screening of inmates upon their admission and medical treatment when requested by inmates, and there was no evidence that the policies were ignored nor any history of widespread problems to place the sheriff on notice of the need to correct the policies, as required to hold the sheriff individually liable. (Coosa County Jail, Alabama)

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
NEGLIGENCE

*Smith v. Clarke*, 458 F.3d 720 (8th Cir. 2006). An inmate brought § 1983 and negligence actions against a physician and the Director of Nebraska Department of Correctional Services alleging failure to treat in a timely manner a pituitary gland tumor pinching his optic nerve. The district court entered summary judgment in favor of the defendants. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the physician did not violate the Eighth Amendment; and (2) the physician was not a state employee within the meaning of the Nebraska State Tort Claims Act provision requiring plaintiffs with tort claims against state employees to file a claim with the State Tort Claims Board before filing an action in court. The court noted that the physician examined the inmate three times and noticed a problem with his pupils during the third examination, and nothing had indicated the tumor prior to the third examination. (Nebraska Department of Correctional Services)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
INVOLUNTARY  
MEDICATION

*Spann v. Roper*, 453 F.3d 1007 (8th Cir. 2006). A state prisoner brought a § 1983 action against a prison nurse alleging deliberate indifference and violation of the due process clause. The district court granted summary judgment in favor of the nurse. The prisoner appealed. The appeals court affirmed in part and remanded in part. The court held that the nurse did not act with deliberate indifference in forcing the prisoner to take another inmate's medication. According to the court, summary judgment was precluded by fact questions as to: (1) whether the state prison nurse's mistaken conduct in forcing the prisoner to take psychiatric medication created a serious medical

condition that the nurse knew of but ignored; and (2) whether immediate medical attention, such as pumping the prisoner's stomach, could have removed the medication before it was totally absorbed in the prisoner's system. The court found that the prisoner's due process rights were not implicated by the nurse's inadvertent administration of another inmate's psychiatric medication because the nurse's decision did not involve the treatment of an unwilling patient with psychiatric medication. A few minutes after taking the medication, the prisoner felt his legs collapse and the room spin. He awoke in pain in another room with a sore throat and dried blood. (Transitional Care Unit, Missouri)

U.S. District Court  
EMERGENCY CARE  
HOSPITAL  
PRIVATE PROVIDER  
DELIBERATE INDIF-  
FERENCE

*Sykes v. McPhillips*, 412 F.Supp.2d 197 (N.D.N.Y. 2006). The personal representatives for a mother and son's estates brought a civil rights action under § 1983 against various employees of a substance abuse correctional facility where the son had been confined, a private hospital which provided emergency medical services to the son, and a physician. The representatives alleged constitutional violations arising from the delivery of emergency medical services during the son's incarceration, as well as a state law malpractice/negligence claim. The hospital and physician moved for summary judgment on the issue of their "state actor" status. The district court granted the motion, holding that neither the hospital nor the physician were a "state actor" for the purposes of § 1983. According to the court, hospitals and physicians that provide care outside of the prison facility may be held to be state actors for purposes of § 1983 when they work pursuant to a contract, but the private hospital did not voluntarily assume the function of the state by accepting the correctional facility's delegation of its duty to provide emergency medical care to the prisoner. The court noted that the hospital did not have an implied contract with the correctional facility to provide emergency medical services when it treated the prisoner, given that it was federally mandated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). The prisoner suffered from diabetes while confined at the facility and the plaintiffs alleged that the defendants were deliberately indifferent to his medical needs. The defendants maintained that the prisoner received the same medical care as any other patient, regardless of his prisoner status. The plaintiff disputed this by pointing out that corrections officers exercised continual custody over the prisoner in a manner that interfered with the confidentiality normally accorded the health information of free patients, the hospital accommodated the officers' constant attendance upon the prisoner, and the state paid for his medical care. (Hale Creek Alcohol and Substance Abuse Correctional Treatment Center, New York)

U.S. District Court  
SUICIDE

*Taylor v. Wausau Underwriters Ins. Co.*, 423 F.Supp.2d 882 (E.D.Wis. 2006). The estate of a pretrial detainee who had committed suicide in jail brought § 1983 claims against a county corrections officer, alleging deliberate indifference to serious medical needs, a claim against the county alleging that the county maintained an unconstitutional informal policy of allowing inmates on suicide watch to turn out their lights, and a state law wrongful death claim against the officer and county. The district court granted summary judgment in favor of the officer and county. The court held that the county was not liable for a due process violation under § 1983 for deliberate indifference to the detainee's serious medical needs absent evidence that the officer's delay in turning on the detainee's light after the detainee had turned it off, during which time the detainee hanged himself, was a standard practice or an aberration. According to the court, even if the jail's unofficial policy of allowing inmates on suicide watch access to light switches was the cause of the detainee's suicide, in that it compromised corrections officers' ability to supervise the detainee, the county was not deliberately indifferent to the detainee's serious medical needs in violation of his due process rights. The court found that the jail's classification of the detainee as a suicide risk did not indicate he was actually a suicide risk, the fact that the detainee was a former corrections officer charged with heinous crimes did not indicate a substantial suicide risk, and, even if suicide risk was indicated by facts that the detainee stole a razor, that there were scratches on his wrists, and that he removed elastic from his underwear, the county placed him on suicide watch and thus was not indifferent. The court noted that the absence of mental illness in an inmate who commits suicide is not fatal to a claim for deliberate indifference to serious medical needs. The detainee was a former correctional officer charged with attempted murder, kidnapping, and sexual assault of a minor. He was admitted to jail where he was placed on a suicide watch in a cell with constant camera surveillance. (Fond du Lac County Jail, Wisconsin)

U.S. District Court  
SMOKE-FREE  
ENVIRONMENT

*Thiel v. Nelson*, 422 F.Supp.2d 1024 (W.D.Wis. 2006). Patients who were involuntarily committed to a mental health facility pursuant to a state's sexually violent persons statute filed state court actions challenging a smoking ban enacted at the facility. After removal to federal court, the patients moved to remand, and the officials moved to dismiss the complaint. The district court dismissed the complaint. The court held that the decision to completely ban smoking at the facility was rationally related to legitimate state interests of improving patients' health and safety, reducing fire hazards, maintaining clean and sanitary conditions, and reducing complaints and the threat of litigation from patients who did not smoke. The court found that the smoking ban did not violate the patients' equal protection rights, even if another state detention facility continued to permit its patients to smoke. The court noted that, unlike criminally confined offenders who may be subject to punishment as long as it is not cruel and unusual under the Eighth Amendment, persons who are civilly confined may not be punished. According to the

court, involuntarily committed patients may be subjected to conditions that advance goals such as preventing escape and assuring the safety of others. The court also found that the patients were not deprived of their due process right to adequate treatment as result of state's decision to completely ban smoking at facility. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. Appeals Court  
MEDICATION  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE

*Thomas v. Ashcroft*, 470 F.3d 491 (2nd Cir. 2006). A detainee brought a *Bivens* action against named and unnamed federal Drug Enforcement Administration (DEA) agents and prison officials, alleging that his blindness was caused by the defendants' deliberate indifference to his serious medical needs while in federal custody. The district court dismissed the case and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that allegations by the detainee, that federal prison officials were on notice of his glaucoma and resulting medical needs, that they were aware of the improper administration of his medications and that they still failed to address the situation, that he was transferred to one correctional facility where he received no medication despite the requests of his family, his lawyer, and outside physicians, and that the officials were personally ordered by a magistrate judge to see to the detainee's medical needs, stated a *Bivens* claim against prison officials, for deliberate indifference to the detainee's serious medical needs. (New York Metropolitan Correctional Center, Federal Bureau of Prisons)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Thomas v. Bruce*, 428 F.Supp.2d 1161(D.Kan. 2006). A state prisoner brought a civil rights action under § 1983 against prison officials, asserting an Eighth Amendment claim for deliberate indifference to his serious medical needs. The district court granted the officials' motion for summary judgment, but the court of appeals reversed and remanded. On remand, the district court held that the officials did not violate the prisoner's Eighth Amendment right to be free from cruel and unusual punishment by allegedly failing to treat his Hepatitis C, where the officials recognized the prisoner's condition and provided ongoing monitoring. The court noted that, when the prisoner's high enzyme levels warranted further testing and a liver biopsy, officials undertook steps to ensure treatment through the established administrative process. (Hutchinson Correctional Facility, Kansas)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Thomas v. Walton*, 461 F.Supp.2d 786 (S.D.Ill. 2006). A state prisoner brought civil rights claims against correctional officials, alleging use of excessive force, deliberate indifference to medical needs, and retaliation in violation of his First Amendment rights. The defendants' motion for partial summary judgment was granted in part and denied in part. The district court held that a one-day delay in providing access to a mental health professional following the prisoner's suicide attempt did not involve deliberate indifference and that a 10-day delay in providing medical attention was not deliberate indifference. The court found that the prisoner's repeated refusal to comply with an order to submit to a strip search during a cell inspection justified spraying him with the chemical agent. The court found that the spraying did not involve the use of excessive force, where the chemical was not used in a quantity greater than necessary to subdue the prisoner, secure his compliance with the order, and assure the safety of the officers. The court noted that the prisoner was being held in segregation in a maximum security prison and had a history of assaults on correctional officers. (Tamms Correctional Center, Illinois)

U.S. District Court  
INTAKE SCREENING

*Thompson v. County of Cook*, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical

screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

U.S. District Court  
MEDICATION  
DELIBERATE INDIF-  
FERENCE

*Torres v. Trombly*, 421 F.Supp.2d 527 (D.Conn. 2006). A prisoner brought a § 1983 action against a correction officer, prison nurse, and other prison officials, alleging that the nurse and the officer were deliberately indifferent to his medical needs in violation of the Eighth Amendment. The district court granted the defendants' motion to dismiss in part, and denied in part. The nurse and officer subsequently filed a motion for summary judgment. The district court held that the nurse's failure to administer the prisoner's hypertension medication on one day did not cause the prisoner to suffer a serious medical condition, and thus the nurse and the correction officer who escorted the nurse on the day in question, were not deliberately indifferent to the prisoner's serious medical needs. The court noted that the prisoner was taking a relatively low dose of medication for mild hypertension, the prisoner took his medication on every other day that month, his blood pressure was normal when checked three weeks later, and there was no indication that the missed dose of medication interfered with the prisoner's activities or caused him medical complications. The court noted that § 1983 was not meant to redress medical malpractice claims that can be adequately resolved under state tort law, and therefore a prisoner's claim of misdiagnosis, faulty judgment, or malpractice, without more to indicate prison officials' deliberate indifference to the prisoner's medical needs, is not a cognizable Eighth Amendment claim under § 1983. (Northern Correctional Institution, Connecticut)

U.S. District Court  
ADA- Americans with  
Disabilities Act  
HEARING IMPAIRED

*Tucker v. Hardin County*, 448 F.Supp.2d 901 (W.D.Tenn. 2006). Deaf detainees and their deaf mother sued a county and a city, alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a county court did not violate the ADA's Title II, which prohibits discrimination in public services, by asking the deaf mother to serve as interpreter for her deaf sons at their plea hearing, despite her contention that the request deprived her of her right to participate as a spectator. The court noted that the mother expressed no reservations to the court about serving as an interpreter, that she could have refused the request, and, even if the court were somehow responsible for her service as an interpreter, its request was based on her skill in lip-reading and sign language, not on her disability. According to the court, assuming that overnight incarceration was covered by the ADA's Title II which prohibits discrimination in public services, and assuming that placing a phone call was an "aid, benefit, or service" within the meaning of an ADA regulation prohibiting public entities from providing a disabled person aid, benefit, or service that was not as effective as that provided to others, the county did not violate ADA in using relay operators and notes to allow the deaf detainees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. The court noted that information was transmitted and received, which was the same benefit non-disabled person would have received. While in custody, the two brothers communicated with officers through written notes. The jail was not equipped with a teletypewriter (TTY) telephone. Instead, the officers acted as relay operators, using paper and pencil, as they spoke with an operator acting on their behalf to complete the call, which lasted 45 minutes. (Hardin County Jail, and the City of Savannah Police Department, Tennessee)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*U.S. v. Gonzales*, 436 F.3d 560 (5th Cir. 2006). Following a jury trial, deportation officers were convicted of deprivation of civil rights and one defendant appealed. The appeals court held that evidence was sufficient to support a finding that the defendant willfully sprayed a detainee, who had a broken neck, with pepper spray and that the use of pepper spray resulted in bodily injury. The court noted that a detention officer testified that while the defendant was carrying the detainee to the bus, he said "Let's Mace the fucker and see if he budges" and two other detention officers remembered a similar statement, and when the defendant exited the bus, he was coughing, smirking sarcastically, and claiming that there had been an "accidental discharge." After the pepper spray was used, the detainee's mouth was foaming, he complained of stinging pain, and his eyes were swollen shut for at least three hours. The court found that the force that caused this pain and that the pepper spray was applied when the detainee was paralyzed, handcuffed, and lying on the floor of the bus. The detainee made his injury known to the defendant, screaming "they broke me..." and in response to his pleas the officers taunted him and invited people to wipe their feet on him. Two of the defendants dragged his limp body from a house to the van, dragged him off the van onto a bus, and witnessed his reaction to being pepper sprayed. According to the court, by moving the detainee without stabilizing him, the officers exposed him to a risk of harm. The detainee was left alone on the bus floor, handcuffed, eyes swollen shut, and foaming at the mouth, despite the officers' training that, due to the risk of potentially fatal asphyxiation, those who had been pepper sprayed should be continually monitored and placed upright, never in a prone position. (San Antonio Division of the Immigration and Naturalization Service [INS] and Brazos County Jail, Texas)

U.S. District Court  
PRETRIAL DETAINEE  
CRIPA- Civil Rights of  
Institutionalized  
Persons Act

*U.S. v. Terrell County, Ga.*, 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government's motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

U.S. District Court  
MEDICATION

*Uptegrove v. Kuka*, 408 F.Supp.2d 708 (W.D.Wisc. 2006). An inmate brought a § 1983 action arising from an alleged failure to provide him with pain medication. The defendant officers moved for summary judgment. The district court granted the motion, finding that the inmate failed to file an inmate complaint so as to exhaust administrative remedies with respect to one correctional officer. The court found that a correctional sergeant who, prior to dispensing the inmate's pain medication, was called away to a prison emergency, did not act with deliberate indifference to the inmate's serious medical need because another officer replaced the sergeant and continued to dispense medications. The court noted that the inmate inexplicably did not remain in line to receive his medication and therefore any pain he suffered as the result of missing his medication was the result of his own choice, not of any Eighth Amendment violation. (Jackson Correctional Institution, Wisconsin)

U.S. Appeals Court  
MEDICATION  
DELIBERATE INDIFFERENCE

*Vaughn v. Greene County, Arkansas*, 438 F.3d 845 (8th Cir. 2006). The sister of a pretrial detainee brought a civil rights action against a sheriff and others to recover damages related to the in-custody death of her brother. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The court of appeals dismissed in part, reversed and remanded in part. The court held that the county sheriff had no knowledge of the pretrial detainee's serious medical needs, and thus was entitled to qualified immunity. The court noted that the sheriff had no personal interaction with the pretrial detainee during his incarceration, and there was no indication that the sheriff knew the pretrial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. According to the court, the sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to the pretrial detainee's serious medical needs, as required to be held individually liable for the detainee's death in a § 1983 action. The 46-year-old detainee had completed a medical intake form indicating he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although he had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. The jail ran out of his anti-depressant medication for two days and the detainee began to act odd. He was moved to an isolation cell to be monitored. He was later found dead in the cell. An autopsy led to the determination that the detainee died of natural causes--arteriosclerotic cardiovascular disease--causing a heart attack that resulted in his death. Detectable amounts of his anti-depressant medication were found in the detainee's system during the autopsy. (Greene County Jail, Arkansas)

U.S. District Court  
DELIBERATE INDIFFERENCE  
MEDICATION

*White v. Crow Ghost*, 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a *Bivens* action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that jail officials were not deliberately indifferent to the arrestee's medical needs, in violation of his Eighth Amendment rights, where officials provided the arrestee with medical care promptly after learning of his suicide gestures or attempts, and again upon learning he might have an infection. The court noted that when the arrestee's need for medication was established, officials ensured that the medications were administered. The court found that the officials were not deliberately indifferent to any risk of harm to arrestee from his placement in two different, allegedly cold and unsanitary jail cells for a total of four days, and thus such placement did not rise to the level of an Eighth Amendment violation. The court noted that the arrestee was placed in those cells after his suicide gestures or attempts so that he could be monitored, his clothing and bedding was removed for his protection after he tried to hang himself, and cleaning supplies were withheld to protect him. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)

<p>U.S. Appeals Court FAILURE TO PROVIDE CARE EMERGENCY CARE INTAKE SCREENING</p>	<p><i>Williams v. Bradshaw</i>, 459 F.3d 846 (8th Cir. 2006). The mother of a detainee who died while in jail brought a § 1983 action, claiming that police officers violated the detainee’s rights under the Eighth and Fourteenth Amendments. The district court granted judgment on the pleadings in favor of the officers. The mother appealed. The court of appeals affirmed, holding that the mother lacked standing. The detainee, the daughter of the plaintiff, had been brought to a jail and was being interrogated when she began talking unintelligibly and experiencing seizures. An officer said that she was “faking a seizure” to avoid jail time. She lost consciousness but officers did not request an ambulance for nearly an hour. She had ingested cocaine at the time of her arrest and died from cocaine intoxication. (Howard County Jail and City of Nashville, Arkansas)</p>
<p>U.S. District Court SMOKE</p>	<p><i>Williams v. District of Columbia</i>, 439 F.Supp.2d 34 (D.D.C. 2006). A former inmate filed a pro se § 1983 action seeking damages for alleged exposure to second-hand tobacco smoke while he was confined in jail. The district court denied the defendants’ motion for summary judgment. The court held that the former inmate’s allegations that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at the time he was confined and posed a risk to his future health, and that the individual defendants were deliberately indifferent to his condition, if true, were sufficient to establish an Eighth Amendment violation. The court found that genuine issues of fact existed, precluding summary judgment. The inmate alleged that inmates and staff in his housing unit smoked tobacco, the unit did not have adequate ventilation or windows or doors that could be opened to remove the tobacco smoke, and his cellmate smoked five packs of cigarettes a day and kept a homemade toilet paper wick burning at all times for the purpose of lighting cigarettes. The inmate said that he experienced nausea and nosebleeds, and he filed a number of grievances. (District of Columbia Department of Corrections, Central Detention Facility)</p>
<p>U.S. District Court REHABILITATION ACT ADA- Americans with Disabilities Act</p>	<p><i>Winters ex rel. Estate of Winters v. Arkansas Department of Health and Human Services</i>, 437 F.Supp.2d 851 (E.D.Ark. 2006). The administrator of the estate of mentally ill pre-trial detainee/civil committee who had died of peritonitis while in custody of a sheriff sued the sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following bench trial, the district court held that neither DHS nor the sheriff caused or contributed to the death of the detainee/committee, and they were not liable under the Due Process Clause, Eighth Amendment, Rehabilitation Act, or ADA. The court found that the sheriff had no policy or custom to apprehend and incarcerate acutely mentally ill persons, as indicated by the fact that the detainee may have been only person under civil commitment ever housed in the sheriff’s detention facility. (Benton Co. Jail, Arkansas)</p>
<b>2007</b>	
<p>U.S. District Court DELIBERATE INDIFFERENCE DELAY IN CARE</p>	<p><i>Adams v. Cook County Dept. of Corrections</i>, 485 F.Supp.2d 940 (N.D.Ill. 2007). An inmate brought a § 1983 claim against physicians, alleging they acted with deliberate indifference to his serious medical needs. The district court dismissed the claim in part, and denied the defendants’ motion for dismissal in part. The court held that the prisoner alleged sufficiently serious medical needs to support his claim that jail officials acted with deliberate indifference to such needs, in violation of due process, by alleging that he had “shortness of breath,” “severe pain in [his] right side” and a high fever. The court found that the inmate stated a § 1983 claim for deliberate indifference to his serious medical needs under the Fourteenth Amendment by alleging that he had a serious medical need and that he was inadequately treated by two physicians. (Cook County Jail, Illinois)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE PSYCHOTROPIC DRUGS</p>	<p><i>Anderson ex rel. Cain v. Perkins</i>, 532 F.Supp.2d 837 (S.D.Miss. 2007). A daughter, as next friend of a jail detainee who suffered second-degree burns on her ankles, thighs, and buttocks while awaiting mental health commitment, brought a civil rights suit against a sheriff and a county. The sheriff moved for summary judgment on claims brought against him in his individual capacity. The district court granted the motion. The court held that the sheriff did not violate the detainee’s right to be protected from harm, absent evidence showing that restraints were likely used to subdue her. The court found that the sheriff was not deliberately indifferent to the detainee’s medical needs in failing to administer her anti-psychotic medications, where the detainee’s refusal to take her medications prior to being taken into custody, coupled with her violent and psychotic behavior as the result of the refusal, was the basis for her commitment. The court found that the sheriff was not deliberately indifferent in failing to discover second-degree burns of an unknown origin on the detainee’s ankles, thighs, and buttocks because jailers regularly observed the detainee through a viewing window in her cell door, but did not actually enter the cell to visually inspect the detainee for signs of injury. (Amite County Jail, Mississippi)</p>
<p>U.S. Appeals Court CONTAGIOUS DISEASES</p>	<p><i>Andrews v. Cervantes</i>, 493 F.3d 1047 (9th Cir. 2007). A prisoner filed a pro se action against prison officials, alleging that the threat he faced from contagious diseases violated the Eighth Amendment prohibition against cruel and unusual punishment. The prisoner sought leave to proceed in forma pauperis (IFP) but the district court denied the motion. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the prisoner’s qualification for an imminent danger exception to the Prison Litigation Reform Act’s (PLRA) three-strikes rule was determined at the time of filing of the complaint and that under the imminent danger exception the prisoner could file an entire complaint IFP. The prisoner alleged that he was at risk of contracting HIV and that he had already contracted hepatitis C, because of his exposure to other prisoners who had those contagious diseases due to prison officials’ policy of not screening prisoners for such diseases. (California State Prison, Solano)</p>

<p>U.S. District Court  CONTRACT SERVICES  DENTAL CARE  SPECIAL DIET  FAILURE TO PROVIDE  CARE  DELIBERATE  INDIFFERENCE</p>	<p><i>Banks v. York</i>, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the detainee's allegations that his teeth became chipped and his gums became infected, leading to damage to his gums, disfigurement of his face, infection, pain, anxiety, and extraction of four teeth, were sufficient allegations of a serious medical need. Officials had confiscated his dental crown. The court found that the detainee stated a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court held that the detainee stated a claim with his allegation that the prison's dental unit should have replaced his dental crown or permitted him to have his private dentist do so. The prison's dental unit had treated him with antibiotics and offered to extract the seven affected teeth. The court held that this involved a mere disagreement over proper treatment and did not support a § 1983 claim of violation of the Eighth Amendment prohibition of cruel and unusual punishment through deliberate indifference to the prisoner's serious medical needs. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)</p>
<p>U.S. District Court  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE  CARE</p>	<p><i>Barbaro v. U.S. ex rel. Federal Bureau of Prisons FCI Otisville</i>, 521 F.Supp.2d 276, (S.D.N.Y. 2007). A federal prison inmate brought a pro se Federal Tort Claims Act (FTCA) suit against the Bureau of Prisons (BOP), alleging failure to treat his preexisting injuries, and asserted Eighth Amendment <i>Bivens</i> claims against individual prison officials, alleging deliberate indifference to his medical needs. The district court granted the defendants' motion to dismiss in part, on statutes of limitations grounds. Following the appointment of counsel for the inmate, the inmate renewed his opposition to the motion to dismiss. The district court rejected the inmate's opposition. The prisoner alleged that officials failed to treat his preexisting back and neck injuries, allegedly leading to the deterioration of his condition. (Federal Correctional Institution in Otisville, New York)</p>
<p>U.S. District Court  DELIBERATE  INDIFFERENCE  DENTAL CARE  MEDICATION</p>	<p><i>Baylis v. Taylor</i>, 475 F.Supp.2d 484 (D.Del. 2007). An inmate brought a § 1983 action against various defendants, alleging deliberate indifference to his serious medical needs. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the inmate's administrative remedies with respect to his claim that prison personnel were deliberately indifferent to his serious medical needs were presumed to have been exhausted, for the purposes of the Prison Litigation Reform Act's requirement that administrative remedies be exhausted before a § 1983 action could be brought, since no further remedies were available to the inmate. The court held that the inmate failed to state a § 1983 claim for deliberate indifference to his serious medical needs against a prison doctor. The inmate alleged in his complaint that the doctor stopped prescribing a particular medication that the inmate deemed appropriate for treatment of his attention deficit disorder, but the court held that this indicated merely a difference of opinion as to treatment that did not rise to the level of an Eighth Amendment violation. According to the court, the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison psychologist by alleging that, despite his promises, the psychologist failed to provide the inmate with therapy for his attention deficit disorder, and failed to have the inmate revisit a psychiatrist. The court also found that the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison employee, with his complaint that alleged that the inmate had no teeth, that he presented himself for dental care, and that the employee refused to let the dental work go forward. (Delaware Correctional Center)</p>
<p>U.S. District Court  DENTAL CARE  DELIBERATE INDIF-  FERENCE</p>	<p><i>Blackston v. Correctional Medical Services, Inc.</i>, 499 F.Supp.2d 601 (D.Del. 2007). An inmate brought an action against a correctional medical services company, alleging Eighth Amendment violations due to inadequate dental care. The company moved for summary judgment. The district court granted the motion. The court held that the inmate failed to establish that the company exhibited deliberate indifference to his serious medical needs following tooth extractions. The inmate's medical records established that he had received dental examinations and treatments to resolve routine problems as well as emergency concerns. (Howard Young Correctional Institution, Delaware)</p>
<p>U.S. District Court  SUICIDE</p>	<p><i>Branton v. City of Moss Point</i>, 503 F.Supp.2d 809 (S.D.Miss. 2007). The son of a pre-trial detainee who had committed suicide while in custody, filed suit against the city and jail officers asserting claims pursuant to the Eighth and Fourteenth Amendments for failure to train, failure to adopt a policy for safe custodial care of suicidal detainees, and failure to adopt a policy of furnishing medical care to suicidal detainees. The detainee was detained on suspicion of drunk driving and was resistant during the booking process. During the booking process the detainee answered a series of questions. When he was asked, "Have you ever attempted suicide or are you thinking about it now?" he responded, "No." He was taken to a cell that was designated for intoxicated or combative prisoners, given a sheet and a blanket, and was locked in the cell at 3:30 a.m. While conducting a jail check at approximately 5:30 a.m., an officer discovered the detainee kneeling in a corner of the cell with the sheet around his neck. He was unable to be revived. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officers had actual knowledge of a substantial risk of suicide by the detainee, and that fact issues precluded summary judgment in the claim against the city and officers in their official capacities. On appeal (261 Fed.Appx. 659), the appeals court reversed and remanded. (City of Moss Point, Mississippi)</p>
<p>U.S. District Court  INADEQUATE CARE</p>	<p><i>Brown v. Beard</i>, 492 F.Supp.2d 474 (E.D.Pa. 2007). A prisoner brought a civil rights suit alleging that medical personnel were intentionally not providing adequate medical care to combat his risk factors for heart disease. Prison officials moved to vacate an order allowing the prisoner to proceed in forma pauperis (IFP). The district court granted the motion. The court held that the prisoner was not in imminent danger of serious physical injury, as required to proceed IFP under the Prison Litigation Reform Act after having three or more prior IFP actions</p>

dismissed as frivolous. The court noted that the prisoner did not dispute that he was receiving medical attention for high blood pressure, low blood sugar, and high cholesterol, but merely disputed the findings and quality of treatment he was receiving. (SCI Graterford, Pennsylvania)

U.S. District Court  
DELAY OF CARE  
MEDICATION  
DELIBERATE INDIF-  
FERENCE

*Bumpus v. Canfield*, 495 F.Supp.2d 316 (W.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that state prison officials and employees violated his Eighth Amendment rights in connection with his medical care and treatment. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison physician's delay of several days in dispensing the inmate's hypertension medication did not demonstrate deliberate indifference to the inmate's serious medical needs, where there was no evidence that the inmate experienced any complications during the time that he was waiting for his prescription to be refilled. The court found that the prison's nurse administrator was not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, even if she did not respond to the inmate's letters complaining about his perceived lack of medical attention, where the administrator was not personally involved in the inmate's medical treatment, and the inmate did not believe that the administrator was deliberately trying to hurt him. (Elmira Correctional Facility, New York)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE INDIF-  
FERENCE

*Calhoun v. Volusia County*, 499 F.Supp.2d 1299 (M.D.Fla. 2007). An inmate at a county detention center brought a § 1983 action against the government entity serving as the center's medical care contractor and the physician who was the supervisor for the center's infirmary, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants. The court held that the detention center's medical care contractor and supervising physician did not act with deliberate indifference to the serious medical needs of the inmate with gall bladder disease in the context of the inmate's pre-operative care. The court noted that the inmate was provided with medical attention as soon as he began complaining of symptoms, the inmate was examined by a registered nurse who then sought the advice of a physician's assistant, the inmate was kept under observation in an infirmary and offered a liquid diet that he initially refused, and the physician was contacted and had the inmate taken to an emergency room upon the worsening of his symptoms. (Volusia County Detention Center, Florida)

U.S. District Court  
CONTRACT SERVICE  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Cameron v. Allen*, 525 F.Supp.2d 1302 (M.D.Ala. 2007). A state inmate filed a § 1983 action against the commissioner of a state department of corrections, a contract medical care provider, and a prison physician challenging the constitutionality of medical treatment provided to him. The defendants moved for summary judgment. The district court granted the motion. The court held that the commissioner was not subject to liability under § 1983 for the prison medical staff's alleged deliberate indifference to the inmate's serious medical needs, where the commissioner did not personally participate in, or have any direct involvement with, the inmate's medical treatment, that medical personnel made all decisions relative to the course of treatment provided to the inmate, and such treatment did not result from a policy instituted by the commissioner. The court found that the inmate's failure to properly exhaust the prison's grievance procedure barred his § 1983 action. According to the court, even though the inmate filed grievance forms addressing his medical treatment, the treatment that was the subject of the forms was wholly unrelated to the medical treatment about which he complained in his § 1983 action. (Bullock County Correctional Facility, Alabama)

U.S. District Court  
DELAY IN TREATMENT  
DELIBERATE  
INDIFFERENCE  
DENTAL CARE  
STAFF

*Chambers v. NH Prison*, 562 F.Supp.2d 197 (D.N.H. 2007). A state prisoner brought a civil rights suit alleging that prison officials had denied him necessary dental care in violation of his Eighth Amendment rights. The district court granted the prisoner's motion for a preliminary injunction. The court found that the prisoner demonstrated the likelihood of success on merits where his allegations were sufficient to state a claim for supervisory liability against some defendants. The prisoner alleged that officials were deliberately indifferent to his serious medical needs in refusing to provide care for a cavity for approximately one year due to a staffing shortage. According to the court, the prisoner's allegations that prison supervisors and a prison dentist knew of the prisoner's pain as the result of an unfilled cavity, but nevertheless failed to take steps to ensure that care was provided to him within a reasonable time period, provided the minimal facts necessary to state a claim for supervisory liability under § 1983 for deliberate indifference to serious medical needs under the Eighth Amendment. (New Hampshire State Prison)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE  
MEDICATION

*Clarke v. Blais*, 473 F.Supp.2d 124 (D.Me. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging they subjected him to excessive force, and against a physician's assistant for allegedly failing to give him proper treatment for his physical and mental health issues. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that questions as to whether jail officers used excessive force in restraining the detainee and whether qualified immunity was available as a defense precluded summary judgment in the detainee's § 1983 action. The court found that the physician's assistant was not deliberately indifferent to the detainee's serious medical needs, by not embarking upon anti-viral therapy for the detainee's hepatitis C because, as a pretrial detainee, he was subject to further movement among facilities, and in not prescribing Seroquel, an anti-psychotic drug, as recommended by a counselor/social worker at an outside clinic. The court noted that the physician's assistant consulted an outside gastroenterologist, the detainee's liver function was monitored, and the counselor did not renew the Seroquel recommendation at a subsequent clinic evaluation. (Knox County Jail, Maine)

U.S. District Court  
MEDICATION  
TREATMENT  
DELIBERATE  
INDIFFERENCE

*Coleman-Bey v. U.S.*, 512 F.Supp.2d 44 (D.D.C. 2007). A prisoner who suffered from Chronic Hepatitis C brought a petition for a writ of mandamus in Superior Court of the District of Columbia, seeking to order the United States to provide him with necessary Hepatitis C medication. The action was removed to federal court and the defendants moved for summary judgment. The district court granted summary judgment, finding that failure to prescribe antiviral medication for the prisoner or to arrange for a liver biopsy did not amount to deliberate indifference to the prisoner's serious medical needs. The court noted that the prisoner was not a candidate for a liver biopsy due to his history of mental illness, and that he was not a candidate for antiviral

therapy because he did not have abnormal alanine aminotransferase (ALT) levels. The court noted that the prisoner had visited an infectious disease clinic at least twice within the past year and the BOP had taken other steps to monitor the prisoner's condition. (United States Penitentiary in Terre Haute, Indiana)

U.S. District Court  
DELAY IN CARE  
DELIBERATE INDIF-  
FERENCE

*Collins v. Kearney*, 495 F.Supp.2d 466 (D.Del. 2007). A state prisoner brought a civil rights action under § 1983 against a prison warden, sergeant, corrections officers, nurse, and a physician, alleging claims for excessive force, assault and battery, and deliberate indifference to serious medical needs. The district court granted summary judgment for the defendants in part, and denied in part. The court held that prison officials were not deliberately indifferent to the prisoner's serious medical needs, in violation of the Eighth Amendment, where the prisoner was examined by a nurse while in a holding cell immediately following an incident in which he was allegedly attacked by a corrections officer, and, two days later, he was seen by a physician. The court noted that x-rays were ordered, and the prisoner continued to receive medical treatment for his fractured ribs and complaints of pain. (Sussex Correctional Institute, Delaware)

U.S. District Court  
DELAY OF CARE  
DELIBERATE INDIF-  
FERENCE

*Cox v. Hartshorn*, 503 F.Supp.2d 1078 (C.D.Ill. 2007). A former pretrial detainee in a county jail brought a § 1983 action against a county sheriff and county jail nurse, alleging that he was denied proper medical care within the county jail in violation of his constitutional rights. The district court granted the defendants' motion for summary judgment. According to the court, the detainee's medical complaint of a foot rash did not rise to the level of an objectively serious medical need, so as to afford the detainee due process protections against the county sheriff and county jail nurse's alleged deliberate indifference to his request for medical attention. The court noted that the detainee's fungal foot rash was not so serious that it was life threatening or posed a risk of needless pain or lingering disability, and after being treated by a nurse, the detainee did not submit any further medical requests for treatment of the rash, nor did he receive any treatment of the rash after leaving the county jail. (Vermilion County Jail, Illinois)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE

*Danley v. Allyn*, 485 F.Supp.2d 1260 (N.D.Ala. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court denied the defendants' motions to dismiss and they appealed. The court of appeals vacated and remanded. On the remand, the district court again denied the defendants' motion to dismiss. The court held that the officers were not entitled to qualified immunity from the detainee's claim that the officers subjected him to excessive force, in violation of Fourteenth Amendment, by pepper spraying him in response to a dispute over toilet paper. The court noted that the officers had fair warning that to employ pepper spray as punishment, or for the sadistic pleasure of the sprayers, as distinguished from what was reasonably necessary to maintain prisoner control, was constitutionally prohibited. The court found that the detainee's allegations that a jail administrator and sheriff created an atmosphere or practice under which the defendant officers operated in allegedly subjecting the detainee to excessive force and then denying him medical treatment when they sprayed him with pepper spray, were sufficient, if proven, to create supervisory liability under § 1983. The court held that the detainee's claim of deliberate indifference on behalf of defendant officers, wherein they failed to provide medical attention to the detainee after using pepper spray against him, was no more than a continuation of the detainee's excessive force claim, and thus was not a separate cause of action under § 1983. (Lauderdale Detention Center, Alabama)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE INDIF-  
FERENCE

*Desroche v. Strain*, 507 F.Supp.2d 571 (E.D.La. 2007). A pre-trial detainee brought a pro se, in forma pauperis action against prison officials, alleging improper conditions of confinement, negligent medical treatment, invasion of privacy, and excessive force. The district court dismissed the action. The court held that the alleged conditions of the detainee's confinement, including being required to sleep on the floor of an overcrowded holding tank, being deprived of a mattress, and being provided with water only in a dirty sink, if proven, did not violate his Eighth Amendment or due process rights, given that he experienced such conditions for only ten days, and that use of sink did not cause him to suffer disease or other serious harm.

The court found that the detainee's attention deficit hyperactivity disorder (ADHD) was not a serious condition, and therefore any denial of medical care for the condition did not violate his Eighth Amendment rights. The court noted that even if ADHD was a serious condition, prison officials were not deliberately indifferent in treating it, and any denial of medical care did not violate the detainee's Eighth Amendment rights, in that the detainee merely disagreed with the treatment offered by two doctors at the jail. (River Parish Correction Center, Louisiana)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
MENTAL HEALTH  
SUICIDE

*Estate of Hill v. Richards*, 525 F.Supp.2d 1076 (W.D.Wis. 2007). The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)

<p>U.S. District Court INTAKE SCREENING SUICIDE</p>	<p><i>Estate of Puza v. Carbon County</i>, 586 F.Supp.2d 271 (M.D.Pa. 2007). The estate of a pretrial detainee who committed suicide brought an action alleging civil rights violations against a county and its corrections officers, and negligence claims against the architect of a county prison. The defendants moved for summary judgment and the district court granted the motion. The court held that correctional and intake officers were not deliberately indifferent to the pretrial detainee's vulnerability to suicide, as was required for the officers' liability under the due process clause for the detainee's suicide. The court noted that the suicide was a "complete surprise" to the police chief who spent one and a half hours with the detainee, the detainee told an officer "he had much to look forward to, and [did] not believe in suicide," the detainee was placed in a cell next to an inmate who was on suicide watch and could be regularly observed, and the officer intervened when he noticed the detainee was still kneeling during a second observation of the detainee. The court found that county employees, through the jail's suicide policy, were not deliberately indifferent as to whether the pretrial detainee successfully committed suicide, as required to support a due process claim. According to the court, the policy was annually reviewed by the Pennsylvania Department of Corrections and was never found deficient, the detainee's screening form did not trigger a suicide watch, and the employees acted without deliberate indifference in allowing the detainee to retain his shoelaces while in his jail cell. (Crabtree, Rohrbaugh &amp; Associates, Carbon County Prison, Pennsylvania)</p>
<p>U.S. District Court INADEQUATE CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Estrada v. Reed</i>, 508 F.Supp.2d 699 (W.D.Wis. 2007). An allegedly indigent federal prisoner brought a proposed <i>Bivens</i> action against a warden, prison doctor, two prison health services administrators, and a captain on the prison's medical staff, alleging deliberate indifference to his serious medical needs. The district court granted the prisoner's motion to proceed in forma pauperis, in part, finding that the prisoner alleged potentially serious medical needs and allowed an inference of deliberate indifference on the part of several of the defendants. The prisoner alleged that prison medical staff failed to monitor his blood pressure consistently after doctors recommended such monitoring, and that a serious stroke left him with limited ability to use much of his left side and with difficulty speaking, so that he required consistent therapy to regain his motor skills. (Federal Correctional Institution, Oxford, Wisconsin)</p>
<p>U.S. District Court DELAY IN TREATMENT TRANSFER DELIBERATE INDIF- FERENCE</p>	<p><i>Farmer v. Kavanagh</i>, 494 F.Supp.2d 345 (D.Md. 2007). A state prison inmate sued officials, claiming her Fourteenth Amendment due process rights and her Eighth Amendment right to be free from cruel and unusual punishment were violated when she was transferred from a medium to a maximum security facility. The defendants moved for summary judgment. The district court entered judgment for the officials on the federal claims and dismissed the state law claim. The court held that the inmate had a liberty interest in not being sent to a maximum security prison, as required in order to bring a claim that transfer to maximum security facility without prior notice and an opportunity to be heard, was a violation of her Fourteenth Amendment rights. The court noted that the maximum security prison's strict control over every aspect of an inmate's life, and almost virtual isolation from any human contact, imposed conditions of confinement far worse than her previous situation in the general population of a medium security prison. But the court found that the officials had qualified immunity from the inmate's due process claim because, at the time of the transfer, it was not clearly established that an inmate could have a liberty interest in not being transferred to a maximum security prison.</p> <p>The court held that the officials' alleged difference in access to health care providers, between the medium security prison and the maximum security prison to which the inmate was transferred, was insufficient to support a determination that prison officials showed deliberate indifference to her medical needs by transferring her. The court noted that the inmate's delivery of drugs required for AIDS treatment was delayed and intermittently interrupted, but the patient's file did not reflect the seriousness of her condition, and when one maximum security prison employee was found derelict in making deliveries of medications, the employee was fired. (Maryland Correctional Adjustment Center ["Supermax"])</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE</p>	<p><i>Felix-Torres v. Graham</i>, 521 F.Supp.2d 157, (N.D.N.Y. 2007). A prisoner filed a pro se § 1983 suit against the New York Department of Correctional Services (DOCS), alleging that named DOCS employees and four "John Doe" defendants violated his constitutional rights under the Eighth and Fourteenth Amendments, related to injuries suffered from a fall from his assigned upper bunk during a diabetic low blood sugar reaction and seizure. The named employees moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the prisoner sufficiently alleged that prison officials were personally involved in the deprivation of his Eighth Amendment rights and that they were not protected by qualified immunity. The court found that the prisoner sufficiently alleged that a nurse administrator was deliberately indifferent to a risk for the prisoner and that the prisoner's allegations were sufficient for a § 1983 claim of deprivation of rights. According to the court, the prisoner sufficiently alleged the "personal involvement" of a superintendent and deputy superintendents of the prison based on the officials' creation and administration of prison procedures for assignment of inmates to upper bunks, and by supervision of subordinates who assigned the prisoner to an upper bunk despite his known medical condition. (Auburn Correctional Facility, New York)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Foster v. Elyea</i>, 496 F.Supp.2d 951 (N.D.Ill. 2007). A special administrator, on behalf of a deceased inmate, brought a § 1983 action against prison officials, alleging their failure to provide the inmate with prescribed medication, treatment, diet, or exercise opportunities hastened his death or caused him great emotional distress. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the allegations of the special administrator stated an Eighth Amendment claim that employees were deliberately indifferent to the inmate's serious medical needs. The administrator alleged that the employees knew that the inmate faced a risk of death if he did not receive his prescribed medication, treatment, diet, and exercise for his type two diabetes, high blood pressure, and congestive heart failure, but that department of corrections employees personally involved in delivering medical services to the inmate failed to provide those things to him. (Statesville Correctional Center, Illinois)</p>

<p>U.S. District Court          DELAY IN CARE          DELIBERATE          INDIFFERENCE</p>	<p><i>Giddings v. Joseph Coleman Center</i>, 473 F.Supp.2d 617 (E.D.Pa. 2007). A parolee brought a civil rights action against a parole officer and warrant officers who transported him back to prison from a halfway house, alleging that they were deliberately indifferent to his serious physical and mental health needs in violation of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity. The district court granted the motion. The court held that the parole officer was entitled to qualified immunity from the Eighth Amendment claim that she was deliberately indifferent to the parolee's need for medical treatment for a self-inflicted cut on his arm, noting that the cut was not serious because the parolee did not experience significant blood loss or infection, and the officer was not indifferent to the cut as evidenced by her offer to take the parolee to the hospital the next day. The court ruled that the officer was entitled to qualified immunity from the claim that she was deliberately indifferent to parolee's mental health needs, where evidence did not show that the parolee's mental health needs were serious on the day he cut himself, as there was no indication of a genuine suicide attempt, and the officer was not indifferent to those needs as she sent the parolee to the mental health unit of the halfway house. (Joseph Coleman Center, Pennsylvania)</p>
<p>U.S. District Court          FAILURE TO PROVIDE          CARE          DELIBERATE          INDIFFERENCE</p>	<p><i>Giles v. Kearney</i>, 516 F.Supp.2d 362 (D.Del.2007). An inmate sued prison officials under § 1983, alleging constitutional violations arising from an alleged use of excessive force at a correctional institution. The district court entered judgment for the defendants. The court held that the incidents in which pepper spray was used against the inmate did not constitute excessive force. According to the court, a corrections officer's use of pepper spray against the inmate was justified in response to the inmate's defiant and argumentative behavior, as well as his repeated refusals to obey orders. Noting that the officer was alone in a shower facility as the inmate continued to yell and defy orders, the court concluded that the officer's use of pepper spray to calm the increasingly volatile situation and prevent injury was a measured and reasonable response. The court also found that there was no deliberate indifference to the inmate's medical needs following incidents in which he was sprayed with pepper spray. The court noted that the inmate received medical care and assessment following each of the events at issue and there was no evidence that defendants obstructed, neglected or prevented him from receiving care or ignored his requests for medication or medical treatment. (Sussex Correctional Inst., Delaware)</p>
<p>U.S. Appeals Court          NEGLIGENCE          FEMALE PRISONERS          DELIBERATE INDIF-          FERENCE</p>	<p><i>Goibert v. Lee County</i>, 510 F.3d 1312 (11th Cir. 2007). A pretrial detainee in a county jail, who had been pregnant during her detention and whose child had been stillborn, brought a § 1983 action against county and jail officials, a physician, and the jail's medical services provider, alleging deliberate indifference to her serious medical needs. The district court granted summary judgment for all defendants based on failure to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the jail's administrative appeal procedure for inmates was not "available" within the meaning of PLRA, where the detainee had no way of knowing about it. According to the court, the detainee adequately exhausted her available remedies under PLRA by filing a document titled "request form." The court noted that the handbook given to inmates did not mention a grievance form, but only spoke of a "written request," and the inmate checked the "complaint" box on the request form rather than the "request" box and cogently described her grievance. The court found that the detainee's amniotic fluid leak constituted a serious medical need and the facility commander exceeded gross negligence in answering the detainee's complaint about lack of treatment, supporting a deliberate indifference claim. The commander apparently held a general disbelief of inmates' medical complaints, and responded only with a statement that the detainee could visit an outside physician if she could pay for it. (Lee Co. Jail, Florida)</p>
<p>U.S. District Court          INADEQUATE CARE</p>	<p><i>Green v. McGinnis</i>, 515 F.Supp.2d 379 (W.D.N.Y. 2007). A state prisoner brought an action against prison employees alleging that he was denied adequate medical treatment in violation of his Eighth Amendment rights. The prison employees moved for summary judgment, which was granted by the district court. The court held that the notice of motion and scheduling order provided adequate notice to the prisoner of an action and the consequences of failure to respond. The court found that the prisoner received adequate medical treatment. The court noted that the prisoner had x-rays and other tests on his back, including an MRI, and received physical therapy. (Southport Correctional Facility, New York)</p>
<p>U.S. District Court          ALCOHOL/DRUGS          DELIBERATE INDIF-          FERENCE</p>	<p><i>Hall v. County of Nemaha, Neb.</i>, 509 F.Supp.2d 821 (D.Nev. 2007). A pretrial detainee's survivors sued a city, county, and various city and county officers and officials, asserting various claims under § 1983 in connection with the death of the detainee from an overdose after swallowing his methamphetamine during a roadside stop of a vehicle in which he was riding. The district court granted summary judgment for the defendants in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to whether a deputy sheriff and a jailer knew that the detainee had swallowed the methamphetamine during a roadside stop and whether they ignored the detainee's panting and gasping, his claims that he could not see or breathe, and his crying and screaming that he needed to go to the hospital. The court found that law enforcement officers and other jail officers, who were unaware that the detainee had swallowed his methamphetamine during a roadside stop, were not deliberately indifferent to the detainee's serious medical needs, so as to violate his Eighth Amendment rights, even though he was complaining, uncooperative and acted like an intoxicated person. The court noted that from their perspective, the detainee was behaving like many other "besotted" pretrial detainees who were "plucked from the highway in the wee hours of the night and who suffered nothing more than a drug-induced stupor while cooling their heels in a cell awaiting their turn to see the local magistrate." (Nemaha County, Nebraska)</p>
<p>U.S. Appeals Court          DENTAL CARE</p>	<p><i>Hartsfield v. Colburn</i>, 491 F.3d 394 (8th Cir. 2007). A pretrial detainee brought a § 1983 action against a nurse, physician, and captain, alleging that they were deliberately indifferent to his serious medical needs. The inmate alleged that the defendants were deliberately indifferent to his serious medical needs when they delayed referring him to an oral surgeon to have three teeth extracted. On remand the district court entered judgment for the defendants and the detainee appealed. The appeals court affirmed. The appeals court held that the district court</p>

did not clearly err in finding that the nurse and physician acted reasonably in requiring a second sick call request from the detainee before referring him to a dentist, and that most of the delay in the detainee seeing the dentist resulted when the detainee unreasonably failed or refused to submit a second request. The court found that the captain in charge of transporting inmates to medical appointments did not deny or delay the detainee's dental treatment by interfering with or overriding any medical staff decisions to schedule an earlier appointment. (Scott County Jail, Iowa)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INVOLUNTARY  
TREATMENT  
PSYCHOTROPIC DRUGS

*Hendon v. Ramsey*, 528 F.Supp.2d 1058 (S.D.Cal. 2007). A state inmate filed a § 1983 action alleging that prison medical officials involuntarily administered anti-psychotic medications without following proper procedures and in deliberate indifference to his medical needs. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the involuntary administration of anti-psychotic medications to the inmate did not demonstrate deliberate indifference to the inmate's serious medical needs, as required to establish an Eighth Amendment violation, where the officials administered the drugs in an attempt to treat the inmate's mental health crisis. But the court held that the post-deprivation remedies available to the California inmate after the officials forcibly administered anti-psychotic drugs were insufficient to protect the inmate's due process liberty interest in being free from involuntary medication. According to the court, although state law established procedural safeguards before inmates could be involuntarily medicated, the prison officials allegedly disregarded their duty to comply with those established pre-deprivation procedures. The court found that the inmate's right to be free from arbitrary administration of anti-psychotic medication was clearly established by existing case law in 2002, the time of this incident, and therefore state prison officials were not entitled to qualified immunity from liability. (California State Prison-Sacramento)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
NEGLIGENCE

*Heredia v. Doe*, 473 F.Supp.2d 462 (S.D.N.Y. 2007). An inmate filed a § 1983 action against county jail officials alleging that he slipped and fell at a jail, and was denied proper medical treatment. The officials moved to dismiss the complaint and the district court granted the motion. The court held that the inmate's claim that he injured his back when he slipped and fell at the county jail was nothing more than a claim for negligence, for which there was no cause of action under § 1983. The inmate alleged he slipped and fell while walking to his cell and in the process injured his back "to the point it swelled up and was in a lot of pain." The court also found that officials were not deliberately indifferent to the inmate's medical needs, despite a one-day delay in providing treatment, where the jail medical department took X-rays and provided pain medication. (Sullivan Correctional Facility, New York)

U.S. District Court  
SUICIDE  
ADA- Americans with  
Disabilities Act

*Herman v. County of York*, 482 F.Supp.2d 554 (M.D.Pa. 2007). The estate of a prisoner who had committed suicide in a county prison sued the county, a warden, the prison health service, and nurses, asserting Eighth Amendment claims under § 1983, claims under the Americans with Disabilities Act (ADA), and state medical malpractice claims. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court found that, notwithstanding a Pennsylvania statute stating that the safekeeping, discipline, and employment of prisoners was exclusively vested in a prison board, the county could be held liable to the prisoner under § 1983 for the actions of the warden if he was acting as an agent of the county. The court held that summary judgment was precluded by genuine issues of material fact as to whether the warden was acting as an agent for the county in allegedly failing to prevent the prisoner's suicide, and as to the warden's role in ratifying county prison policies. The court found that the county, warden, nurses, and prison health service were not deliberately indifferent to the medical needs of prisoner who committed suicide, where alleged failures to check on the prisoner in his cell was by officers other than the defendants, nurses could not have been deliberately indifferent if they were unqualified as the prisoner's estate said, and the nurses' failure to place the prisoner on a suicide watch did not fall outside their professional judgment, given the prisoner's denials of suicidal ideation and his family's testimony. The court found that the prisoner was not denied access to county prison's programs or services because of disability, and any failure by the county and warden to prevent his suicide thus was not discrimination in services, programs, or activities of a public entity in violation of ADA. The prisoner denied thoughts of suicide, he told a nurse that he did not wish to take anti-depressant medications that had been prescribed for him, and a nurse told him to return to mental health services if necessary. (York County Prison, Pennsylvania)

U.S. Appeals Court  
INVOLUNTARY  
MEDICATION

*Hydrick v. Hunter*, 500 F.3d 978 (9th Cir. 2007). Sexual offenders who were civilly confined in a state psychiatric hospital under California's Sexually Violent Predators Act (SVP) filed a class action against various state officials under § 1983, challenging the conditions of their confinement. The district court denied the defendants' motion to dismiss, and the defendants appealed. The appeals court affirmed in part and reversed in part. The court held that the First Amendment claims brought against state hospital officials were based on clearly established law for qualified immunity purposes insofar as they challenged retaliation for filing lawsuits, however, officials had qualified immunity to the extent that the plaintiffs' claim relied on a First Amendment right not to participate in treatment sessions. The court found that the plaintiffs stated a § 1983 claim for violations of their Fourth Amendment rights to be free from unreasonable searches and seizures. The court concluded that hospital officials were entitled to qualified immunity with regard to procedural due process claims, but not substantive due process claims. The offenders alleged that they were subjected to public strip searches, to retaliatory searches of their possessions and to arbitrary seizure of their personal belongings, that they were placed in shackles during transport to the hospital and during visits from family and friends, that they were subjected to restraint even if they did not pose any physical risk, and that they were force-medicated. On appeal to the United States Supreme Court (129 S.Ct. 2431) the court vacated the decision. (Atascadero State Hospital, California)

<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Johnson v. Tedford</i>, 616 F.Supp.2d 321 (N.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by verbally and physically assaulting him, and then denying him adequate medical care for the injuries he sustained in that assault. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate filed a medical care grievance that was not responded to, recorded, or assigned a grievance number. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who supervised the state corrections officers who allegedly assaulted the inmate also had supervisory authority over the nurse who treated the inmate. The inmate alleged that the sergeant was grossly negligent in supervising the nurse when she engaged in the examination of the inmate. (Clinton Correctional Facility, New York)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE MENTAL HEALTH SUICIDE</p>	<p><i>Justus v. County of Buchanan</i>, 517 F.Supp.2d 810 (W.D.Va. 2007). The administrator of a pretrial detainee's estate filed a § 1983 action against a sheriff and county jail employees arising out of the detainee's jail suicide. The detainee had a history of schizophrenia, bipolar disorder, anxiety, paranoia, and delusions and had been hospitalized for these conditions several times in the three years prior to his suicide. His treatment records show that he was hospitalized because family members reported suicidal ideation and bizarre, violent, and sexually inappropriate behavior. The defendants moved for summary judgment. The district court granted the motion. The court held that the sheriff's deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to deliberate indifference to the detainee's serious bodily injuries, in violation of the detainee's due process rights. The court noted that, even though the detainee was still alive when they took him down approximately 13 minutes after discovering him, there was no showing of an affirmative causal link between their inaction and the detainee's death from hypoxic brain injury.</p> <p>The court found that the sheriff was not deliberately indifferent to the pretrial detainee's suicidal nature, and thus was not subject to liability under § 1983 for failing to take steps to prevent his suicide, even though a notation on an incident report two months before the detainee's suicide indicated that another prisoner reported that the detainee "was threatening suicide". The court found no proof that the report did not simply inadvertently escape the sheriff's knowledge.</p> <p>The court held that a reasonable sheriff would not have understood from existing law that the absence of an operating video surveillance system in the county jail would violate a suicidal pretrial detainee's constitutional rights, and thus the sheriff was entitled to qualified immunity from liability under § 1983, even though the jail policy and procedure manual required immediate repair of any defective security equipment, and the sheriff was aware that the equipment had not been operating for some time.</p> <p>According to the court, under Virginia law, the deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to gross negligence as required to overcome their immunity from tort liability. (Buchanan County, Virginia)</p>
<p>U.S. District Court DENTAL CARE</p>	<p><i>Kaufman v. Schneider</i>, 474 F.Supp.2d 1014 (W.D.Wis. 2007). An inmate at a supermaximum security prison filed a § 1983 action alleging that prison officials violated his constitutional rights. The inmate filed a motion seeking leave to proceed in forma pauperis. The district court granted the motion in part and denied in part. The court held that the inmate's claim that he was transferred to a maximum security facility in retaliation for his decision to name a warden as a defendant in a civil rights action was not frivolous, and thus the inmate was entitled to proceed in forma pauperis in his § 1983 action, where fact issues remained as to whether the lawsuit motivated the warden's decision to transfer the inmate. The court found that the inmate's allegations that he was in pain from a tooth that was cutting into his tongue, and that the waiting list for dental care was approximately 12 months long, were sufficient to state a claim against prison officials under the Eighth Amendment for deliberate indifference to his serious medical needs. (Wisconsin Secure Program Facility)</p>
<p>U.S. District Court CONTAGIOUS DISEASES DELAY IN CARE DELIBERATE INDIFFERENCE ISOLATION</p>	<p><i>Lee v. Frederick</i>, 519 F.Supp.2d 320 (W.D.N.Y. 2007). A state prison inmate brought a § 1983 suit against corrections staff, claiming deliberate indifference to his serious medical needs, in violation of his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion. The court held that placing the inmate on "TB hold" status unless he consented to take TB medication did not constitute cruel and unusual punishment in violation of the Eighth Amendment. The court noted that the inmate's TB test was negative and that he shared a cell with an inmate who was not on TB hold, but other test results indicated that the inmate's immune system was not functioning properly, and conditions at the facility made it impracticable to completely isolate the inmate from the rest of the population.</p> <p>The court found that a delay of six or seven hours in obtaining treatment for the inmate's eye condition after he reported the condition to a nurse did not constitute deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. According to the court, the inmate received treatment at a hospital and made a full recovery, and even assuming that the inmate was in pain during the delay, there was no indication that a nurse or a physician assistant who responded to the report deliberately delayed taking action for the purpose of causing the inmate pain or to prolonging his suffering. (Five Points Correctional Facility, New York)</p>
<p>U.S. Appeals Court DENTAL CARE MEDICATION RECORDS POLICIES</p>	<p><i>Meuir v. Greene County Jail Employees</i>, 487 F.3d 1115 (8th Cir. 2007). A prisoner who suffered from chronic dental problems brought a § 1983 action against a county and county jail medical staff, alleging deliberate indifference to his serious medical needs. The prisoner suffered from chronic dental problems. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to establish that jail medical staff acted with deliberate indifference to his serious medical needs, where jail nurses provided the prisoner with over-the-counter pain medication and encouraged him to brush and gargle with salt water in response to his complaints of bleeding gums and toothaches. The court noted that staff referred him to a county dentist, but the prisoner refused to go. According to the court, in the face of medical records indicating that medical treatment was provided and physician</p>

affidavits indicating that the care provided was adequate, an inmate cannot create a question of fact, to avoid summary judgment, in a claim for deliberate indifference to serious medical needs by merely stating that he did not feel he received adequate treatment. According to the court, the prisoner lacked standing to seek injunctive relief to end the county jail's unwritten "pull-teeth-only" policy for treatment of chronic dental problems, where the prisoner filed suit against the county four months after he was transferred to another correctional facility, his dental ailments were treated without complaint at the transferee facility, and there was no reason to believe that detainee would be returned to the county jail. (Greene County Jail, Missouri)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
SUICIDE

*Mombourquette ex rel. Mombourquette v. Amundson*, 469 F.Supp.2d 624 (W.D.Wis. 2007). A pretrial detainee in a county jail who was left seriously brain damaged after she attempted suicide by hanging in her cell, brought a civil rights suit against a county sheriff, correctional officers, and jail nurses, alleging that they violated her constitutional rights by failing to protect her from harming herself. The defendants filed motions for summary judgment. The district court denied the motions. The court held that evidence that the pretrial detainee reported to county jail personnel that a jail lieutenant was taking another female inmate out of her cell at night to engage in sexual activity was admissible, because such evidence showed that the lieutenant had a strong motive to withhold protection from the detainee, and thus was relevant to show he intentionally disregarded a risk to the detainee's safety. The court also found that evidence that county sheriff refused to investigate allegations that the county jail lieutenant was engaging in sexual misconduct with another inmate was relevant and admissible, where the sheriff's dismissive attitude of the complaint exhibited deliberate indifference, both toward the detainee's health and safety in particular and generally toward the health and safety of all inmates. The court denied summary judgment because it found a genuine issue of material fact as to whether a nurse and correctional officers at the county jail were deliberately indifferent to pretrial detainee's health and safety. The court also found a genuine issue of material fact as to whether there was an affirmative link between the county sheriff's failure to properly train and supervise county jail personnel and the failure to prevent the detainee's suicide. (Monroe County Jail, Wisconsin)

U.S. Appeals Court  
MENTAL HEALTH  
SUICIDE  
RESTRAINTS

*Norris v. Engles*, 494 F.3d 634 (8th Cir. 2007). A county jail detainee, who had been diagnosed with manic bipolar depression, sued a jail official under § 1983, alleging due process violations arising from his physical restraint. The district court denied the official's motion for summary judgment based upon qualified immunity. The official appealed. The appeals court reversed and remanded, finding that the official's alleged conduct of cuffing the detainee to a floor-grate toilet in an uncomfortable manner for approximately three hours, if proven, did not violate the detainee's substantive due process rights. According to the court, the official's alleged actions did not shock the conscience and thus did not violate the detainee's substantive due process rights, inasmuch as official took such action after the detainee, who had been diagnosed with manic bipolar depression, had threatened to pull out her own peripherally inserted central catheter (PICC) so that she would bleed to death, and after the detainee had shown that having her hands handcuffed behind her back was alone not an adequate form of restraint. (Independence County Jail, Arkansas)

U.S. Appeals Court  
MENTAL HEALTH  
REHABILITATION ACT  
ADA- Americans With  
Disabilities Act

*O'Guinn v. Lovelock Correctional Center*, 502 F.3d 1056 (9<sup>th</sup> Cir. 2007). A prisoner filed a pro se suit claiming prison officials denied him accommodation and treatment for mental illness, under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit pursuant to the Prison Litigation Reform Act (PLRA) and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's suit did not arise under § 1983 and that exhaustion is required under PLRA. The court found that the prisoner failed to exhaust administrative remedies. According to the court, the prisoner's filing of grievances requesting a lower bunk due to poor balance resulting from a brain injury were not equivalent to claims of denial of mental health treatment, and the prisoner's complaint to the United States Department of Justice (DOJ) did not exhaust the prison's internal grievance process. The court found that the DOJ's investigation of the prisoner's claims did not satisfy the exhaustion requirement as the investigation did not terminate the prisoner's rights to pursue ADA and Rehabilitation Act claims internally. (Lovelock Correctional Center, Nevada)

U.S. District Court  
INADEQUATE CARE

*Pettus v. Wright*, 514 F.Supp.2d 436 (W.D.N.Y. 2007). A state prisoner brought a civil rights action under § 1983 against physicians who examined or treated him, alleging that he was denied adequate medical treatment for a number of conditions affecting his health, in violation of his Eighth Amendment rights. The physicians moved for summary judgment and the district court granted the motion. The court held that the treatment the prisoner received was adequate. The court noted that although the prisoner disagreed with the course of treatment that he received, he was examined by a number of physicians, including specialists, various tests were performed on him, and he was administered various medications for his complaints, consistent with the test results. (Elmira Correctional Facility, New York)

U.S. District Court  
TRANSFER  
DELAY IN CARE  
DELIBERATE INDIF-  
FERENCE

*Price v. Correctional Medical Services*, 493 F.Supp.2d 740 (D.Del. 2007). An inmate brought a § 1983 action against a prison's medical services provider and prison officials, alleging deliberate indifference to his serious medical needs. The provider moved to dismiss, and the inmate moved for appointment of counsel. The district court denied the motions. The court held that the prisoner stated a claim under § 1983 against the prison's medical services provider for deliberate indifference to a serious medical need, in violation of the Eighth Amendment. The prisoner alleged that the refusal of prompt medical care to his recently surgically repaired wrists, upon his transfer from another facility, by employees of the prison's medical services provider, was, or could have been, partially responsible for the permanent damage to his wrists that was independently verified by an outside doctor. The court noted that the seriousness of the prisoner's medical need was so obvious, from the condition he arrived in, his description of the events to nurses, and from the obvious pain he was under for a period of weeks, that any lay person would have recognized the need for a doctor.

The court held that the prisoner's allegations that the employees of the prison's medical services provider were following the provider's inmate housing code when they initially denied the prisoner care, causing deliberate

indifference to his serious medical needs in violation of the Eighth Amendment and two weeks of intense suffering, were sufficient, at the early stage of proceedings, to allege that there was a relevant provider policy or custom, and that the policy caused the constitutional violation, as required for provider to be held liable for its employees' acts under § 1983. The court declined to appoint counsel for inmate, noting that the prisoner had been capably representing himself, and there were no special circumstances requiring the appointment of counsel. (Delaware Correctional Center)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE

*Primus v. Lee*, 517 F.Supp.2d 755 (D.S.C. 2007.) A prisoner brought a pro se medical malpractice action against a prison surgeon, prison physician, and the director of the state Department of Corrections. The defendants moved to dismiss, and the prisoner moved for leave to amend. The district court dismissed the action without prejudice and granted the plaintiff's motion to amend. The court held that the allegations did not state an Eighth Amendment claim for deliberate indifference, and that the prisoner's proposed amendment would not be futile. According to the court, the allegations that a prison surgeon negligently performed surgery, which resulted in the unwanted removal of the prisoner's testicle, did not state a § 1983 claim for deliberate indifference to the prisoner's serious medical needs under the Eighth Amendment. The prisoner's proposed amendment, alleging that the surgeon contracted with the state corrections department to provide surgical treatment, and that the surgeon unnecessarily and maliciously removed the prisoner's testicle in retaliation for the prisoner's lack of cooperation, could state a § 1983 claim for deliberate indifference under the Eighth Amendment. The court noted that when a physician cooperates with the state and assumes the state's constitutional obligation to provide medical care to its prisoners, he or she acts "under color of state law," for purpose of a § 1983 action. (Lee Correctional Institution, South Carolina)

U.S. Appeals Court  
HEARING IMPAIRED  
ADA- Americans With  
Disabilities Act

*Robertson v. Las Animas County Sheriff's Dept.*, 500 F.3d 1185 (10th Cir. 2007). A deaf pretrial detainee brought suit under § 1983 and the Americans with Disabilities Act (ADA) against deputies and a sheriff, claiming wrongful arrest and failure to accommodate his disability. The district court dismissed all claims against the defendants on their motion for summary judgment and the detainee appealed. The appeals court reversed and remanded. The court held that a fact issue as to whether the totally deaf detainee with a surgically implanted cochlear implant was substantially limited in his ability to hear, precluded summary judgment as to whether he was a qualified individual under ADA. The court also found that summary judgment was precluded by fact issues as to whether the jail knew, or should have been aware of, the deaf inmate's limitations. The court found that the detainee was qualified to receive benefits and services of the county jail, within the meaning of ADA, with respect to phone services and televised closed-circuit viewing of his probable cause hearing, as such services were available to all inmates. (Las Animas County Jail, Colorado)

U.S. District Court  
EQUAL PROTECTION  
EXPERIMENTATION  
INADEQUATE CARE  
MEDICATION

*Roman v. Donelli*, 616 F.Supp.2d 299 (N.D.N.Y. 2007). A state prisoner, who suffered from Hepatitis C, brought a § 1983 action against the New York State Department of Correctional Services' (DOCS) chief medical officer, among others, alleging that the officer violated his constitutional rights under the First, Eighth, and Fourteenth Amendments. The officer moved for summary judgment and the district court granted the motion. The court held that the officer was not deliberately indifferent to the prisoner's medical needs and that the prisoner was not similarly situated to another prisoner who was allegedly treated for the same condition. According to the court, the officer's allegedly differentiated treatment of prisoners was not motivated by discriminatory animus, as would support an equal protection claim. The chief medical officer refused to implement a course of treatment that was not approved by Food and Drug Administration (FDA) for 22 months after the prisoner was treated ineffectively with a different drug combination. The court noted that the officer made decisions regarding the prisoner's treatment based on information before him at the time, and when the officer became aware of the circumstances that would warrant an exception to the prison policy prohibiting treatment with drugs that were not FDA approved, the officer approved treatment.

The court found that the prisoner did not suffer any adverse action as a result of his filing of grievances, as would support a First Amendment retaliation claim. (New York State Department of Correctional Services)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
TRANSPLANT  
DELAY OF CARE

*Rosado v. Alameida*, 497 F.Supp.2d 1179 (S.D.Cal. 2007). The family of a state prisoner who died of liver disease brought a civil rights action under § 1983 against prison physicians and officials, alleging violation of his Eighth Amendment rights by failing to take necessary steps to qualify him for a liver transplant and to provide other necessary care for his liver condition. The physicians moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact regarding whether the deputy director of prison health care services chose to delay or refused an evaluation for a liver transplant for the prisoner, who later died of liver cirrhosis, whether the failure to take steps towards a liver transplant was medically unacceptable, and whether the deputy's decision was chosen in conscious disregard of an excessive risk to the prisoner's health. The court found that the deputy director of prison health care was not entitled to qualified immunity for his alleged intentional denial or delay in getting the prisoner with end-stage liver cirrhosis evaluated for a liver transplant, as it was clearly established that prison officials could not intentionally deny or delay prisoner's access to necessary medical care. (Centinela State Prison, California)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
INADEQUATE CARE  
DELIBERATE  
INDIFFERENCE

*Ruiz-Rosa v. Rullán*, 485 F.3d 150 (1<sup>st</sup> Cir. 2007). The mother of a pretrial detainee brought suit against officials of the Puerto Rico prison system and prison medical personnel after her 18-year-old son died of septicemia while incarcerated. The district court granted the defendants' motion for summary judgment and the mother appealed. The appeals court affirmed. The appeals court held that the district court's dismissal with prejudice of the mother's complaint for failure to comply with a court order requiring her to file a clearly stated amended complaint was an abuse of discretion, but that there was no evidence of deliberate indifference on the part of prison personnel to the serious medical needs of pretrial detainee, as required for the mother's claim under the Fourteenth Amendment. The court noted that the detainee received medical care in the form of draining of his abscess, blood cultures, and two different antibiotics. (Bayamón Correctional Complex, Puerto Rico)

- U.S. District Court  
CONTRACT SERVICES  
DENTAL CARE  
DELIBERATE INDIF-  
FERENCE
- Samuel v. Carroll*, 505 F.Supp.2d 256 (D.Del. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The officials moved to dismiss and the district court granted the motions. The inmate filed a motion for partial reconsideration. The prison's contract medical provider filed a motion for summary judgment, and a second provider filed a motion for an entry of judgment. The district court denied the motions for reconsideration, summary judgment and entry of final judgment. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the contract medical provider had a policy or custom, in the form of a standard eight to nine month delay for tooth repair, that amounted to deliberate indifference to the inmate's serious medical needs. The motions to compel discovery were granted in part and denied in part. (Delaware Correctional Center)
- U.S. District Court  
HEARING IMPAIRED  
ADA- Americans with  
Disabilities Act
- Sanders v. Ryan*, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the state's failure to rebut the hearing-impaired inmate's evidence in opposition to a summary judgment motion that the prison denied him access to his bi-aural headphones, allowed the inference of discriminatory animus, as required to establish a claim under Title II of the Americans with Disabilities Act (ADA). The inmate had arranged to have four items, including the headphones, shipped to the prison before the effective date of the rule limiting prisoners' possessions, and the prison issued a television and a calculator but not headphones. The court held that the state's refusal to issue the hearing-impaired inmate bi-aural headphones so that he could watch television did not violate his First Amendment rights, where the inmate did not have a right to watch television, he was still able to receive information, ideas, and messages through books, magazines and newspapers, and the inmate acknowledged in his complaint that he was able to hear his television without his hearing aids. (Arizona Department of Corrections)
- U.S. District Court  
DELAY IN CARE  
INADEQUATE CARE
- Shuler v. Edwards*, 485 F.Supp.2d 294 (W.D.N.Y. 2007). A state prisoner who fell in his cell and sustained a broken ankle filed a pro se § 1983 claim against a nurse and a physician's assistant who treated him at a prison hospital, alleging inadequate medical treatment. The district court granted summary judgment for the defendants. The court held that the prisoner failed to establish that he received inadequate treatment from the physician's assistant and nurse, although x-rays were not taken until a day after injury, 17 days passed between the x-rays and surgery, and the prisoner alleged that such delay resulted in severe pain and caused him to walk with a limp. The court noted that the physician's assistant and nurse treated the prisoner by immobilizing his ankle, giving him crutches and pain relievers, and providing for further evaluation and treatment, and there was no proof that they acted with a culpable state of mind or intended to inflict pain on prisoner. (Attica Correctional Facility, New York)
- U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE
- Streeter v. Goord*, 519 F.Supp.2d 289 (N.D.N.Y. 2007). A prisoner brought a § 1983 action, alleging prison officials and medical personnel acted with deliberate indifference in treating his sickle cell anemia in violation of the Eighth Amendment. The court granted the defendants' motion for summary judgment. The court held that the inmate's condition during the sickle cell crisis was a "serious medical condition," for the purposes of an Eighth Amendment § 1983 claim. The court found that there was no evidence that a prison doctor knowingly disregarded an excessive risk to the prisoner's health or safety, and that a delay in flushing the prisoner's catheter was not a serious medical need. According to the court, the prisoner's conclusory allegations about prison nurses were insufficient to establish that they knowingly disregarded a serious risk to his health. The court concluded that there was no evidence that the prison commissioner was aware of the alleged constitutional violations that occurred, nor was there any evidence that he implemented or sanctioned policies or customs amounting to a constitutional violation, as was required to impose supervisory liability in § 1983 action. The court also found that the prison superintendent had no personal involvement in alleged violations as was required to impose supervisory liability under § 1983. The court noted that the superintendent was not serving at the prison at the time of the events relevant to the prisoner's claims. (Coxsackie Correctional Facility, New York)
- U.S. District Court  
PRETRIAL DETAINEE  
CONTAGIOUS  
DISEASES  
DELIBERATE INDIF-  
FERENCE
- Thomas v. Sheahan*, 499 F.Supp.2d 1062 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors, and a correctional medical technician, on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia. The administrator alleged violations of the detainee's constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The defendants moved for summary judgment and to strike documents. The district court granted the motions in part and denied in part. The court did not strike all of the plaintiff's summary judgment submissions, for allegedly failing to disclose witnesses or individuals with relevant information who submitted affidavits, given that the plaintiff had disclosed witnesses prior to discovery deadline. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee's illness was an objectively serious medical need, and whether correctional officials and a correctional medical technician were aware of the detainee's serious medical symptoms. The court found that the supervisors of the correctional officers were not deliberately indifferent to the detainee's serious medical condition, where the officers did not contact their supervisors about the detainee until the morning that he died, the supervisors obtained medical care for the detainee, and the supervisors were not responsible for security checks or rounds of jail. The court also found that summary judgment was precluded on the issue of causation due to a genuine issue of material fact as to whether the county was deliberately indifferent to its widespread practice of failing to train its employees on how to handle inmate medical requests at the county jail. Summary judgment was also precluded by genuine issues of material fact as to whether the county was deliberately indifferent to: (1) its widespread practice of understaffing correctional officers at the county jail; (2) its widespread practice of failing to repair broken video monitoring systems for inmate surveillance at the jail; and, (3) its widespread policy or practice of falsifying daily logs to cover up missed security checks on inmates. (Cook County Jail, Illinois).

U.S. District Court INADEQUATE CARE	<i>Thomas v. Sheahan</i> , 514 F.Supp.2d 1083 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors and correctional medical technician on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia, alleging violations of constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The court held that the administrator's failure to produce documentary evidence of lost wages or child support payments did not preclude her from introducing evidence at trial. The court found that the physician was not qualified to testify as to the manifestations of meningitis absent evidence that the physician was an expert on meningitis or infectious diseases. According to the court, a jail operations expert's proposed testimony that the county did not meet minimum standards of the conduct for training of correctional staff was inadmissible. The court also found that evidence of jail conditions was relevant and thus admissible, where the administrator of the detainee's estate argued that county officials should have known the detainee was sick because he was throwing up in his cell and in a day room. (Cook County, Illinois)
U.S. District Court TRAINING INADEQUATE CARE	<i>Turner v. Correctional Medical Services</i> , 494 F.Supp.2d 281 (D.Del. 2007). A former prisoner brought a § 1983 action against a state, prison officials, and a medical service company, alleging inadequate medical care for hepatitis while he was incarcerated. After the district court entered partial summary judgment in the prisoner's favor, the company moved to alter or amend the judgment. The district court denied the motion. The court held that expert testimony regarding the need to train the inmate suffering from hepatitis C to rotate the injection site for his interferon shots was not required to establish the medical service company's deliberate indifference to the inmate's serious medical needs, where the medical record was replete with references to the inmate self-injecting at the same site and an infection occurring at the injection site. (Delaware Correctional Center)
U.S. District Court INVOLUNTARY MEDICATION	<i>U.S. v. Jaramillo-Ayala</i> , 526 F.Supp.2d 1094 (S.D.Cal. 2007). The U. S. government moved for an order allowing involuntary medication of a defendant in order to render him fit to stand trial on charges of reentry after deportation. The district court issued a medication order. The court held that while medication could not be sustained on grounds that the defendant was a danger to himself or others, medication was medically necessary and appropriate to render the defendant fit for trial on serious crimes. (Alvarado Parkway Institute, California)
U.S. Appeals Court RECORDS	<i>U.S. v. Miller</i> , 477 F.3d 644 (8th Cir. 2007). A supervisor at a county detention center was convicted in the district court of depriving two prisoners of their Eighth Amendment right to be free from cruel and unusual punishment. The supervisor appealed and the appeals court affirmed. The court held that there was sufficient evidence that the supervisor acted maliciously and sadistically toward the prisoner, in violation of the Eighth Amendment prohibition against cruel and unusual punishment, even though the supervisor could have inflicted even greater injuries upon the prisoner. Evidence indicated that the supervisor punched the prisoner when there was no legitimate reason to do so, kicked the prisoner, and stomped on the prisoner while he was lying on the ground. The court noted that the assailing officer's ability to inflict greater injuries upon a prisoner does not make an attack any less malicious or sadistic, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court held that the prisoner's medical records, which did not identify the supervisor as the individual responsible for the prisoner's injuries, were admissible under the medical treatment or diagnosis exception to the hearsay records. (Craighead County Detention Facility, Arkansas)
U.S. District Court DELIBERATE INDIFFERENCE MEDICATION	<i>Wakat v. Montgomery County</i> , 471 F.Supp.2d 759 (S.D.Tex 2007). The estate of inmate who died in a county jail brought a § 1983 action against the county, jail physician, and other county personnel. The defendants moved for summary judgment. The district court held that the county was not liable based on a county policy, the county was not liable for failure to train or supervise county jail personnel, and a physician did not act with deliberate indifference to the inmate's serious medical needs. The court held that the county sheriff was not liable in his individual capacity under § 1983 to the estate of the inmate absent a showing that he participated in any of the alleged activities in any individual capacity. According to the court, the county was not liable to the estate under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, since the county policy did not directly cause county personnel to fail to seek physician approval to reinstate the inmate's prescription medication. The court noted that although the jail had a written policy of abruptly discontinuing any narcotic medications when inmates were initially processed for booking, regardless of whether the inmate had a valid prescription for the narcotic, the jail also had a policy allowing the narcotic medications to be reinstated with the permission of a doctor. The court held that the county jail physician did not act with deliberate indifference to the serious medical needs of the inmate, where the physician did not refuse to treat the inmate nor ignore his complaints, prescribed medication when he was first called about the inmate's disorientation and hallucinations, and saw the inmate and diagnosed him with undifferentiated schizophrenia. According to the court, although the physician failed to see signs of withdrawals from benzodiazepine, there was no indication that he intentionally treated the inmate for schizophrenia while knowing that, in fact, he was suffering dangerous withdrawals from a prescription drug to which he was addicted. (Montgomery Co. Jail, Texas)
U.S. Appeals Court EMERGENCY CARE INADEQUATE CARE	<i>Watson v. U.S.</i> , 485 F.3d 1100 (10th Cir. 2007). A guardian brought an action on behalf of an incapacitated former federal prisoner under the Federal Tort Claims Act (FTCA), alleging that the government responded negligently to the prisoner's medical condition, resulting in a brain hemorrhage that left him severely and permanently disabled. The district court entered a jury verdict in favor of the defendants and the guardian appealed. The appeals court affirmed. The court held that there was sufficient evidence that the government lacked notice of the need to closely observe the prisoner for post-surgical complications upon his return to the correctional facility after brain surgery. Evidence indicated that the prisoner did not require observation upon his return to the facility, that he was neurologically normal except for mild speech problems, and that he was discharged with the instruction only that he continue speech and occupational therapy, with no need for further observation. The court upheld the district court's finding that the government did not breach any applicable

standard of care by failing to summon an air ambulance after the prisoner was found unconscious in his cell, where expert physicians testified that the use of an air ambulance was dependent upon distance, necessity, and the patient's best interest, but did not suggest that such factors applied to the prisoner's case. (Federal Correctional Institute in El Reno, Oklahoma)

U.S. Appeals Court  
DENTAL CARE

*Whittington v. Ortiz*, 472 F.3d 804 (10th Cir. 2007). A state prisoner brought a § 1983 action alleging his rights were violated by the denial of access to free hygiene items. The district court dismissed the action and the prisoner appealed. The appeals court held that the prison's failure to timely respond to the prisoner's Step Three grievance regarding access to hygiene products established that the prisoner exhausted his available administrative remedies, as required by PLRA. A Step 3 grievance requires the prison to respond within 45 days. 196 days after he filed his Step 3 grievance he still had not received a response and then filed suit. The court held that the prisoner's elaboration on the way the prison's policies caused him to suffer dental problems satisfied his obligation to state an injury to support his Eighth Amendment claim but did not equate to a delay in dental treatment claim. The prisoner contended that he was unable to pay for hygiene items out of his prison income after the prison debits his prison account to pay for restitution, medical care, legal photocopies, and legal postage. (Colorado Department of Corrections)

U.S. Appeals Court  
DELAY IN TREATMENT  
MEDICATION  
DELIBERATE INDIF-  
FERENCE

*Williams v. Liefer*, 491 F.3d 710 (7th Cir. 2007). A prisoner brought a § 1983 action against prison officers, alleging deliberate indifference to his medical needs. Following the entry of a jury verdict in favor of the prisoner, the district court denied the officers' motion for judgment as a matter of law. The officers appealed. The appeals court affirmed. The court held that the issue of whether a delay in medical care unnecessarily prolonged and exacerbated the prisoner's pain and unnecessarily prolonged his high blood pressure was for a jury, and the officers were not qualifiedly immune. The court noted that medical records indicated that the nitroglycerin the prisoner eventually received almost immediately relieved his pain and lowered his blood pressure, such that a jury could find that the delay caused the prisoner six extra hours of pain and dangerously elevated blood pressure for no good reason. (Menard Correctional Center, Illinois)

U.S. District Court  
DELAY IN CARE  
MEDICATION

*Williamson v. Correctional Medical Services*, 494 F.Supp.2d 285 (D.Del. 2007). An inmate brought a § 1983 action against prison's health care providers, alleging violations of his rights under the First, Fifth, Eighth, and Fourteenth Amendments. The inmate alleged that he experienced a pervasive and continuous pattern of unnecessary and harmful medication interruptions during a four year period. He alleged he required thyroid medication. The inmate also alleged that he suffered an acute knee injury involving muscle, tendon and ligament damage as a result of an injury, and that the defendants were deliberately indifferent by disregarding his symptoms and denying or obstructing medical treatment for the condition. The district court dismissed the action. The court found that the action was brought against a wrongly named provider, requiring dismissal as to that entity. The court noted that the provider named in the suit did not contract with the Department of Corrections (DOC) to provide medical services, as alleged in the complaint. (Delaware Correctional Center)

U.S. Appeals Court  
REHABILITATION ACT  
MENTAL HEALTH  
ADA- Americans With  
Disabilities Act

*Winters v. Arkansas Dept. of Health and Human Services*, 491 F.3d 933 (8th Cir. 2007). The administrator of the estate of a mentally ill pretrial detainee/civil committee who had died of peritonitis in a county jail sued a sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court entered judgment for the defendants. The administrator appealed and the appeals court affirmed. The appeals court held that the pretrial detainee was not discriminated against on the basis of his mental illness, as required to establish violation of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The court noted that the detainee was arrested for criminal trespass, and although he was not treated for his peritonitis due to his inability to communicate because of his mental illness, the sheriff and other jail officials sought immediate treatment for the detainee's mental illness, and attempted to transport him to a state hospital, but he was denied admittance due to lack of available space. The court found that neither the Arkansas Department of Human Services (DHS) nor the county sheriff were deliberately indifferent to the serious medical needs of the detainee, nor was there a policy or custom to deprive mentally ill detainees of treatment. According to the court, the detainee died from a condition that neither defendant knew of or suspected, the sheriff and other jail officers attempted to get the detainee into a mental health treatment facility, but no facility would accept custody of him. (Benton County Jail, Arkansas)

U.S. Appeals Court  
INTAKE SCREENING  
DELIBERATE INDIF-  
FERENCE

*Williams v. Rodriguez*, 509 F.3d 392 (7th Cir. 2008). An arrestee sued a city and others under § 1983, asserting claims for false arrest and deliberate indifference to his medical needs. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The court held that the arrestee's asthma was not objectively serious during the time he was being processed, and therefore an officer was not deliberately indifferent to his medical needs. According to the court, the arrestee's statements to the officer that he had asthma, needed his medication, and could not breathe, made in the context of a request that the arrestee take a breathalyzer test, were insufficient by themselves to show that he was suffering from a serious attack. (City of Chicago Police Department, Illinois)

## 2008

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
SMOKE-FREE  
ENVIRONMENT

*Abdullah v. Washington*, 530 F.Supp.2d 112 (D.D.C. 2008.) An inmate filed a § 1983 action seeking damages for violation of his Eighth Amendment rights stemming from his alleged exposure to second-hand tobacco smoke while confined at a District of Columbia detention facility. The district court granted summary judgment in favor of the defendants. The court held that the plaintiff's expert's testimony failed to demonstrate a causal relationship between environmental tobacco smoke (ETS) and the increased risk of harm to the inmate. The court noted that the expert was a biophysicist, not a medical doctor, never went to the jail, and never examined the inmate or his medical records. The court held that the officials were not deliberately indifferent to the health

risks caused by environmental tobacco smoke (ETS), even if the officials inadequately enforced no-smoking rules, where a non-smoking policy was in existence during the inmate's incarceration, and the jail was undergoing extensive renovation to improve air quality, including the ventilation system. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
EMERGENCY CARE  
RELIGION

*Abdur-Raqiyb v. Erie County Medical Center*, 536 F.Supp.2d 299 (W.D.N.Y. 2008). A jail prisoner brought a federal civil rights suit against public hospitals and a physician, alleging violation of his First and Eighth Amendment rights during emergency treatment for a suspected heart attack. The district court granted the defendants' motions for summary judgment. The court held that the hospitals' failure to communicate, that allegedly resulted in an overdose of morphine upon the prisoner's arrival at a second hospital, did not involve the requisite deliberate indifference for an Eighth Amendment claim. The court noted that the failure to communicate did not establish the intent to cause the prisoner pain or physical harm or a conscious disregard of a substantial risk of harm. The court held that the Muslim prisoner's First Amendment right to free exercise of religion was not violated when hospital personnel administered drugs that were pork-derived and gave him a CT scan in which shellfish-derived dye was used to rule out a possible heart attack, in response to his complaints of chest pain, without informing him in advance of the nature of the substances involved. The court noted that the prisoner acknowledged that his religion permitted the administration of otherwise forbidden substances in emergencies, and hospital staff would have exposed themselves to liability had they not administered the medications and CT test. (Groveland Correctional Facility, New York)

U.S. District Court  
INVOLUNTARY  
MEDICATION

*Anglin v. City of Aspen, Colo.*, 552 F.Supp.2d 1205 (D.Colo. 2008). A pretrial detainee brought a civil rights action, alleging that a county sheriff, county jailers, and others violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while in custody at a county jail. The district court granted summary judgment for the defendants in part. The court held that a county sheriff's deputy personally participated in the decision to sedate the detainee and therefore the deputy could be liable in his individual capacity under § 1983. The deputy had called paramedics and admittedly lobbied the medics to sedate the detainee, he allegedly falsely reported to the paramedics that the detainee had been banging her head and throwing herself against her steel cell door, and he participated in physically restraining the detainee during the injection, at the request of the paramedics. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the deputy falsely reported to the paramedics. The court found that the deputy was not entitled to qualified immunity from liability. The court found that the training of county jail personnel by the county sheriff and other officials with respect to forcible sedation of pretrial detainees in the county jail, was not deliberately indifferent to the due process rights of the detainees, and therefore the sheriff and county officials were not liable under § 1983 for failure to properly train. The training required personnel to call the paramedics and let the paramedics, with the advice of a physician, make the decision as to whether or not to sedate. (Pitkin County Jail, Colorado)

U.S. District Court  
INVOLUNTARY  
MEDICATION  
PRIVATE PHYSICIAN  
PSYCHOTROPIC DRUGS

*Anglin v. City of Aspen, Colo.*, 552 F.Supp.2d 1229 (D.Colo. 2008). A jail inmate brought a civil rights action, alleging that an emergency room physician violated her constitutional rights by forcibly injecting her with antipsychotic medication while she was in custody. The physician filed a motion for summary judgment, which was granted by the district court. The court held that the physician "acted under color of state law" within the meaning of § 1983 when he ordered the inmate to be involuntarily sedated, and that the physician exercised reasonable medical judgment in deciding to forcibly sedate the inmate. The court noted that although the private physician did not contract directly with the state to treat the inmate, the physician however undertook a public function because the provision of medical services to inmates was traditionally the exclusive prerogative of the state. The inmate appeared highly intoxicated and out of control, was pounding and throwing her body against her cell door, was violently pulling against her restraints and thrashing about, and was unable to gain control in the presence of the paramedics or to allow her vital signs to be taken. (Pitkin County Jail, Colorado)

U.S. District Court  
INVOLUNTARY  
MEDICATION

*Anglin v. City of Aspen*, 562 F.Supp.2d 1304 (D.Colo. 2008). A jail inmate brought a civil rights action under § 1983 against a city, former and current police officers, and a police chief, alleging that the defendants violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while she was in custody at a county jail. The district court granted summary judgment for the defendants. The court held that officers did not deprive the inmate of due process by restraining her while paramedics forcibly sedated her and that the officers' act of restraining the inmate while she was sedated did not amount to excessive use of force. The court found that the police chief was not liable for failure to train and/or supervise officers, where the training reflected the sound conclusion that medical professionals, rather than law enforcement personnel, were the individuals most qualified to determine whether sedation was appropriate. According to the court, absent a policy of sedating detainees, the city was not municipally liable under § 1983. The court held that the officers' act of restraining the inmate while paramedics forcibly administered antipsychotic medication to her was not substantially motivated as a response to her exercise of allegedly constitutionally protected conduct, as would support the inmate's First Amendment free speech retaliation claim against the officers, where the physician, not the officers, had legal authorization to decide whether an emergency existed that justified the inmate's forced sedation, and the officers did not participate in making the decision to forcibly sedate the inmate. (City of Aspen, Colorado)

U.S. Appeals Court  
CONTRACT SERVICES  
DELAY IN TREATMENT  
DELIBERATE  
INDIFFERENCE

*Brown v. District of Columbia*, 514 F.3d 1279 (D.C. Cir. 2008). A District of Columbia prisoner brought Eighth Amendment civil rights claims against the District, mayor, operator of a private prison and various correctional officials and employees, among others. The district court dismissed certain claims for failure to effect service and others for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim for violation of his Eighth Amendment rights through deliberate indifference to his serious medical needs. The court also found that the allegations were

sufficient to state a claim for *Monell* liability against the District for Eighth Amendment violations by alleging that prison officers failed to transfer him for treatment for 60 days following a physician's notification that the prisoner was in need of immediate hospitalization for gallstones. The court found that the allegations were insufficient to state a supervisory liability claim against a correctional official who supervised the care of prisoners "housed in contract facilities" for alleged wrongdoing at a correctional facility that did not qualify as a "contract facility". (District of Columbia, Corrections Corporation of America, Occoquan Correctional Facility in Lorton, Virginia)

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
NEGLIGENCE  
SUICIDE

*Brumfield v. Hollins*, 551 F.3d 322 (5<sup>th</sup> Cir. 2008). The daughter of a detainee who hung himself while confined in a "drunk tank" of a county jail brought a § 1983 action against the county, and a sheriff and deputies in their individual and official capacities. The district court awarded summary judgment to each defendant sued in his individual capacity on the basis of qualified immunity, but denied summary judgment to individual defendants in their official capacities and to the county. After a trial, the district court directed a verdict in favor of all officers and the county. The daughter appealed. The appeals court affirmed. The court held that the sheriff was protected by qualified immunity and that the district court did not abuse its discretion by excluding expert testimony indicating that the detainee was alive when paramedics arrived at the jail. The court found that the county was not liable under § 1983. According to the court, the sheriff was entitled to qualified immunity from the claim that he failed to adopt any written policy pertaining to inmate supervision or medical care, where verbal policies existed concerning inmate supervision and medical care. The court found that the sheriff's efforts in training and supervising deputies were not deliberately indifferent, as required for the sheriff to be liable under § 1983 for the suicide of a drunk driving detainee. The court noted that the deputies did receive training, and that there was no evidence of a pattern of similar violations or evidence that it should have been apparent that a constitutional violation was the highly predictable consequence of an alleged failure to train. The court found that while the deputies' conclusion that the detainee who had hung himself was already dead, and their resulting failure to make any attempt to save his life, were arguably negligent, this conduct alone did not amount to deliberate indifference, nor was any county custom or policy the moving force behind the deputies' conduct, as required for the county to be liable under § 1983 for denial of reasonable medical care. (Marion County Jail, Mississippi)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
INTAKE SCREENING  
PRETRIAL DETAINEE

*Burnette v. Taylor*, 533 F.3d 1325 (11<sup>th</sup> Cir. 2008). The father of a detainee who died while in custody in a county jail brought a § 1983 claim against county sheriff's deputies and jailers, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court reversed and remanded. The court held that the arresting officers were not deliberately indifferent to the serious medical needs of the detainee who died after ingesting a lethal combination of drugs while in custody in the county jail. Although the officers had been warned by the detainee's stepfather that the detainee was strung out on drugs, and one officer observed that the detainee had glassy eyes and appeared to be under the influence of something, the officers saw only that the detainee possessed a bottle of prescription pills. The court noted that neither the detainee nor any family member requested that the detainee be given medical treatment, and the symptoms exhibited by the detainee were not necessarily indicative that medical attention was required.

The court found that a jailer was not deliberately indifferent to the serious medical needs of the detainee. The jailer was in charge of dressing out the detainee before he was placed in his cell, and although the jailer found a bottle of prescription pills and observed that the detainee was wasted, the detainee advised that he had just woken up, and no one told the jailer that the detainee needed medical help or needed to be looked after.

The court also held that a jailer was not deliberately indifferent to the serious medical needs of the detainee even though the jailer was aware that the detainee was in possession of a bottle of pills when he was arrested, that his speech was slurred, that he needed assistance when he was moved from one cell to another and that his eyes were rolling back in his head at that time, and that the detainee was making a snoring sound at the time of one bed check. According to the court, the jailer was never aware that the detainee could have ingested a lethal amount of drugs, no one ever recommended to the jailer that the detainee be placed in a holding cell or otherwise be observed, and the jailer observed the detainee laughing and talking with his cellmates at one point. (Bacon County Jail, Georgia)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Burns v. Trombly*, 624 F.Supp.2d 185 (N.D.N.Y. 2008). A state prisoner brought a § 1983 action against prison employees, alleging that his constitutional rights under the Eighth and Fourteenth Amendments were violated when the employees used excessive force during an attempt to move him to a different prison cell, and when they were deliberately indifferent to his serious medical needs arising from that use of excessive force. The employees moved for partial summary judgment and the district court granted the motion. The court held that the assertion in the prisoner's complaint was insufficient to create a genuine issue of material fact with regard to an employee's personal involvement in the alleged use of excessive force. According to the court, the prison employee who videotaped the alleged use of excessive force was not deliberately indifferent to the prisoner's serious medical needs arising from that incident, where the prisoner did not explain to the employee why he needed to go to the medical clinic, the employee did not hear the prisoner's request, and the employee did not witness any alleged loss of consciousness or facial swelling while standing outside the prisoner's cell door. The court held that the state prisoner's letter complaining to a superintendent was too brief to place prison employees on notice that any constitutional violation had actually occurred, and thus was insufficient to create a genuine issue of material fact with regard to the employees' personal involvement in the alleged use of excessive force and deliberate indifference to his serious medical needs arising from that use of excessive force. (Upstate Correctional Facility, New York)

<p>U.S. District Court  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE  CARE</p>	<p><i>Cameron v. Myers</i>, 569 F.Supp.2d 762 (N.D.Ind. 2008). A prisoner moved for a default judgment on a § 1983 claim against a prison doctor for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted the motion. The court held that the prison doctor was deliberately indifferent to the prisoner's serious medical needs, and an award of \$250,350 in compensatory damages, and denial of punitive damages was warranted. According to the court, the doctor was deliberately indifferent to the prisoner's serious medical needs in failing to provide the prisoner with the necessary and urgent medical care and treatment required for his Crohn's disease, which also led to the prisoner's development of a flesh eating disease. The court found that the doctor was plainly subjectively aware of the prisoner's objectively serious medical condition because of the diagnosis established in his previous doctor's medical records as well as by what the prisoner told him, and the doctor's inaction forced the prisoner to endure tremendous pain and suffering stemming from his untreated Crohn's disease as well as the newly formed flesh eating disease, which ceased only when the prisoner moved to a new facility and began treatment under another physician. (Indiana State Prison)</p>
<p>U.S. District Court  CONTRACT SERVICES  INADEQUATE CARE  MISDIAGNOSIS  WORK ASSIGNMENT</p>	<p><i>Cason v. District of Columbia</i>, 580 F.Supp.2d 76 (D.D.C. 2008). A prisoner brought a § 1983 action against a correctional services company, alleging violations of the Eighth Amendment related to an injury to the prisoner's eye, alleged misdiagnosis, and alleged inadequate treatment. The district court granted summary judgment for the company. The court found that the company was not responsible for dishwashing at the prison or for the prisoner's medical care, and thus the company was not liable under § 1983 for the prisoner's alleged eye injury while working in the kitchen as a dishwasher, alleged misdiagnosis by prison medical staff, or alleged inadequate treatment. (ARAMARK Correctional Service, District of Columbia Central Detention Facility, Operated by Corrections Corporation of America)</p>
<p>U.S. District Court  DELAY IN TREATMENT  INADEQUATE CARE  MEDICATION</p>	<p><i>Collins v. Williams</i>, 575 F.Supp.2d 610 (D.Del. 2008). An inmate brought a § 1983 action against a warden, a prison's medical provider, medical director, and corrections officers, alleging lack or delay of medical treatment and/or improper medical treatment. Following dismissal of the claims against the medical director and corrections officers, and dismissal of the claims against the warden and provider, the inmate filed an amended complaint against the warden and provider and moved for the appointment of counsel, which was denied. The defendants moved for summary judgment, and the inmate moved for reconsideration of the order denying his motion for appointment of counsel. The district held that the warden and provider were entitled to summary judgment. The court held that dismissal was warranted for the inmate's refusal to cooperate in the discovery process. The court noted that the warden had no personal involvement in the alleged denial of the inmate's access to medical treatment or the alleged interference with the inmate's medical care, and the warden responded to the inmate's grievances and letters by directing him to the individuals who could be of assistance. The court found that the provider was not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. According to the court, rather than ignoring the inmate's medical complaints, he provided care and treatment. The court noted that although not to inmate's liking and perhaps not as quickly as the inmate wished, all delays in his receiving medication, save one, were for pain medication and were for a relatively short period. The court declined to second guess the medical decision to discontinue the inmate's use of trazodone, a drug primarily used for the treatment of depression. (Howard R. Young Correctional Institution, Delaware)</p>
<p>U.S. District Court  CONTAGIOUS DISEASE  MALPRACTICE</p>	<p><i>Costa v. County of Burlington</i>, 566 F.Supp.2d 360 (D.N.J. 2008). A plaintiff brought a wrongful death action against a doctor, arising from alleged malpractice in the treatment of an inmate who was at a corrections center. The district court denied the doctor's motion to dismiss the action based on the plaintiff's alleged failure to comply with filing deadlines. The plaintiff claimed that the inmate contracted a MRSA infection while she was confined and died because the doctor failed to both "respond to her obvious need for medical care" and hospitalize her at the appropriate time. The plaintiff also alleged that the doctor failed to report the MRSA outbreak to the appropriate authorities. (Burlington County Corrections and Work Release Center, N.J.)</p>
<p>U.S. District Court  CONTAGIOUS DISEASES  RECORDS-ACCESS</p>	<p><i>Costa v. County of Burlington</i>, 584 F.Supp.2d 681 (D.N.J. 2008). An administrator, individually and as the representative of a deceased pretrial detainee's estate, brought civil rights and state law claims against a county and the warden of a county jail, alleging that the inmate contracted Methicillin-resistant Staphylococcus aureus (MRSA) during her incarceration and ultimately died as result of MRSA-related pneumonia. The administrator appealed the pretrial rulings of a United States Magistrate. The district court denied the appeal in part and dismissed in part. The court held that broadening the scope of discovery of documents concerning other inmates' medical treatment beyond grievances related to Methicillin-resistant Staphylococcus aureus (MRSA) would have been too intrusive and minimally probative. (Burlington County Corrections and Work Release Center, New Jersey)</p>
<p>U.S. Appeals Court  DELAY IN CARE</p>	<p><i>Danley v. Allen</i>, 540 F.3d 1298 (11<sup>th</sup> Cir. 2008). A pretrial detainee brought a § 1983 action against jailers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court entered orders denying the defendants' motions to dismiss on qualified immunity grounds, and the defendants appealed. The appeals court vacated and remanded. On remand, the district court again denied the motion to dismiss, and defendants again appealed. The appeals court affirmed. The court found that allegations in the detainee's complaint, regarding his subsequent confinement without being allowed to properly clean himself and remove pepper spray from his clothing, in a small, poorly-ventilated cell, were sufficient to state an excessive force claim. According to the court, the entire incident, consisting of both the initial pepper-spraying and the detainee's subsequent confinement in a small, poorly-ventilated cell, could be treated as a single alleged incident of use of excessive force. The court noted that the detainee's eyes nearly swelled shut, he had difficulty breathing, and he nearly passed out, while jail officials allegedly failed to take any, and then only inadequate, steps to alleviate his suffering but instead mocked and ridiculed him. The court found that the alleged mocking of the detainee while he suffered, by jailers who parodied his choking, was circumstantial evidence of their malicious intent. The court found that the allegations were sufficient to state a</p>

claim for officials' deliberate indifference to the detainee's serious medical needs. The court determined that the jailers were not entitled to qualified immunity on the detainee's deliberate indifference claim and that the detainee stated a claim against the sheriff and the jail administrator to hold them personally liable under § 1983 for alleged excessive force and deliberate indifference by the jailers. The detainee was allegedly diagnosed with chemical conjunctivitis and bronchospasms as the result of the delay in treatment. The court noted that this, along with the fact that another prisoner allegedly recognized the detainee's distress and was ultimately successful in obtaining a brief shower for him, was sufficient to show the seriousness of his medical need. (Lauderdale County Detention Center, Alabama)

U.S. District Court  
DELAY IN TREATMENT  
DELIBERATE  
INDIFFERENCE  
NEGLIGENCE

*Dantone v. Bhaddi*, 570 F.Supp.2d 167 (D.Mass. 2008). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA) and against a prison doctor under Bivens, seeking to recover for injuries allegedly sustained when the seat of a van in which he was being transported collapsed. The district court denied the defendant's motion to dismiss. The court held that the prisoner's allegations that prison staff breached its duty of care in their transportation of him by failing to properly install, maintain, and inspect the seating in a transport van, and that this breach resulted in the collapse of the seat, which resulted in the injuries to his head and neck, and ongoing pain, were sufficient facts to state a negligence claim against the United States under the Federal Tort Claims Act. The court found that the prisoner's allegations that he received no meaningful medical care following the accident, that the magnetic resonance imaging (MRI) which he eventually received six months after the accident was untimely, and that, to date, he had been unable to obtain any medical information about the results of his tests, all despite repeated complaints to the prison doctor, were sufficient to state a claim against the doctor of deliberate indifference to his medical needs in violation of the Eighth Amendment. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE

*Davis v. First Correctional Medical*, 530 F.Supp.2d 657 (D.Del. 2008). A state prisoner filed a § 1983 action alleging that a contractor that operated a prison medical center and its employees were deliberately indifferent to his ventral hernia. The contractor renewed its motion to dismiss and the prisoner moved for appointment of counsel. The district court dismissed the action. The prisoner had complained of pain following his diagnosis, and had alleged that the contractor was not responsive to his need. (Delaware Correctional Center)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Davis v. First Correctional Medical*, 589 F.Supp.2d 464 (D.Del. 2008). An inmate brought a § 1983 action against a prison medical center and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The parties cross-moved for summary judgment. The district court granted summary judgment for the defendants. The court held that a delay in surgery to treat and relieve a hernia and to resect the inmate's small bowel due to an obstruction did not constitute deliberate indifference to the inmate's serious medical need. The court noted that the inmate had been treated repeatedly for his medical conditions, that any delay in surgery was caused by diagnostic testing and scheduling, and that there was no evidence that the delay was intentional. (Howard R. Young Correctional Institution, Delaware).

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Davis v. Williams*, 572 F.Supp.2d 498 (D.Del. 2008). A state prisoner brought a § 1983 action against a prison warden, several correctional officers, and prison medical staff, alleging that the defendants failed to protect him from a fellow prisoner even though he complained of the prisoner's conduct. The prisoner moved for summary judgment, to amend, and to appoint counsel. The court held that the prison warden's participation in an after-the-fact review of the prisoner's grievance was not enough to establish the warden's personal involvement in the prisoner's alleged constitutional deprivations, as would subject the warden to personal liability in the prisoner's § 1983 action. According to the court, prison medical employees were not deliberately indifferent to the serious medical needs of the prisoner, whose jaw was broken in an altercation with a fellow inmate, in violation of the Eighth Amendment. The court noted that the prisoner's condition was monitored almost immediately after he was injured, his jaw was x-rayed one day following the injury, and two days after the injury, the prisoner was placed in an infirmary and placed on a liquid diet. The court also found no Eighth Amendment violation on the delay of approximately one week from the time the prisoner was examined by a physician for his jaw injury until the time he was surgically treated. (Delaware Correctional Center)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
PRETRIAL DETAINEE

*Dean v. City of Fresno*, 546 F.Supp.2d 798 (E.D.Cal. 2008). The widow and children of a detainee who died from complications of cocaine ingestion while incarcerated in a county jail, brought an action in state court against a city and two police officers. After removal to federal court, the defendants moved for summary judgment on all claims. The district court granted the motion in part and remanded. The court found that the officers violated the detainee's Fourteenth Amendment right to medical care when they did not obtain medical aid for the detainee after he vomited in the patrol car and rock cocaine was found in the vomit. According to the court, a rational jury could conclude that the officers knew that the detainee had swallowed rock cocaine and had a serious medical condition, and that the officers did not render care themselves, did not call for paramedics, did not take the detainee to the hospital, and did not report the discovery of rock cocaine in the vomit to the jail nurse. The court found that the officers were entitled to qualified immunity where the detainee, who did not exhibit signs of being high as his detention progressed and who was previously communicative of his symptoms, gave an inaccurate reason to explain his condition and never requested medical treatment.

The court held that the plaintiffs failed to show that the city failed to adequately train the officers. According to the court, the undisputed evidence showed that Fresno police officers receive police academy training, field training programs, on the job training, advanced officer courses, and various classes and seminars. The court noted that Fresno police officers are particularly trained: (1) to conduct evaluations to determine if a person is under the influence of a controlled substance, including rock cocaine (for those officers involved in narcotics investigations); (2) to request aid for persons in need of medical care; (3) to recognize an arrestee's need for medical care and provide such care; (4) to be aware of efforts that suspects may make to hide controlled substances, including putting such substances in their mouths; (5) to render medical aid, contact emergency

medical services or transport the suspect to the hospital if they have a reasonable belief that a suspect has swallowed a controlled substance, such as rock cocaine; (6) to know that ingestion of cocaine can cause death; (7) to know that arrested persons may have evidence in their mouth; (8) to know that persons arrested on drug charges may attempt to conceal the illegal drugs on their person; and (9) to be suspicious of those arrested and what the arrestees say. (City of Fresno and Fresno County Jail, California)

U.S. District Court  
DELIBERATE  
INDIFFERENCE

*Decker v. Dunbar*, 633 F.Supp.2d 317 (E.D.Tex. 2008). *Affirmed* 358 Fed.Appx. 509. An inmate filed a pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. The officials moved for summary judgment and the district court granted the motion. The court held that the officials' conduct in delaying the inmate's use of a restroom for 30 minutes did not amount to deliberate indifference to his medical needs in violation of the Fourteenth Amendment. According to the court, the delay in taking the inmate to a restroom was caused by the need to conduct a prisoner count, and the inmate failed to demonstrate that he suffered any injury as a direct result of the delay. The court found that placement of the inmate in a holding cell for 90 minutes on a day that the outside temperature reached 95 degrees did not amount to cruel and unusual punishment in violation of the Eighth Amendment. The court noted that even assuming the holding cell was extremely hot, 90 minutes was not an excessive period of time rising to the level of a constitutional violation. The court held that the inmate failed to demonstrate that his alleged lack of access to the prison's law library resulted in dismissal of his multiple previously filed criminal appeals and civil cases, and thus the inmate failed to establish an actual injury, as required to prevail on the claim that he was denied access to court. (Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court  
ADA-Americans with  
Disabilities Act  
EQUAL PROTECTION  
HEARING IMPAIRED

*Douglas v. Gusman*, 567 F.Supp.2d 877 (E.D.La. 2008). A deaf prisoner brought a civil rights suit alleging violation of his equal protection rights, the Americans with Disabilities Act (ADA), and the Eighth Amendment as the result of his limited access to a telephone typewriter (TTY) device for phone calls, lack of access to closed captioning for television, and verbal abuse from officers. The district court dismissed the action. The court held that the prisoner's civil rights claims arising from denial of full access to a telephone typewriter (TTY) and denial of closed captioning on a television in a parish prison accrued each time he was denied access to a TTY or captioning or was threatened or assaulted for requesting access. The court found that the differential treatment permitting other inmates unlimited telephone access, while permitting the deaf inmate only limited access, did not violate the deaf inmate's equal protection rights where the deaf inmate, who required the use of telephone typewriter (TTY) device for the deaf in a separate office, failed to show that limited access burdened a fundamental right. Legitimate security interests of the prison, where a deputy was required to escort the prisoner outside his housing area each time the prisoner used the phone, precluding the claim that he was denied equal protection based on the greater phone privileges afforded to hearing inmates who had access to phones in the housing tier. The court held that failure to provide a telephone typewriter (TTY) device on the deaf prisoner's housing tier, while providing unlimited access to phones to other prisoners, did not discriminate against the disabled inmate in violation of Title II of the ADA. According to the court, allowing the prisoner twice daily use of a TTY device on a prison facility phone outside the housing tier was meaningful access, and lack of a TTY in the housing tier affected disabled persons in general, precluding a finding of specific discrimination against the inmate in particular. The court held that alleged verbal abuse from correctional officers when the deaf prisoner complained about the lack of a telephone typewriter (TTY) was too trivial to rise to the level of a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
PRIVATE PHYSICIAN

*Duckworth v. Ahmad*, 532 F.3d 675 (7<sup>th</sup> Cir. 2008). A state prisoner diagnosed with bladder cancer brought a § 1983 action against prison doctors, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the doctors and the prisoner appealed. The appeals court affirmed. The court held that a prison doctor's failure to order a cystoscopy when the prisoner reported, and testing showed, that he was passing blood in his urine, which delayed the proper diagnosis of bladder cancer, did not constitute deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The court noted that although it would have been a better route to conduct the cystoscopy, the doctor referred the prisoner to an outside urology clinic and believed incorrectly that the prisoner was seeing an urologist. According to the court, there was no showing that the doctor suspected cancer or knew that blood in the urine involved an excessive risk of cancer, and after the doctor learned that the prisoner was, in fact, not seeing the urologist, he conducted additional testing, which did not reveal blood in the urine. (Centralia Correctional Facility, Illinois)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE

*Duffield v. Jackson*, 545 F.3d 1234 (10<sup>th</sup> Cir. 2008). An inmate in a state correctional facility brought a § 1983 action against several members of the medical staff claiming they violated his Eighth Amendment right to be free from cruel and unusual punishment by showing deliberate indifference to his medical condition. The district court dismissed the claims against some defendants and granted summary judgment in favor of others. The inmate appealed. The appeals court held that the district court did not commit a plain error in determining that the prisoner's medical treatment did not violate his Eighth Amendment rights. The court noted that the prisoner received repeated examinations and underwent lab-work and x-rays, was prescribed several different medicines, and saw an outside specialist for an ear infection. The court held that the nurse who facilitated the prisoner's various requests for medical services lacked an affirmative link with the prisoner's diagnosis and treatment, as required for liability under § 1983 on the prisoner's Eighth Amendment medical mistreatment claim. (James Crabtree Correctional Center, Helena, Oklahoma)

U.S. District Court  
FAILURE TO PROVIDE  
CARE

*Ellis v. Vaclamudi*, 568 F.Supp.2d 778 (E.D.Mich. 2008). A state prisoner brought a civil rights suit against prison medical personnel alleging due process and Eighth Amendment violations as the result of failure to treat his chronic pain from several diagnosed medical conditions. The defendants moved to dismiss for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). A magistrate filed a report and recommendation that the motion be denied and the defendants filed objections. The district court held

that the continuing violations doctrine should be applied to repeated failure to treat chronic pain, such that instances predating and postdating a prison grievance were exhausted, even if discrete grievances were not filed for each denial of treatment within the time limits of the state prison's grievance system. (Mound Correctional Facility, Michigan Department of Corrections)

U.S. District Court  
AIDS-Acquired Immune  
Deficiency Syndrome  
DELIBERATE  
INDIFFERENCE

*Estate of Chance v. First Correctional Medical Inc.*, 579 F.Supp.2d 583 (D.Del. 2008). The administrators of an inmate's estate brought a § 1983 action against Delaware Department of Corrections (DOC) officials for claims arising out of the inmate's death. The district court granted summary judgment for the officials. The court held that there was no evidence that the DOC Commissioner and the DOC Bureau Chief for the Bureau of Management Services were involved in the medical care provided to the HIV-positive inmate who died by cryptococcal meningitis, and therefore, those DOC officials were not deliberately indifferent to the inmate's medical needs in violation of the Eighth Amendment. (Howard R. Young Correctional Institution, Webb Correctional Facility, Delaware)

U.S. District Court  
DELIBERATE  
INDIFFERENCE

*Estate of Harvey ex rel. Dent v. Roanoke City Sheriff's Office*, 585 F.Supp.2d 844 (W.D.Va. 2008). The administrator of a pretrial detainee's estate brought a civil rights action under §§ 1983, 1985, and 1986 and Virginia law, against a city sheriff's department, sheriff, deputies, and prison health providers, alleging excessive use of force, failure to train, assault, battery, conspiracy, breach of a non-delegable fiduciary duty, intentional infliction of emotional distress and wrongful death. The defendants moved for summary judgment. The district court granted the motions. The court held that the estate of the pretrial detainee who died following cardiac arrest after transfer from a jail to a hospital could not sustain a deliberate indifference claim under the Fourteenth Amendment against the employees of a prison health provider, absent evidence that they actually knew of and disregarded a serious risk of harm to the detainee, or that they actually knew of and ignored a serious need for medical care. The court noted that the city sheriff and sheriff's deputies did not knowingly disregard a substantial risk of harm to the pretrial detainee in violation of Fourteenth Amendment when they relied on medical personnel's decisions as to the appropriate course of treatment for the detainee's medical needs. The court found that the city sheriff's deputies did not act with deliberate indifference when, in an attempt to transfer the detainee to a hospital for treatment, they forcibly removed the detainee from his cell, placed him face down on a stretcher, and covered him with a blanket to stop him from spitting and throwing feces at the deputies. According to the court, there was no evidence that the deputies knew that the detainee suffered from an excited delirium or serious heart condition. The court noted that the detainee was naked, slick with feces and urine, spitting, yelling, being combative, threatening to throw more bodily fluids, trying to bite, and was HIV and Hepatitis C positive. (Roanoke City Jail, Virginia)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Fear v. Diboll Correctional Center*, 582 F.Supp.2d 841 (E.D.Tex. 2008). A prisoner brought a § 1983 action against a prison system, medical center, and prison physician, alleging deliberate indifference to a serious medical need. The district court dismissed the action. The court found that the prisoner's allegations that a prison physician was deliberately indifferent to his nail fungus condition failed to state a claim under § 1983, where the nail fungus condition did not amount to a serious medical need, the physician was responsive to the prisoner's health problem, and the physician followed protocol in treating the prisoner. (Diboll Correctional Center, Texas)

U.S. Appeals Court  
ADEQUACY OF CARE  
DELIBERATE  
INDIFFERENCE

*Ford v. County of Grand Traverse*, 535 F.3d 483 (6<sup>th</sup> Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk. According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her \$214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE  
NEGLIGENCE

*Francisco v. Correctional Medical System*, 548 F.Supp.2d 128 (D.Del. 2008). A state prisoner brought an action against a correctional medical services provider, alleging claims for deliberate indifference to his need for medical treatment and medical negligence under state law. The district court granted summary judgment for the defendant. The court held that the correctional medical services provider's decision not to provide normal treatment for the prisoner's Hepatitis C did not amount to deliberate indifference to the prisoner's need for medical treatment, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. The court noted that normal treatment was contraindicated by the prisoner's psychiatric illness, and that the prisoner received full treatment that was necessary and appropriate based on documented literature and national databases. According to the court, the prisoner failed to present expert medical testimony, as required to prevail under the Delaware Medical Malpractice Act, on medical negligence claims against the correctional medical services provider. (Delaware Correctional Center)

U.S. Appeals Court FAILURE TO PROVIDE CARE WORK ASSIGNMENT DELIBERATE INDIFFERENCE	<p><i>Gabriel v. Hamlin</i>, 514 F.3d 734 (7th Cir. 2008). A state prisoner who was seriously burned while working in a prison kitchen filed a § 1983 action against prison officials alleging that they were recklessly indifferent to his serious medical needs. The district court dismissed the action for want of prosecution, and subsequently denied a motion for reconsideration. The prisoner appealed. The appeals court reversed and remanded, finding that dismissal of the prisoner's claim was not warranted as a sanction. According to the court, the prisoner's failure to secure a trial deposition of his expert as a contingency did not justify the harsh sanction of dismissal for want of prosecution. (Big Muddy River Correctional Center, Illinois)</p>
U.S. Appeals Court DELIBERATE INDIFFERENCE MALPRACTICE	<p><i>Gibson v. Moskowitz</i>, 523 F.3d 657 (6<sup>th</sup> Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part. The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive.</p> <p>According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. The psychiatrist never asked for the inmate's temperature to be monitored, even when he had learned from a nurse and other prison employees that the inmate had vomited. The nurse had advised the psychiatrist that the inmate was suffering from dehydration and severe weight loss, and that his condition was deteriorating. The psychiatrist did not examine the inmate, change his medication, or move the inmate to a cooler room.</p> <p>The case was remanded to the district court to provide justification for its allocation of \$1.5 million in compensatory damages awarded by the jury between the § 1983 Eighth Amendment deliberate indifference claim and the medical malpractice claim. The court had allocated \$683,500, representing Michigan's high-tier non-economic damages cap to the medical malpractice claim, and the rest to the deliberate indifference claim, but it failed to provide any explanation for the allocation. The appeals court held that the allocation did not follow intuitively from the evidence, since a higher standard of culpability was required for the deliberate indifference claim. (Riverside Correctional Facility, Michigan)</p>
U.S. Appeals Court DELIBERATE INDIFFERENCE MALPRACTICE MEDICATION NEGLIGENCE	<p><i>Gil v. Reed</i>, 535 F.3d 551 (7<sup>th</sup> Cir. 2008). A federal prisoner brought a Bivens action against a prison doctor, physician's assistant, and the United States alleging negligence, malpractice, and deliberate indifference to his serious medical needs in violation of his Eighth Amendment rights. The district court granted summary judgment in favor of defendants. On appeal, the appeals court vacated and remanded. On remand, the district court again granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court again vacated and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the refusal of the physician's assistant to fill the prisoner's prescription for antibiotics harmed the prisoner, and whether the prison physician acted with deliberate indifference to the prisoner's serious medical needs when he prescribed medication which a specialist had warned against while simultaneously canceling other prescribed products. (Federal Correctional Institution, Oxford, Wisconsin)</p>
U.S. District Court DELIBERATE INDIFFERENCE DENTAL CARE	<p><i>Gonzales v. Brevard</i>, 531 F.Supp.2d 1019 (W.D.Wis. 2008). A state prisoner filed a § 1983 action claiming that a dentist and nurses employed by the Department of Corrections violated his Eighth Amendment rights due to the prisoner's pain and bleeding following a tooth extraction. The defendants moved for summary judgment. The district court granted summary judgment in favor of the defendants. The court held that the dentist and nurses were not deliberately indifferent to the prisoner's serious dental health needs following a tooth extraction that was not closed with sutures. The court noted that the dentist and nurses provided reasonable medical treatment that did not substantially depart from accepted professional judgment by packing the surgical opening, as a common alternative to sutures. (Columbia Correctional Institution, Wisconsin.)</p>
U.S. District Court DELIBERATE INDIFFERENCE MENTAL HEALTH PSYCHOTROPIC DRUGS SUICIDE	<p><i>Graham v. Van Dycke</i>, 564 F.Supp.2d 1305 (D.Kan. 2008). An inmate brought a § 1983 action against medical providers working at a state correctional facility, alleging violations of her Eighth Amendment due process rights arising from a strip search conducted by a male officer. She also challenged her mental health confinement. The district court granted summary judgment for the medical providers. The court held that the prison doctor's decision to remove the inmate from her cell after she became agitated and demanded two psychotropic drugs and to place her in mental health segregation was not deliberate indifference. The court noted that the doctor's decision was based on the inmate's previous history of mental illness and the doctor's knowledge that the inmate previously had a bad experience using one of the drugs she requested. The inmate threatened to harm other inmates, and the doctor feared for the inmate's safety because she had access to scissors. The court found that removal of the female inmate from her cell into administrative segregation and removal of her clothing, after she became agitated and demanded psychotropic drugs, did not violate her privacy or Eighth Amendment due process rights, even though officers who performed such tasks were all male. According to the court, the inmate was on suicide watch, which required removal of clothing to avoid self-injury, removal was done pursuant to established procedure and was videotaped, and a staffing shortage rendered it impractical to include a female officer on the removal team. (Topeka Correctional Facility, Kansas)</p>

<p>U.S. Appeals Court          DELAY IN CARE          DELIBERATE          INDIFFERENCE          MEDICATION</p>	<p><i>Grieverson v. Anderson</i>, 538 F.3d 763 (7<sup>th</sup> Cir. 2008). A federal pretrial detainee who was a Canadian citizen and who was held in a county jail brought actions against a city and against a sheriff, jail commander, sergeant, jail officers, and the United States marshal. The detainee sued the defendants in their official and individual capacities, asserting state-law negligence and constitutional claims, § 1983 claims, and claims under the Alien Tort Claims Act. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that the detainee did not show that the alleged practice at the county jail of dispensing an inmate or detainee's entire drug prescription at one time was a widespread practice, reflective of a policy choice made by the county sheriff, as required to establish a § 1983 claim against the sheriff in his official capacity. According to the court, the detainee did not establish the frequency of the claimed practice or indicate how many such disbursements to others he witnessed. The court held that summary judgment was precluded by verifying medical evidence of a genuine issue of material fact as to whether a delay in securing medical care for the detainee's broken nose was deliberate indifference to his serious medical needs. According to the court, evidence that the detainee suffered a nasal fracture, could experience further bleeding, and possibly would need to see a specialist, and that the detainee later underwent painful nose surgery, would help a jury determine whether the one and one-half day delay by jail officers in getting the detainee medical attention unnecessarily prolonged and exacerbated the detainee's pain. (Marion County Jail, Indiana)</p>
<p>U.S. Appeals Court          RESTRAINTS</p>	<p><i>Grinter v. Knight</i>, 532 F.3d 567 (6<sup>th</sup> Cir. 2008). A state prisoner, proceeding pro se, brought §§ 1981 and 1983 actions against prison officials, alleging violations of his right to due process, right to equal protection, and Eighth Amendment rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the prisoner had no due process liberty interest in freedom from use of four-point restraints or in having a prison nurse arrive before corrections officers placed the prisoner in the restraints. According to the court, such restraints were expected adverse consequences of confinement, the prisoner had been accused of hitting a corrections officer, and officers entered the prisoner's cell to conduct an investigation. (Kentucky State Penitentiary)</p>
<p>U.S. Appeals Court          INADEQUATE CARE</p>	<p><i>Hannah v. U.S.</i>, 523 F.3d 597 (5<sup>th</sup> Cir. 2008). A federal prisoner filed a <i>pro se</i> complaint under the Federal Tort Claims Act (FTCA) against the United States and others involved in the medical treatment that he received while suffering from Methicillin-Resistant Staphylococcus Aureas (MRSA), a sinus infection. After the prisoner's untimely motion for appointment of an expert witness was denied, the United States moved for summary judgment. The district court granted the motion and dismissed the lawsuit. The prisoner appealed. The appeals court affirmed. The court held that the district court did not abuse its discretion in failing to appoint an expert witness, and that under Texas law, the prisoner was required to present expert testimony to establish the applicable standard of care with respect to the treatment of MRSA and to show how the care he received breached that standard. According to the court, his failure to designate or hire an expert to testify on his behalf entitled the United States to judgment as a matter of law. (Federal Medical Center, Fort Worth, Texas)</p>
<p>U.S. Appeals Court          DELAY IN CARE          DELIBERATE          INDIFFERENCE          EMERGENCY CARE          PRIVATE PROVIDER</p>	<p><i>Harrison v. Ash</i>, 539 F.3d 510 (6<sup>th</sup> Cir. 2008). The personal representative of the estate of an inmate who died after suffering a severe asthma attack at a jail brought a § 1983 action against jail nurses and officers, alleging deliberate indifference to the inmate's serious medical needs. The inmate died while serving a 35-day sentence for failing to pay child support. The district court denied the defendants' motion for summary judgment and the defendants appealed. The court held that the appeals court had jurisdiction over the officers' appeal and that the officers were entitled to qualified immunity, and that the court did not have jurisdiction to consider the nurse's appeals. The court found that an officer working in the jail's medical unit reasonably responded to the substantial risk to the inmate's health from asthma and, thus, was not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. According to the court, the officer, after being contacted by the inmate from his cell to report that he was having difficulty breathing, notified the nursing staff of the inmate's complaints, who in turn arranged for emergency medical transport to the hospital, where the inmate was subsequently pronounced dead. After being contacted by the nurse to request that an ambulance be called, one officer contacted an ambulance and later drove the ambulance to the hospital after being told to do so by the other officer so that emergency medical staff could treat the inmate while in route to the hospital. The court held that the jail nurses, as employees of a for-profit private medical provider, rather than the county, could not assert a qualified immunity defense to the § 1983 action. Although the nurses were acting under the color of state law, because of the contractual relationship between the county and the provider, there was no firmly rooted common law practice of extending immunity to private actors, and policy rationales undergirding qualified immunity did not support extending immunity to the nurses. (Macomb County Jail, Michigan)</p>
<p>U.S. District Court          DELIBERATE          INDIFFERENCE          INADEQUATE CARE</p>	<p><i>Hart v. Bertsch</i>, 529 F.Supp.2d 1032 (D.N.D. 2008). A state inmate brought a § 1983 action against prison officials for violations of his constitutional right to receive necessary medical care. The inmate alleged that the officials failed to provide adequate medical care for his serious medical needs because he had been housed in a cell that utilized "steam heat," and that officials had not provided him with a medical alert button necessary due to his sleep apnea. The officials moved for summary judgment. The district court granted the motion. The court held that the officials did not act with deliberate indifference toward the inmate's central sleep apnea condition or alleged sensitivity toward "steam heat," as would have violated the Eighth Amendment prohibition against cruel and unusual punishment. The court noted that the inmate had been subjected to a multitude of physical examinations and diagnostic tests in an effort to diagnose the cause of his breathing complaints, and that the treating physician found no medical or factual basis to support another physician's recommendation that the inmate needed to avoid steam heat. According to the court, the inmate failed to follow through with recommended treatments, and the physician had never received a recommendation that the inmate be provided with a medical alert button, nor would such a procedure have been consistent with the inmate's condition. (North Dakota State Penitentiary)</p>

U.S. District Court  
FAILURE TO PROVIDE  
CARE

*Hart v. Celaya*, 548 F.Supp.2d 789 (N.D.Cal. 2008). A state prisoner brought a § 1983 action against corrections officers, alleging excessive force and deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants. The court held that the officers did not use excessive force in releasing pepper-spray into the prisoner's holding cell after he refused to submit to an unclothed body search. The court noted that the officer released pepper-spray into the cell only after the prisoner refused to comply with the direct orders of three different officers of increasingly higher rank to submit to the search, after the officer explained to the prisoner that all inmates entering administrative segregation were required to submit to an unclothed body search, after the prisoner began yelling and pushing up against his cell door causing it to shake and rattle, and after the officers were concerned that the prisoner would either harm himself or break out of his cell and endanger others. The court found that the prisoner did not suffer from a "serious medical need" within the meaning of the Eighth Amendment when he was pepper-sprayed in his cell, allegedly roughly handled by corrections officers as they took him to an outside area for decontamination and required him to kneel on a concrete surface for approximately 45 minutes during decontamination. After decontamination the prisoner was examined by a medical technician who listed no evidence of injury and documented the prisoner's decontamination from pepper-spray. A physician's subsequent examination found no long-term or lasting skin, knee, shoulder or pepper-spray related injuries. (Salinas Valley State Prison, California)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Hayes v. Snyder*, 546 F.3d 516 (7<sup>th</sup> Cir. 2008). A former prisoner brought an action against prison officials, alleging the officials were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's testicular growths and cysts, painful urination and excruciating pain constituted a serious medical condition and a reasonable jury could infer that the prison physician was deliberately indifferent to these needs. The court held that the physician was not entitled to qualified immunity. The court noted that the prison physician never prescribed prescription-strength pain killers, stopped providing even minimal pain treatment to the prisoner, and rejected the prisoner's request to see a specialist. The court found that non-medical prison officials were not deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment, where the officials responded readily and promptly to each of the prisoner's letters and grievances and were entitled to defer to the professional judgment of medical officials on questions of the prisoner's medical care. (Hill Correctional Center, Illinois)

U.S. Appeals Court  
TREATMENT  
DELIBERATE  
INDIFFERENCE

*Hernandez v. Velasquez*, 522 F.3d 556 (5<sup>th</sup> Cir. 2008). A state prisoner brought a § 1983 action alleging violations of his Eighth Amendment and due process rights. The district court granted summary judgment to all defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to show that he was placed at a substantial risk of serious harm when he was placed on lockdown status for 13 months, and therefore he could not show deliberate indifference on the part of prison personnel to his health or safety, as required for prison personnel to be liable under § 1983 for imposing conditions of confinement that constituted cruel and unusual punishment under the Eighth Amendment. The court noted that even if the prisoner suffered from muscle atrophy, stiffness, loss of range of motion and depression, there was no indication that those conditions posed a substantial risk of serious harm. The court held that the prisoner failed to show that prison personnel failed reasonably to address his medical needs, as required for prison personnel to be liable under § 1983 for deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The court noted that sick call requests that the prisoner submitted while he was in lockdown, complaining of muscle soreness, stiffness and loss of range of motion, bore notations from medical staff showing that they responded to the prisoner in a timely manner, treating his back pain with heat packs, conducting an x-ray, advising him to take medication for soreness and recommending exercises for soreness and stiffness. (Texas Department of Criminal Justice, Polunsky Unit)

U.S. Appeals Court  
EQUAL PROTECTION  
INADEQUATE CARE

*Hines v. Anderson*, 547 F.3d 915 (8<sup>th</sup> Cir. 2008). Inmates appealed an order of the district court that had terminated a consent decree that regulated prison medical care. Inmates had filed a class action against the state in 1973, resulting in a 1977 consent decree that set medical standards for the prison. The appeals court affirmed the district court's ruling. The court held that the Prison Litigation Reform Act (PLRA) did not require an investigation and/or evidentiary hearing before termination of a consent decree. The court noted that the consent decree that regulated prison medical care did not constitute a final judgment, and therefore inmates had no property right that would entitle them under the due process clause to further discovery and a pre-termination evidentiary hearing. The court found that although the record presented a picture of what, at times, may have constituted less than optimum care of inmates, it failed to show current and ongoing deliberate disregard of the inmates' serious medical needs, which was required to maintain the consent decree. According to the court, the type of day-to-day oversight on all aspects of medical care encompassed in the consent decree was broader than necessary to assure protection of the right to reasonable medical care in the face of a known substantial risk of harm to the inmate. Because the consent decree was not narrowly tailored nor was it the least intrusive means to protect the inmates' Eighth Amendment rights, it violated the provisions of PLRA. (Minnesota Correctional Facility at Oak Park Heights)

U.S. District Court  
MEDICATION

*Hubbs v. County of San Bernardino, CA*, 538 F.Supp.2d 1254 (C.D.Cal. 2008). A civilly committed sexually violent predator (SVP) brought a civil rights action against a sheriff and county claiming numerous violations of his constitutional and statutory rights. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the SVP stated a civil rights due process claim against the county and a civil rights due process claim against the sheriff and county regarding conditions of his confinement at the jail. The SVP alleged that policies regarding conditions of confinement and denial of medical care injured him, and that the sheriff did not properly train his subordinate employees to prevent those injuries. The SVP alleged that the defendants did not provide prescribed medications and that a holding cell was cold and did not have a mattress,

hygiene supplies, or bed roll. The court found that the SVP stated a Fourteenth Amendment due process claim against the sheriff and county, on allegations that, pursuant to the sheriff's policies, he was neither provided with prescribed medications in a manner directed by his treating physicians, nor allowed to have medications that were sent with him, and those deprivations caused him severe pain and suffering, made him sick and listless, and caused him to suffer from a migraine headache that lasted for four days. The SVP also alleged that he suffered from severe urinary problems, which included great difficulty in emptying his bladder, as a result of the deprivation. (West Valley Detention Center, San Bernardino County, California)

U.S. District Court  
DENIAL OF CARE

*Hurt v. Birkett*, 566 F.Supp.2d 620 (E.D.Mich. 2008). A state inmate brought an action against prison employees under § 1983, alleging conspiracy, racial discrimination, retaliation, deliberate indifference, excessive force, and failure to report in connection with an incident in which the inmate's arm was broken. The district court dismissed the action. The court held that the inmate's allegations, that state prison employees engaged in a campaign of harassment based on race, failed to state an equal protection claim. The court noted that a single allegation was insufficient to raise the inmate's right to relief above the speculative level. The court found that the inmate's allegations that prison employees conspired to deny him medical care after his arm was broken, in violation of the Eighth Amendment, failed to state a claim of conspiracy against the employees, absent details and allegations of specific acts made in furtherance of such conspiracy. The court held that prison employees were not liable for excessive force for breaking the inmate's arm, where a video of the incident in which the inmate's arm was broken showed the inmate starting an altercation and needing to be subdued, and it was clear that the force applied by the employees was applied in a good-faith effort to restore discipline. (Marquette Branch Prison, Michigan)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
RECORDS

*Husayn v. Gates*, 588 F.Supp.2d 7 (D.D.C. 2008). A detainee at the United States Naval Base in Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus challenging his detention as an enemy combatant. After denial of the detainee's motion for disclosure of his medical records, the detainee moved for reconsideration. The district court granted the motion in part and denied in part. The court held that counsel was entitled to review the detainee's medical records and staff records regarding his seizure-related episodes, despite the government's contention that the records were inherently related to detention, treatment, or conditions of confinement, and thus were exempted from judicial review. The court found that the records were necessary to permit counsel to assess whether and to what extent the detainee's medical condition affected his right to habeas relief, and to determine whether to challenge the legitimacy of his Combatant Status Review Tribunal (CSRT) hearing. The detainee alleged that he suffered over 120 seizures since he was first detained in 2006, and that they are currently frequent and severe. He alleged that they consist of excruciating pain in his head near the site of an old mortar injury that left him unable to think clearly or speak for an extended period. (United States Naval Base in Guantánamo Bay, Cuba)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Iko v. Shreve*, 535 F.3d 225 (4<sup>th</sup> Cir. 2008). The estate and family of a deceased inmate brought a § 1983 survival and wrongful death action against correctional officers, alleging violations of the inmate's Eighth Amendment rights. The district court granted, in part, the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that an officer violated the deceased inmate's Eighth Amendment right to be free from excessive force, arising from the inmate's death after his extraction from his cell involving the use of pepper spray, and thus the officer was not entitled to qualified immunity on § 1983 claims. The court held that correction officers were deliberately indifferent to the medical needs of the deceased inmate in violation of the inmate's Eighth Amendment right to adequate medical care, and thus were not entitled to qualified immunity on § 1983 claim brought by the inmate's estate and family. According to the court, the officers' training required decontamination after the use of pepper spray, the state's medical examiner credited pepper spray as contributing to the inmate's death, a lay person would have inferred from the inmate's collapse that he was in need of medical attention, the officers witnessed the inmate's collapse, caught him, and directed him into a wheelchair, and yet the inmate received no medical treatment. The officers argued that the inmate did not appear fazed by the pepper spray and that the inmate's opportunity to breathe fresh air while he was wheeled from the medical room was an adequate alternative to receiving actual medical care. (Western Correctional Institution, Maryland)

U.S. District Court  
INADEQUATE CARE

*Illina v. Zickefoose*, 591 F.Supp.2d 145 (D.Conn. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, alleging that she was denied necessary medical care in violation of her Eighth Amendment rights. The district court held that the claim was cognizable as a habeas petition. According to the court, the claim asserted by the prisoner who had been diagnosed with cervical cancer, that she was denied necessary medical care in federal prison in violation of her Eighth Amendment right to be free from cruel and unusual punishment, and seeking restoration of certain medical treatment, specifically hormone medication, was cognizable as a habeas petition challenging her conditions of confinement pursuant. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court  
DELAY IN TREATMENT  
MEDICATION  
NEGLIGENCE

*Jackson v. Correctional Corporation of America*, 564 F.Supp.2d 22 (D.D.C 2008). An inmate brought an action against a prison's medical provider, alleging medical negligence and violations of the Eighth Amendment. The court held that the inmate stated a medical negligence claim and the provider was liable under the theory of respondeat superior. The inmate alleged that he was deprived of medication prescribed for his stomach ailments for 19 days. The court held that an award of \$9,500 in compensatory damages for medical negligence was warranted, where the inmate experienced a burning pain in his stomach and esophagus that increased over time without his medication and at times prevented him from sleeping or eating. (Center for Correctional Health Policy and Studies, Inc., Correctional Corporation of America, District of Columbia Correctional Treatment Facility)

U.S. Appeals Court DELIBERATE INDIFFERENCE INADEQUATE CARE	<p><i>Jackson v. Kotter</i>, 541 F.3d 688 (7<sup>th</sup> Cir. 2008). A prisoner brought an action against federal prison employees and the federal government, alleging negligence under the Federal Tort Claims Act (FTCA) and constitutional claims pursuant to Bivens. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that a Physician's Assistant (PA) in the prison did not act with deliberate indifference toward the prisoner in response to an alleged back injury suffered by the prisoner after being escorted out of his cell for a strip search. According to the court, the PA saw the prisoner shortly after his alleged injuries and ordered an x-ray, personally observed the prisoner's condition and took into consideration prior x-rays of his spine, and afforded some of the pain treatment that the prisoner demanded. (United States Penitentiary, Terre Haute, Indiana)</p>
U.S. District Court MEDICATION MENTAL HEALTH TRANSFER	<p><i>Jarecke v. Hensley</i>, 552 F.Supp.2d 261 (D.Conn. 2008). A prisoner who suffered from antisocial personality and borderline personality disorders challenged his mental health treatment and an attempt to transfer him to a correctional facility with dormitory housing, alleging violation of the Eighth Amendment. The prisoner moved for a preliminary injunction to prevent his transfer and to be prescribed lithium and assigned to a single cell. The district court denied the motion. The court found that the prisoner did not have a likelihood of success on the merits of his claim, and that the prisoner would not suffer irreparable harm without an injunction. The court noted that the prisoner's medical treatment was adequate, as lithium was generally not used to treat such disorders, and that no medical diagnosis precluded his transfer to a dormitory setting or required confinement in single cell. (Connecticut)</p>
U.S. District Court DELIBERATE INDIFFERENCE DENTAL CARE	<p><i>Johnston v. Maha</i>, 584 F.Supp.2d 612 (W.D.N.Y. 2008). A pretrial detainee brought an action against employees of a county jail, alleging violations of his constitutional rights under § 1983 and violations of the Americans with Disabilities Act (ADA). The defendants moved for summary judgment and the district court granted the motion. The court held that the inmate failed to exhaust administrative remedies for the purposes of the Prison Litigation Reform Act (PLRA) as to some of his § 1983 and Americans with Disabilities Act (ADA) claims against employees of the county jail, where the inmate either did not pursue appeals at all, or did not pursue appeals to the final step. The court held that evidence was insufficient to show that medical staff at the county jail acted with deliberate indifference to the inmate's medical needs as to requested dental care, as required to support his § 1983 claim for violation of the Eighth Amendment. The court noted that although the inmate had to wait two months to see a dentist, the dentist filled the inmate's cavities and took x-rays related to that treatment. (Genesee County Jail, New York)</p>
U.S. Appeals Court FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE	<p><i>Jones v. Minnesota Dept. of Corrections</i>, 512 F.3d 478 (8th Cir. 2008). The trustee for the heirs of an inmate brought an action against a state Department of Corrections, corrections officers and prison nurse alleging deliberate indifference to the inmate's serious medical need in violation of Eighth Amendment. The district court granted summary judgment in favor of the defendants and trustee appealed. The appeals court affirmed. The court held that the inmate did not have a medical need so obvious that a layperson would easily recognize the need for a doctor's immediate attention, as required to establish an objectively serious medical need without a physician's diagnosis. The court found that the corrections officers and a prison nurse did not violate the Eighth Amendment prohibition against cruel and unusual punishment by deliberate indifference to the inmate's serious medical need. The court noted that although the inmate appeared to be unable to stand or walk under her own power, did not respond to officers' directions, rolled on the ground grunting and groaning and had dried blood and cuts on her lips, prison personnel had no background knowledge that made it obvious that those symptoms required medical attention and the inmate never expressed a need for medical attention. (Blue Earth County Jail and Minnesota Correctional Facility- Shakopee)</p>
U.S. District Court DELIBERATE INDIFFERENCE INTAKE SCREENING NEGLIGENCE	<p><i>Jones v. Oakland County</i>, 585 F.Supp.2d 914 (E.D.Mich. 2008). The personal representative of an arrestee's estate brought an action against a county and two employees of the jail where the arrestee died of heart failure. The arrestee had been brought to the jail on a bench warrant for failing to appear at a court proceeding. Two days after her admission she was found unresponsive in her cell and could not be revived. It was subsequently determined that she died of heart failure (ischemic cardiomyopathy). The defendants moved for summary judgment and the district court granted the motion. The court held that neither a jail interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, nor a jail nurse, who first came into contact with the arrestee when she was summoned to assist in CPR and other efforts to revive the arrestee after she was found unresponsive in her jail cell, were deliberately indifferent to the arrestee's serious medical needs. According to the court, neither employee perceived a substantial risk to the arrestee's health and well-being and yet disregarded that risk, and any purported negligence in the interviewer's assessment of the arrestee's medical needs did not rise to the level of deliberate indifference. The court held that the conduct of the interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, did not amount to "gross negligence" within the meaning of Michigan's governmental immunity statute, and therefore she was not liable for failing to secure immediate medical treatment for a condition that shortly would result in the arrestee's death. (Oakland County Jail, Michigan)</p>
U.S. District Court COSTS DELAY IN CARE DELIBERATE INDIFFERENCE	<p><i>Jones v. Westchester County Department of Corrections Medical Dept.</i>, 557 F.Supp.2d 408 (S.D.N.Y. 2008). A county prisoner brought pro se action against a county corrections department, warden, and administrative liaison, alleging deliberate indifference to his serious medical needs. The district court held that the prisoner's complaint, stating that he was scheduled for necessary surgery to alleviate chronic and extreme pain, and stating facts tending to show that prison officials denied him surgery in order to shift the cost to another agency, sufficiently alleged that he was denied adequate care, as required to state a claim for deliberate indifference to his serious medical needs. According to the court, the prisoner's complaint, stating that his hips caused him chronic and extreme pain, and that his pain would have been alleviated if he had been given hip replacement surgery, sufficiently alleged that his medical needs were serious, as required to state a deliberate indifference</p>

claim. The court found that the prisoner's complaint, stating that an administrative liaison made the final decision not to let him have hip replacement surgery, and that she personally, and with deliberate indifference to his suffering, put the county's financial concerns ahead of his medical needs, alleged with requisite specificity the personal involvement of the administrative liaison, as required to state a cause of action against her for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. (Westchester County Department of Corrections, New York)

U.S. District Court  
CONTAGIOUS DISEASES

*Joy v. Healthcare C.M.S.*, 534 F.Supp.2d 482 (D.Del. 2008). An inmate filed an action under § 1983, raising constitutional claims against a Governor, mayor, and corrections officials. The district court held that the prisoner stated an Eighth Amendment claim against the warden based on his exposure to tuberculosis, where he alleged that the warden was aware that inmates were not thoroughly screened for disease before going into the general population and that correctional medical services did not have a policy in place to examine inmates before placing them into the general population. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
TRANSFER

*Kinslow v. Pullara*, 538 F.3d 687 (7<sup>th</sup> Cir. 2008). A state inmate filed a § 1983 action against prison officials at the Illinois Department of Corrections (IDOC) and the New Mexico Department of Corrections (NMDOC), and against a private transportation company and its employees. The inmate alleged violation of his constitutional right to adequate medical treatment during his transfer between institutions, resulting in the failure of chemotherapy for his advanced liver disease from hepatitis C. The district court dismissed the claims against the NMDOC, and dismissed the claims against the remaining parties after settlement. The inmate appealed. The appeals court affirmed. The court held that NMDOC officials lacked sufficient contacts with Illinois for the exercise of personal jurisdiction. The court noted that New Mexico officials had only arranged and planned the inmate's transfer by a handful of phone calls, but did not purposefully avail themselves of the privileges of conducting activities in Illinois, and had not deliberately engaged in significant activities or created continuing obligations in Illinois. The inmate's transfer took place in October 2004. The court noted that although the inmate's bus trip to New Mexico could have been completed in less than 24 hours, the route that the private transport company (TransCor) chose lasted six days. Moreover, while the Illinois and New Mexico prison officials were all well aware of the inmate's prescribed treatment and of how strictly it had to be followed, they failed to establish procedures that would ensure proper medical care for the inmate during the trip. According to the court, "During his transfer, everything that could go wrong with [the inmate's] treatment, did." (Illinois Department of Corrections, New Mexico Department of Corrections, TransCor America, LLC)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
SMOKE-FREE  
ENVIRONMENT

*Lee v. Young*, 533 F.3d 505 (7<sup>th</sup> Cir. 2008). A former state prisoner brought a pro se § 1983 action against prison officials, alleging that the officials exhibited deliberate indifference to his serious medical needs, in connection with the prisoner's exposure to secondhand smoke that allegedly triggered his asthma. The district court granted summary judgment in favor of the officials, and the prisoner appealed. The appeals court affirmed, finding that the officials were not deliberately indifferent. According to the court, although the prisoner complained to medical staff, the officials did not ignore the medical staff's advice, since no doctor ever recommended that the prisoner be transferred to avoid exposure to the secondhand smoke. The court noted that medical professionals concluded that the prisoner's asthma was controlled. When the prisoner requested a non-smoking cell he was given one, his cellmate was issued a disciplinary ticket when he smoked in their non-smoking cell, and the ventilation system was repaired when the prisoner complained. (Shawnee Correctional Center, Illinois)

U.S. Appeals Court  
INVOLUNTARY  
TREATMENT

*Levine v. Roebuck*, 550 F.3d 684 (8<sup>th</sup> Cir. 2008). A state inmate brought § 1983 claims against a correctional officer and nurses alleging that they violated his Fourth and Eighth Amendment rights by forcing him to undergo catheterization to avoid prison discipline when he could not provide a urine sample for a random drug test. The district court granted the defendants' motions for summary judgment and the inmate appealed. The appeals court affirmed. The court held that the prison nurses' actions in attempting catheterization of the inmate were objectively reasonable and did not violate the inmate's Eighth Amendment rights against brutality. The court noted that the nurses were following a request from a correctional officer, and the inmate had undergone voluntary catheterization in the past when he was unable to urinate. (Western Missouri Correctional Center)

U.S. District Court  
DELIBERATE  
INDIFFERENCE

*Lindell v. Schnitzer*, 531 F.Supp.2d 1005 (W.D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Lloyd v. Lee*, 570 F.Supp.2d 556 (S.D.N.Y. 2008). A prisoner brought a pro se § 1983 action against prison doctors and a mayor, alleging that the defendants denied him adequate medical care while he was incarcerated in violation of his constitutional rights. The district court dismissed the action in part and denied the defendants' motion for dismissal in part. The court held that the prisoner's amended complaint sufficiently alleged a serious deprivation, as required to state an Eighth Amendment claim, and the complaint sufficiently alleged that doctors acted with deliberate indifference to the prisoner's serious medical needs. The court found that the doctors alleged to have been involved only in the first few weeks of the prisoner's medical treatment could not be

charged with deliberate indifference to his serious medical needs. The court found that a qualified immunity defense did not shield the doctors from liability. The prisoner alleged he was denied magnetic resonance imaging (MRI) scan for months and that, as a consequence, his shoulder injury was not properly diagnosed and his surgery was unreasonably delayed, and that inadequate medical treatment caused a condition of urgency, degeneration, and extreme pain, and the delayed surgery that was necessary to his recovery. The court noted that an unconvicted detainee's rights are at least as great as those of a convicted prisoner, and district courts apply the same "deliberate indifference" test developed under the Eighth Amendment to Fourteenth Amendment claims. (Manhattan House of Detention and Riker's Island Corrections Building, New York)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE

*Lockett v. Suardini*, 526 F.3d 866 (6<sup>th</sup> Cir. 2008). A state prisoner sued two prison officers and two prison nurses, alleging violations of his free speech and Eighth Amendment rights. The district court entered summary judgment for the officers and nurses. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's act of calling a hearing officer a "foul and corrupted bitch" was not protected conduct. The court found that the prison officers did not use excessive force in violation of the Eighth Amendment in restraining the prisoner after he insulted a hearing officer, where the prisoner did not dispute that he was angered, bit an officer's hand, and verbally threatened the officers. The prisoner stated that the officers merely attempted to shove him down stairs and "almost" broke his glasses, and the prisoner by his own account suffered at most "minor lacerations and cuts." According to the court, the prisoner's injuries from the altercation with the officers, consisting of minor cuts and lacerations, did not create an objectively serious medical need, and any denial of medical treatment thus did not violate his Eighth Amendment rights. (Alger Maximum Correctional Facility, Michigan)

U.S. District Court  
HANDICAP  
RA- Rehabilitation Act  
RESTRAINTS  
TRANSPORTATION  
WHEELCHAIR

*Miller v. Johnson*, 541 F.Supp.2d 799 (E.D.Va. 2008). A state prisoner brought an action against a state department of corrections and warden, seeking damages under the Rehabilitation Act. The inmate suffered from Guillain-Barre syndrome, a paralyzing neurological disorder that caused nerve damage in his feet and ankles. As a consequence of his disease, the inmate was unable to bend his left foot at the ankle and was able to walk only with great difficulty. He was able to climb stairs only while holding handrails in order to steady himself. According to the court, the inmate was a qualified person with a disability within the meaning of the Rehabilitation Act. The inmate alleged that officials refused to provide needed accommodations, including the use of a cane and a wheelchair, use of elevators, and transport without cuffing his hands to a waist chain. The district court denied the defendants' motion to dismiss. The district court held that by accepting federal funding, the department waived sovereign immunity as a bar to the prisoner's action. (Greensville Correctional Center, Virginia)

U.S. Appeals Court  
DENIAL  
FAILURE TO PROVIDE  
CARE

*Moore ex rel. Estate of Grady v. Tuelja*, 546 F.3d 423 (7<sup>th</sup> Cir. 2008). Administrators of an arrestee's estate filed a § 1983 action alleging that police officers and jail personnel deprived the arrestee of his rights under the Fourth and Fourteenth Amendments by using excessive force and denying him medical care. The district court entered judgment on a jury verdict in the defendants' favor and denied the administrators' motions for judgment as a matter of law and for a new trial. The administrators appealed. The appeals court affirmed. The court held that there was sufficient evidence to support the jury's findings. A physician had testified that the nature of the arrestee's injuries indicated that he had most likely been beaten with a baton by jail personnel. But all medical experts agreed that the arrestee suffered from advanced heart disease and died of a heart attack, the arrestee had been in two automobile accidents on the date of his death and had suffered a hand laceration immediately after the second accident, and there was evidence that the arrestee's wrist injuries occurred in an accident or while he was being transported to jail, and that his head injuries occurred when he fell to the floor after a heart attack. (Chicago Police Department, Illinois)

U.S. District Court  
DELIBERATE  
INDIFFERENCE

*Murphy v. Gilman*, 551 F.Supp.2d 677 (W.D.Mich. 2008). A civil rights action was brought against state prison officials, raising claims arising from the death of a prisoner, who died from dehydration after a four-day period during which he received no medical care and little water and food. A jury found that certain defendants were deliberately indifferent to the prisoner's serious medical needs, the defendants were grossly negligent, and one defendant was liable for intentional infliction of emotional distress. The jury awarded \$250,000 in actual damages, and \$2,500,000 in punitive damages. The defendants moved for judgment as a matter of law, and to stay enforcement of the judgment. The plaintiff filed a motion for a new trial. The district court denied the motions, finding that evidence supported the finding that an official knew of the obvious risks to the prisoner. The court held that punitive damages of \$1,250,000 per prison official defendant was not constitutionally excessive for the dehydration death of a physically vulnerable prisoner, who was trapped without physical necessities or medical care for five days during a heat wave and who was awarded \$250,000 in actual damages. The court noted that evidence established that prison officials kept the prisoner's water turned off, knew that the prisoner was not drinking, and knew the prison was on a heat alert. (Bellamy Creek Corr'l Facility, Michigan)

U.S. District Court  
DELAY IN CARE

*Myrie v. Calvo/Calvoba*, 591 F.Supp.2d 620 (S.D.N.Y. 2008). A pretrial detainee brought a pro se § 1983 action alleging jail medical personnel violated his Eighth Amendment right to adequate medical care. The medical personnel filed a pre-answer motion to dismiss the complaint. The district court granted the motion. The court held that the detainee's claim that deprivation of his eyeglasses caused significant eye deterioration constituted a serious deprivation of medical needs, but the allegation that a jail physician neglected to take care of his vision problem in a sufficiently prompt manner did not sufficiently allege the physician was deliberately indifferent to the detainee's serious medical needs. According to the court, allegations that jail medical personnel's delay in locating his medical file, and the resulting cancellation of his appointment with a physician, delayed or denied his access to medical treatment in violation of Due Process failed to state a claim. (Otis Bantum Correctional Center, New York)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Petrig v. Folz*, 581 F.Supp.2d 1013 (S.D.Ind. 2008). An inmate filed a § 1983 action in state court alleging that county jail officials failed to protect him from an assault by his cellmate and were deliberately indifferent to his serious medical needs. The case was removed to federal court and the district court granted summary judgment for the sheriff, in part. The court held that the sheriff was not liable under § 1983 in his individual capacity for failing to provide proper medical care after the inmate was assaulted by his cellmate, where the sheriff was not personally involved in any wrongful conduct, and was not personally responsible for the inmate's care after the attack. The court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable jail officials should have realized that the inmate, who was suffering from a lacerated spleen, had an objectively serious medical need, and whether a 21-hour delay in having a physician evaluate and treat the inmate was reasonable. The court found that the county jail's failure to maintain medical staff on-site and available to examine the injured inmate for more than an entire day, and its failure to immediately transport the inmate, who was in obvious distress, to a hospital, were sufficiently indicative of a possible custom, policy, or practice that contributed to the inmate's injury, precluding summary judgment. (Posey County Jail, Indiana)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
EMERGENCY CARE  
MALPRACTICE

*Phillips v. Roane County, Tenn.*, 534 F.3d 531 (6<sup>th</sup> Cir. 2008). A representative of the estate of a pretrial detainee who died in a county jail of untreated diabetes brought an action against correctional officers, a jail doctor, and paramedics, alleging deliberate indifference to the detainee's serious medical condition under § 1983 and asserting state law medical malpractice claims. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that the detainee had a sufficiently serious medical condition, as required to prevail in a § 1983 deliberate indifference claim against jail officers and others, under the Due Process Clause. The court noted that at one point the detainee was found unconscious in her cell without a pulse, and for approximately two weeks after that incident, the detainee complained to officers and a doctor about chest pains, numbness, dizziness, vomiting, nausea, constipation, and a possible kidney infection. The court held that the alleged conduct of the correctional officers in observing and being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, and in allegedly disregarding jail protocols, which required the officers to transport the detainee to a hospital emergency room for evaluation upon complaints of chest pain, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. The court found that the paramedic's conduct in allegedly disregarding a jail protocol which required the paramedic to transport detainees to a hospital emergency room when they complained of chest pains, by failing to transport the detainee upon responding to an incident in which the detainee allegedly lost consciousness, had no pulse, and complained of chest pain and nausea after she regained consciousness, amounted to deliberate indifference to the detainee's serious medical condition, in violation of her due process rights. The court found that county officials were not liable under § 1983 for their alleged failure to properly train jail officers as to the proper protocols for obtaining medical treatment for the detainee, absent a showing that any individual official encouraged, authorized, or knowingly acquiesced to the officers' alleged deliberate indifference. The court found that the alleged conduct of a county jail doctor in being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, but failing to conduct more than a cursory examination, and in allegedly disregarding jail protocols, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. Because the detainee had a clearly established right under the Due Process Clause of the Fourteenth Amendment to receive medical treatment to address serious medical needs, the court found that jail officials were not entitled to qualified immunity for their alleged conduct in failing to provide the diabetic detainee with medical treatment. (Roane County Jail, Tennessee)

U.S. Appeals Court  
INADEQUATE CARE  
RECORDS  
DELIBERATE  
INDIFFERENCE

*Popoalii v. Correctional Medical Services*, 512 F.3d 488 (8th Cir. 2008). A state prisoner brought a § 1983 action against multiple staff members of the state department of corrections (DOC) alleging deliberate indifference to her serious medical conditions. The district court struck the prisoner's expert affidavit and granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that DOC staff members were not deliberately indifferent to the prisoner's serious medical condition of cryptococcal meningitis, which resulted in her eventual blindness, as required to prevail in a § 1983 Eighth Amendment claim. According to the court, the prisoner had none of the normal signs or risk factors of cryptococcal meningitis. The court noted that although the staff probably should have been more vigilant in obtaining the prisoner's medical records, which would have disclosed her condition, there was no showing that they knew of the prisoner's condition. (Women's Eastern Reception Diagnostic and Corr'l Center, Missouri)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Porterfield v. Durst*, 589 F.Supp.2d 523 (D.Del. 2008). An inmate brought an action against prison physicians and a correctional medical service, alleging Eighth Amendment violations following the amputation of his finger. The finger had been injured when the tray slot door to his cell was slammed shut by a correctional officer. The defendants moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that the inmate failed to establish that the physicians' conduct contributed to his injury because the physicians' administration of a particular antibiotic and prescription of post-surgery physical therapy fell within the ambit of their discretionary medical judgment. The court held that summary judgment was precluded by genuine issues of material fact regarding whether a correctional medical service was deliberately indifferent to the inmate's serious medical needs. (Corr'l Medical Services, Inc., Delaware Dept. of Correction)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Potter v. Ledesma*, 541 F.Supp.2d 463 (D.Puerto Rico 2008). A federal inmate filed an action to recover damages he suffered when prison officials failed to provide medical treatment after a cell door closed on his finger. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the Federal Tort Claims Act's (FTCA) exclusivity provision did not bar the inmate's Eighth Amendment claim. According to the court, the inmate's allegation that he was entitled to money damages due to prison officials' deliberate indifference to his serious medical needs after a cell door closed on his finger raised a cognizable claim for violation of his Eighth Amendment rights. (Puerto Rico)

<p>U.S. District Court  DELIBERATE  INDIFFERENCE  NEGLIGENCE</p>	<p><i>Presley v. City of Blackshear</i>, 650 F.Supp.2d 1307 (S.D.Ga. 2008). A mother brought an action against a city police officer and a county paramedic, arising out of her son's death while detained in a county jail after his arrest. The district court granted the defendants' motion for summary judgment. The court held that the arresting officer was not deliberately indifferent to the serious medical needs of the detainee who died of an apparent drug overdose after being arrested on drug charges and placed into custody at a county jail, absent evidence that the arresting officer actually saw the detainee swallow any drugs that allegedly led to his death. The court held that the county paramedic who responded to the jail was not deliberately indifferent despite any alleged negligence in the paramedic's original diagnosis. The court noted that the paramedic promptly responded to both calls from county jail concerning the detainee, and, each time, examined the detainee to determine whether further medical treatment was needed. According to the court, the paramedic's alleged bad judgment and negligence in caring for the pretrial detainee who died of an apparent drug overdose, was insufficient to show a lack of good faith for the purposes of statutory immunity from negligence or malpractice liability under Georgia law. (<i>City of Blackshear and Pierce County Jail, Georgia</i>)</p>
<p>U.S. District Court  PRIVACY</p>	<p><i>Ringgold v. Lamby</i>, 565 F.Supp.2d 549 (D.Del. 2008). An inmate filed a § 1983 action against a correctional officer, alleging deliberate indifference amounting to cruel and unusual punishment based on the officer's alleged refusal to let him leave his cell early to serve food and the officer's alleged discussion of his hygiene and HIV status with another prisoner. The district court granted the officer's motion for summary judgment. The court held that the officer's alleged discussion of the prisoner's hygiene and HIV status with another prisoner was only verbal harassment and therefore could not be cruel and unusual punishment. The court noted that the inmate's right to privacy under the Fourteenth Amendment prohibited the officer from making any statements to another prisoner about the inmate's hygiene and HIV status, and the statements did not involve correctional goals or institutional security. The court found that the officer's refusal to allow the inmate to leave his cell to serve a meal as a prison food worker was a good faith error and not cruel and unusual punishment, where the officer thought that the inmate worked on a different crew. (<i>Howard R. Young Correctional Institution, Rhode Island</i>)</p>
<p>U.S. Appeals Court  ABORTION</p>	<p><i>Roe v. Crawford</i>, 514 F.3d 789 (8th Cir. 2008). An inmate brought a class action against corrections officials challenging the Missouri Department of Corrections (MDC) policy prohibiting transportation of pregnant inmates off-site for elective, non-therapeutic abortions. The district court determined that the MDC policy was unconstitutional and entered judgment for the inmate. Corrections officials appealed. The appeals court affirmed. The court held that the MDC policy could not withstand scrutiny under <i>Turner</i>. The court noted that even if the MDC policy rationally advanced the prison's legitimate security interests, the policy acted as a complete bar to elective abortions. The prison policy allowed transportation "outcounts" to outside facilities only for medically necessary therapeutic abortions due to a threat to the mother's life or health. According to the court, obtaining an abortion prior to incarceration was not a valid alternative means of exercising the right. According to the court, the MDC policy did not reduce the overall number of outcounts and so did not reduce any strain on financial or staff resources, and ready alternatives to the MDC policy existed including reverting to the previous policy of allowing outcounts for elective abortions. (<i>Missouri Department of Corrections, Women's Eastern Reception, Diagnostic and Correctional Center</i>)</p>
<p>U.S. District Court  DELIBERATE  INDIFFERENCE  INADEQUATE CARE  MEDICATION</p>	<p><i>Sanderson v. Buchanon</i>, 568 F.Supp.2d 217 (D.Conn. 2008). An inmate brought a § 1983 suit against corrections officials, alleging that he was provided constitutionally inadequate medical care. The district court granted summary judgment in favor of the defendants. The court held that there was no deliberate indifference to the serious medical needs of the inmate regarding his stomach pain, thus defeating his § 1983 claim asserting an Eighth Amendment violation. According to the court, even assuming that the inmate did have an ulcer, all that could be drawn from the facts was that prison staff unadvisedly gave him an over-the-counter drug used to treat minor digestive system upset and that his symptoms continued for several more days. (<i>Carl Robinson Correctional Institution, Connecticut</i>)</p>
<p>U.S. District Court  CONTRACT SERVICES  DELAY IN TREATMENT  MEDICATION</p>	<p><i>Sauve v. Lamberti</i>, 597 F.Supp.2d 1312 (S.D.Fla. 2008). A former prisoner brought a § 1983 action against a sheriff and correctional health services corporation, alleging that the defendants denied the prisoner access to medications while he was incarcerated. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the extent that a doctor employed by the corporation with which the county contracted for correctional health care services was aware of the prisoner's history of drug problems, mental health issues, and prior noncompliance with treatment at the time of his decision not to place the prisoner on medication. The court also found genuine issues of material fact as to whether the decision not to place the prisoner on medication for the first 49 days of his incarceration was based on the medical judgment of the doctor. The court held that summary judgment was also precluded by genuine issues of material fact as to whether the corporation had a practice or policy that resulted in the prisoner being denied medication for 49 days during his incarceration. The court ruled that the sheriff failed to establish an entitlement to summary judgment, even though the former prisoner presented evidence only as to the private corporation with which the county contracted for correctional health care services because the county remained liable for constitutional deprivations caused by policies or customs of the corporation. (<i>Broward County Jail, Florida, and Armor Correctional Health Services</i>)</p>
<p>U.S. District Court  ADA-Americans with  Disabilities Act  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE  CARE</p>	<p><i>Shaw v. TDCJ-CID</i>, 540 F.Supp.2d 834 (S.D.Tex. 2008). A legally blind state inmate brought an action alleging that prison officials failed to remedy unsafe conditions in handicapped showers, in violation of his constitutional rights, Title II of Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and the Texas Tort Claims Act (TTCA). The inmate also alleged that prison medical officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials. The court held that prison officials did not discriminate against the legally blind inmate as the result of their alleged failure to remedy unsafe conditions in the prison's handicapped showers, and thus the officials were not liable under Title II of Americans with Disabilities Act (ADA) for injuries the inmate sustained in a slip and fall accident. The court</p>

found that prison officials were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, as a result of their failure to remedy unsafe slippery conditions in the prison's handicapped showers, absent a showing that the officials were aware of and deliberately ignored an excessive risk. According to the court, prison medical officials were not deliberately indifferent to the inmate's broken hand, in violation of the Eighth Amendment, despite the inmate's contention that their failure to operate resulted in excessive pain and disfigurement. The court noted that a physician saw the inmate the morning after he reported the accident, X-rays indicated that the fracture would heal properly without surgery, the physician properly diagnosed the injury and prescribed pain medication, a brace, and a bandage, and the inmate received physical therapy to help restore motion and strength. (Estelle Unit, Texas Department of Criminal Justice-Correctional Institutions Division)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
DENIAL  
MEDICATION

*Smith v. County of Los Angeles*, 535 F.Supp.2d 1033 (C.D.Cal. 2008). The estate of a deceased county jail inmate brought a § 1983 action against a county and officials, claiming violation of the inmate's Fourth, Fifth, Eighth and Fourteenth Amendment rights, arising out of denial of the inmate's request for an asthma inhalator. The district court denied the defendants' motion to dismiss. The court held that the Eleventh Amendment immunity of state officials did not apply to the county sheriff. The court found that the estate stated a claim that the county was liable when the inmate died allegedly because he was denied an asthma inhalator. The court held that the allegation that the county "promulgated, created, maintained, ratified, condoned, and enforced a series of policies, procedures, customs and practices which authorized the arbitrary punishment and infliction of pain, torture, and physical abuse of certain inmates and detainees" was sufficient to state a claim. The court found that the estate stated a claim that officials violated the Eighth Amendment by showing deliberate indifference to his medical condition, through allegations that they ignored the inmate's plea to be furnished with his asthma inhalator. (Los Angeles County Men's Central Jail, California)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
MEDICATION  
MENTAL HEALTH

*Swift v. Tweddell*, 582 F.Supp.2d 437 (W.D.N.Y. 2008). An inmate brought a pro se § 1983 action against a sheriff, deputies, and jail employees. The district court denied the defendants' motion for summary judgment. The court found that the jail employees were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, in connection with a delay in prescribing the inmate's "mental health" medications. The court noted that on the day that the inmate submitted a request for mental health clinic services, the jail nurse referred the request to the county Mental Health Department (MHD) pursuant to standard practice at the jail, but because the inmate did not appear to be an emergency case and because he made no further requests for mental health services, he was not seen by a psychiatrist from MHD for more than two months. He was prescribed Prozac but did not, according to the court, suffer serious adverse effects as a result of the temporary gap between his request for mental health care and his psychiatric examination. (Steuben County Jail, New York)

U.S. District Court  
CONTRACT SERVICES  
MENTAL HEALTH  
SUICIDE

*Tatsch-Corbin v. Feathers*, 561 F.Supp.2d 538 (W.D.Pa. 2008). Survivors of an inmate who committed suicide sued a jail's forensic specialist under § 1983, claiming violations of the Fourteenth Amendment's prohibition against deprivations of life without due process. The district court denied the forensic specialist's motion to dismiss. The court found that the fact that the jail's forensic specialist lacked a contractual relationship with either the jail or a health care contractor retained by the county did not preclude her from being considered a "state actor," as required for imposition of liability under § 1983 in connection with the inmate's suicide. According to the court, her role was to provide mental health care to inmates, regardless of her other job responsibilities or the contractual nuances through which she came to work at the jail, and she could not have done so without the authorization of the state. The court found that the inmate's survivors alleged sufficient facts to establish that the forensic specialist should have known, or did know, that the inmate presented a suicide risk and failed to take necessary or available precautions to protect him. According to the court, alleged facts suggested that the inmate had made various threats to kill himself, which had been taken seriously enough by jail officials to warrant the request of an evaluation by a mental health professional, and he had a documented history of attempted suicide and psychiatric hospitalization, of which the specialist was allegedly aware. (Blair County Prison, Pennsylvania)

U.S. District Court  
DENIAL

*Tindal v. Goord*, 530 F.Supp.2d 465 (W.D.N.Y. 2008). A state prisoner brought a pro se § 1983 action against state department of corrections employees, alleging denial of proper medical care in violation of the Eighth Amendment. The district court granted summary judgment for the plaintiffs. The court held that the prisoner received adequate medical treatment. The court noted that the prisoner received extensive treatment, including a test for syphilis, and was diagnosed as suffering from certain ailments other than a sexually transmitted disease, such as folliculitis and a possible bacterial infection, for which he was prescribed antibacterial and pain medications. (New York State Department of Correctional Services)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE

*U.S. v. Conatser*, 514 F.3d 508 (6th Cir. 2008). Jail officers were convicted in district court on charges arising from their participation as corrections officers in a conspiracy to violate the rights of detainees and prisoners in a county jail. The officers appealed and the appeals court affirmed. The court held that evidence was sufficient to support the determination that one officer joined a conspiracy. Three conspirators testified that the officer was among those second-shift officers who would accompany a second-shift supervisor into a cell or stand outside the cell while the supervisor committed unjustified assaults on loud, obnoxious or uncooperative inmates. According to the court, evidence indicated that the officer, on a specific occasion involving the death of an inmate, followed the supervisor and a coconspirator as they took the inmate to a detox cell, and the officer stood outside while the inmate was assaulted. The court found that a sentence of life imposed upon a supervising corrections officer was reasonable, even though another officer had inflicted the injuries that ultimately killed an inmate, given that the supervising officer's actions in denying the inmate necessary and appropriate medical care resulted in his death. (Wilson County Jail, Tennessee)

<p>U.S. Appeals Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS</p>	<p><i>U.S. v. Green</i>, 532 F.3d 538 (6<sup>th</sup> Cir. 2008). A pretrial detainee who had been determined to be mentally incompetent to stand trial on narcotics trafficking indictments, appealed the order of the district court for involuntary administration of psychotropic medications. The appeals court affirmed, finding that an important governmental interest was at stake in the prosecution, as required to support an order for involuntary medication. (Federal Medical Center, Rochester, New York)</p>
<p>U.S. District Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS</p>	<p><i>U.S. v. Moruzin</i>, 583 F.Supp.2d 535 (D.N.J. 2008). A defendant was indicted on charges of bank robbery and jury tampering. The government moved for the involuntary administration of antipsychotic medication to the defendant to render him competent to stand trial. The district court denied the motion. The court held that the administration of medication would not significantly further the state's interests, that alternatives existed to involuntary administration of the drug Haldol, and that involuntary administration of Haldol was not in the defendant's best medical interest. (Federal Medical Center, Butner, North Carolina)</p>
<p>U.S. Appeals Court DENIAL OF CARE</p>	<p><i>Vondrak v. City of Las Cruces</i>, 535 F.3d 1198 (10<sup>th</sup> Cir. 2008). An arrestee filed a § 1983 action against a city and its police officers alleging illegal arrest, excessive force, inadequate medical attention, and failure to train. The district court granted in part and denied in part the defendants' motion for summary judgment. The parties filed cross-appeals. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the police officers ignored the arrestee's complaints that his handcuffs were too tight, and whether the arrestee suffered permanent nerve injury because of the handcuffing. The court noted that for purposes of determining the police officers' qualified immunity from liability under § 1983 for use of excessive force, the arrestee's right to be free from unduly tight handcuffing, and the contours of that right, were clearly established in 2003. The court also found that it was clearly established that all law enforcement officials had an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence, and thus one of the officers was not entitled to qualified immunity from liability, where the officer was in close proximity to the initial handcuffing, and was present thereafter. The arrestee had been taken into custody and transported to the police station, where two blood alcohol tests were administered. Both tests showed no alcohol. He was held for another 90 minutes, during which time he made several requests for someone to loosen his handcuffs because his wrists were hurting. All requests were ignored. Eventually, the officers charged the arrestee with Driving While Under the Influence to the Slightest Degree, and they released him on his own recognizance. The charge was later dropped. Following his release, the arrestee went to an emergency room. A toxicology screening report showed no drugs or alcohol. A doctor who treated the arrestee observed "multiple superficial abrasions and ecchymosis" on both wrists. He diagnosed the arrestee with neurapraxia in both wrists, and a soft tissue sprain of the right wrist. The pain and discomfort in the arrestee's wrists did not subside, and it interfered with his ability to practice as an orthodontist and to play golf. He was diagnosed with a permanent radial nerve injury in his wrists that was caused by the handcuffing. (Las Cruces Police Department, New Mexico)</p>
<p>U.S. District Court SMOKE</p>	<p><i>Williams v. District of Columbia</i>, 530 F.Supp.2d 119 (D.D.C. 2008). A former inmate brought a § 1983 action against District of Columbia and corrections officials seeking damages related to his alleged exposure to second-hand smoke while he was in jail. Defendants moved for summary judgment. The court granted summary judgment for the defendants. The court held that a potential future injury to the former inmate arising from his alleged exposure to environmental tobacco smoke (ETS) while he was in jail was too remote and speculative to support standing in the inmate's § 1983 action. The court noted that the expert report submitted by the inmate indicating a increased risk of heart disease and lung cancer for the jail population exposed to ETS during the inmate's period of incarceration did not indicate a probability of harm to the inmate. (District of Columbia Department of Corrections Central Detention Facility)</p>
<p>U.S. District Court ADA- Americans with Disabilities Act HEARING IMPAIRED</p>	<p><i>Williams v. Hayman</i>, 657 F.Supp.2d 488 (D.N.J. 2008). A state prisoner brought an action for violation of the Americans with Disabilities Act (ADA), alleging denial of various social and educational programs and services at a prison because he was deaf, and naming as a defendant the Commissioner of the New Jersey Department of Corrections (NJDOC), the Executive Director of the New Jersey Parole Board, the prison's chief administrator, the prison's assistant administrator, the prison's parole administrator, a corrections officer, two social workers at prison, and the prison's psychiatrist. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's deafness inhibited his capacity to express his grievances comprehensibly in writing in accordance with prison grievance program's requirements. The court also found a genuine issue of material fact as to the prison social worker's ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. (South Woods State Prison, New Jersey)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Zuhair v. Bush</i>, 592 F.Supp.2d 16 (D.D.C. 2008). An alien, who had petitioned for habeas relief from his detention in the Guantanamo Bay military facility, brought an emergency motion to compel immediate medical relief. The district court held that the court would appoint its own medical/mental health expert to examine the detainee and provide the court with a report and any recommendations. The court noted that evidence suggested that the health of the petitioner was continuing to deteriorate. (United States Naval Base in Guantánamo Bay, Cuba)</p>

2009

U.S. District Court  
SMOKE-FREE  
ENVIRONMENT

*Abuhouran v. U.S.*, 595 F.Supp.2d 588 (E.D.Pa. 2009). A prisoner brought a negligence action against the United States under the Federal Tort Claims Act alleging prison officials exposed him to excessive amounts of environmental tobacco smoke (ETS). The defendants moved for summary judgment and the district court granted the motion. The court held that the prisoner was precluded, under the discretionary function exception of the Federal Tort Claims Act (FTCA), from challenging the warden's designation of smoking areas, as federal regulations explicitly assigned the exercise of choice or judgment to the warden to designate areas subject to ETS. The court noted that the stated policy considerations for implementing the "no smoking areas" in prisons was to provide a clean air environment and to protect the health and safety of staff and inmates, suggesting the designation of smoking areas was the kind of discretionary function the FTCA exception was meant to shield. The court held that under Pennsylvania law, the prisoner failed to present any medical evidence or expert witnesses to establish a causal connection between his exposure to environmental tobacco smoke (ETS) and his alleged injury, as required to prevail on his negligence claim. The court also held that the prisoner failed to present any evidence of an actual injury. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court  
ADEQUACY OF CARE  
DELIBERATE  
INDIFFERENCE  
SMOKE-FREE  
ENVIRONMENT

*Adams v. Banks*, 663 F.Supp.2d 485 (S.D.Miss. 2009). An inmate brought a § 1983 action against a warden and other prison officials for exposure to unreasonable levels of secondhand smoke, or environmental tobacco smoke (ETS), and for denial of adequate medical care. The defendants moved for summary judgment, and the inmate moved for summary judgment on his claim against a prison nurse. The district court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate was exposed to unreasonably high levels of environmental tobacco smoke (ETS) from cellmates who smoked in his cell and from other inmates in the area outside his cell. The court also found fact issues as to whether the complaints made by the inmate were sufficient for the warden and assistant supervisor to infer that ETS posed a substantial risk of serious harm to him, such that they acted with deliberate indifference to the inmate's situation. The court found that summary judgment was precluded by genuine issues of material fact as to the seriousness of the inmate's medical condition as a result of exposure to environmental tobacco smoke (ETS) in his cell, as well as to the nature of a prison nurse's responses to the inmate's three sick call request forms complaining of coughing, chest pains, nausea, dizziness, difficulty breathing and vomiting as a result of exposure to ETS. The court held that neither the warden nor the assistant supervisor were involved in a decision to deny the inmate medical care as a result of exposure to secondhand smoke, and thus they were not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. (Wilkinson Co. Correctional Facility, Mississippi)

U.S. District Court  
CONTRACT SERVICES  
INADEQUATE CARE

*Austin v. Taylor*, 604 F.Supp.2d 685 (D.Del. 2009). A state prisoner brought an action alleging a § 1983 claim for inadequate medical care in violation of the Eighth Amendment and a state law medical negligence claim against a medical service corporation under contract with the state to provide healthcare services at a prison. The district court dismissed the case in part. The court held that the corporation that provided prison healthcare was not a state actor entitled to Eleventh Amendment immunity on the state prisoner's § 1983 claim. The court noted that despite having been named in hundreds of § 1983 actions, the corporation had never been held to be an arm of the state for Eleventh Amendment purposes. The court noted that the corporation was an autonomous actor and was not immune from state taxation, and any judgment against the corporation would not be paid from the state treasury. According to the court, although the corporation could not be held liable for allegedly medically negligent acts of an employee under the theories of respondeat superior or vicarious liability, the corporation could be directly liable for acts of the employee if the employee's acts were deemed the result of the corporation's policy or custom that was so likely to result in the violation of constitutional rights that the corporation could reasonably be said to have been deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment. The court noted that a "policy" of the corporation is made when a decision-maker possessing final authority to establish a policy with respect to an allegedly violative action issues an official proclamation, policy or edict. According to the court, the "custom" of the corporation can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as to virtually constitute law. (Howard R. Young Correctional Institution, Wilmington, Delaware)

U.S. District Court  
DELAY OF CARE

*Baker v. Wilkinson*, 635 F.Supp.2d 514 (W.D.La. 2009). A Louisiana state prisoner brought a § 1983 action, in forma pauperis, against a warden, assistant warden, prison operator, and two nurses, alleging that he was denied adequate medical care related to hemorrhoids. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner suffered an injury as a result of the delay in appropriate medical care, whether he was entitled to damages for emotional distress, and whether he was entitled to nominal or punitive damages. (Winn Correctional Center, Louisiana, Corrections Corporation of America)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
DENIAL  
MEDICATION

*Blackstock v. Corrections Corp. of America*, 660 F.Supp.2d 764 (W.D.La. 2009). A state inmate brought an action against a prison medical provider, seeking preliminary injunctions requiring that the prison provide him prescribed medications. The district court granted the motion. The court held that the prison physician's refusal, for no valid reason, to provide Neurontin, prescribed by an outside neurologist, constituted deliberate indifference. The court noted that the prison had specifically referred the inmate to the neurologist because the prison physician, who was not a neurologist, needed the specialist's expertise in a serious and complicated medical case. Neurontin was available in a generic form and was less expensive than what the prison was giving the inmate, and Neurontin was a drug that had helped the inmate and was a successful treatment for him both before and after his arrival at prison. According to the court, the inmate would likely suffer irreparable injury in the absence of a preliminary injunction requiring that the prison provide him medications prescribed by the outside neurologist. (Winn Correctional Center, Louisiana)

<p>U.S. District Court MALPRACTICE NEGLIGENCE DELIBERATE INDIFFERENCE</p>	<p><i>Brace v. Massachusetts</i>, 673 F.Supp.2d 36 (D.Mass. 2009). The administrator of a female detainee’s estate sued the Commonwealth of Massachusetts and a number of individuals having some role in providing medical services to inmates at a county correctional facility, including a clinician, asserting claims for negligence and medical malpractice, and alleging that the detainee was deprived of her constitutional rights by deliberate indifference to her medical needs. A clinician moved to dismiss certain counts. The district court allowed the motion in part and denied in part. The court held that dismissal of a medical malpractice claim after a medical tribunal found that there was insufficient evidence to raise a legitimate question of liability did not preclude the deceased detainee's estate from stating a § 1983 claim against a prison clinician for deliberate indifference to the inmate's medical needs. The court held that the deceased detainee's estate stated a § 1983 wrongful death claim against the jail clinician for deliberate indifference to the inmate's medical needs, in violation of her Eighth and Fourteenth Amendment rights. The estate alleged that the clinician observed the detainee while she was in obvious medical distress and took the minimal step of making a phone call to a medical unit about the detainee's condition. (Hampden County House of Correction, Massachusetts)</p>
<p>U.S. District Court CONTRACT SERVICES DELIBERATE INDIFFERENCE DENTAL CARE</p>	<p><i>Brathwaite v. Correctional Medical Services</i>, 630 F.Supp.2d 413 (D.Del. 2009). A state prison inmate brought a § 1983 action against a corporation that provided medical services to correctional facilities, and individual defendants including a dentist affiliated with the corporation, alleging deliberate indifference to his dental needs in violation of the Eighth Amendment. The district court granted the defendants’ motion for summary judgment. The court held that denials of the inmate's requests for a root canal procedure were not deliberate indifference, given the dentist's repeated recommendation of extraction and the inmate's refusal to consent to the extraction. The court noted that, under the Eighth Amendment, prisoners are entitled to medical treatment, but prisoners have no right to choose the specific form of medical treatment when the treatment provided is reasonable. (Correction Medical Services, Delaware Department of Corrections)</p>
<p>U.S. District Court INADEQUATE CARE POLICIES TRAINING</p>	<p><i>Brickell v. Clinton County Prison Bd.</i>, 658 F.Supp.2d 621(M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. (Clinton County Prison Board, Clinton County Correctional Facility, Pennsylvania)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Browne v. San Francisco Sheriff's Dept.</i>, 616 F.Supp.2d 975 (N.D.Cal. 2009). A former state pretrial detainee filed a § 1983 action against nearly 50 defendants, seeking redress for alleged injuries caused by deputies and medical staff of a sheriff's department. The district court granted summary judgment to the defendants. The court held that a deputy's alleged placing of a “white tip poisonous spider” in a safety cell before moving the pretrial detainee back into the cell, grabbing the detainee and bending his arm while he threw him out of the cell, and putting his knee into the center of the detainee's back did not rise to the level of malicious and sadistic use of force, as required for a Fourteenth Amendment excessive force claim. The court noted that there was no evidence that the detainee was injured or that he sought medical treatment for any injuries. (San Francisco County Sheriff's Department, San Francisco County Jail, California)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE INADEQUATE CARE</p>	<p><i>Browning v. Pennerton</i>, 633 F.Supp.2d 415 (E.D.Ky. 2009). A pro se federal prisoner brought an action against prison officials, alleging that the officials violated the Eighth Amendment by deliberately failing to heed his warning that another inmate was going to harm him and for providing inadequate medical treatment after the inmate attacked him. The court held that the prisoner failed to allege that he personally warned prison supervisors of threats made by another inmate and his resulting fear for his safety, as required to state an Eighth Amendment failure to protect claim against the supervisors. The court found that prison supervisors were not physicians qualified to render medical treatment and lacked involvement in treating the prisoner's injuries, and thus the supervisors could not be held liable for failing to provide adequate medical treatment to the prisoner following an assault by another inmate. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner, who had warned prison officers that he faced imminent danger from another inmate, was incarcerated under conditions that posed a substantial risk of serious harm, and whether the officers were deliberately indifferent to that substantial risk. (U.S. Penitentiary-Big Sandy, Kentucky)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act WORK ASSIGNMENT</p>	<p><i>Burke v. North Dakota Dept. of Correction and Rehabilitation</i>, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. According to the court, the officials' requirement that the inmate work did not violate the Eighth Amendment, even though the inmate suffered from mental illness and</p>

hepatitis C, and the Social Security Administration had determined that he was disabled. The inmate had not requested accommodations in his working conditions on account of his disabilities, and there was no evidence that the inmate was being forced to work beyond his physical strength or that the jobs were endangering his life or health. The court noted that the prison policies and procedures manual established that all inmates were expected to work, regardless of their disability status.

The court found that the inmate's purported schizoid/sociopathic personality did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA, where the inmate did not describe the nature and severity, duration, the anticipated duration, or the long-term impact of his mental impairment. The court held that the inmate failed to demonstrate that his mental impairment substantially limited his ability to care for himself. Similarly, the inmate's hepatitis C did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA. (North Dakota State Penitentiary)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE

*Burks v. Raemisch*, 555 F.3d 592 (7<sup>th</sup> Cir. 2009). A prisoner who allegedly suffered permanent vision impairment due to a prison's failure to treat his eye condition while he was incarcerated brought a civil rights action against prison officials for deliberate indifference to a serious medical need. The district court dismissed the prisoner's complaint, and he appealed. The appeals court affirmed in part and remanded. The court held that the prisoner's allegations regarding a prison official's role as head of the prison's medical unit in treatment of the prisoner's eye condition were sufficient to support his § 1983 claim against the official for deliberate indifference to a serious medical need. Although the prisoner's complaint did not say that he ever spoke with the official or explain how she came to know of his eye condition, it may have been possible to show through discovery that the physicians and nurses to whom the prisoner spoke reported to the official on his condition, and that the official rather than the other members of the health unit made the decision to leave the condition untreated. The court found that a prison complaint examiner was not deliberately indifferent to the prisoner's serious medical need when she rejected as untimely the prisoner's grievance regarding the alleged failure of the prison's medical staff to treat his eye condition. The court noted that the examiner was fulfilling her duty to dismiss untimely grievances, and was not required to go beyond the duties of her job and try to help the prisoner. (Milwaukee Secure Detention Facility, Wisconsin)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE  
MEDICATION

*Burton v. Lynch*, 664 F.Supp.2d 349 (S.D.N.Y. 2009). A state prisoner brought a § 1983 action against a prison superintendent, corrections officers, prison nurses and a physician alleging violations of his federal constitutional rights. A nurse, the superintendent, and the physician moved to dismiss and the district court granted the motion in part and denied in part. The court held that the prisoner's grievance relating to his alleged beating by corrections officers, for which the prisoner sought an investigation into the beating and to be seen by a doctor, presented no ongoing situation that the prison's superintendent could remedy, such that the superintendent was not personally involved in the alleged violation of the prisoner's constitutional right. According to the court, although the request to see a doctor referred to an ongoing situation, by the time superintendent received it the prisoner had been seen by a doctor, and by the time superintendent answered the prisoner's appeal the prisoner had been transferred to another prison. The court found that the prisoner's allegations that when he saw a prison doctor he could not straighten his left arm without receiving a lot of pain from his elbow, and that the doctor refused to examine his elbow, saying only that was "there was nothing wrong with it without touching it or x-rays," were sufficient to allege facts which plausibly could support a finding that the prisoner's elbow condition was sufficiently serious, as required to state a claim for deliberate indifference to his serious medical needs under the Eighth Amendment. The court found that the prisoner's allegations: (1) that a prison doctor retaliated against him for a previous grievance he had filed against the doctor by denying medical evaluation, treatment, and adequate pain medication; (2) that all levels of the inmate grievance process determined that the doctor had, by his own admission, prescribed the prisoner a medication to which he was allergic; (3) that the doctor failed to detect a condition which was later determined to require surgery on the prisoner's elbow; (4) and that the doctor told the prisoner his elbow looked fine and that his allergy to the medication was the prisoner's "problem," were sufficient to state a case of retaliation under the First Amendment. (Fishkill Correctional Facility, New York)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
MENTAL HEALTH  
SUICIDE

*Cabral v. County of Glenn*, 624 F.Supp.2d 1184 (E.D.Cal. 2009). A pretrial detainee brought a § 1983 action against a city and a police officer alleging violations of the Fourth and Fourteenth Amendments and claims under California law. The city and officer filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, a psychotic and suicidal individual who collided with the wall of a safety cell and broke his neck, failed to plead that a police officer, who extracted the detainee from his holding cell and used a stun gun and pepper spray on him following an incident in which the detainee rubbed water from his toilet on his body, was deliberately indifferent to the detainee's need for medical attention, as required to state due process claim under § 1983. According to the court, the detainee failed to allege that the officer knew he was suicidal and was not receiving medical care, or that the officer attempted to interfere with the detainee's receipt of such medical attention. The court found that the detainee's allegations that the officer used a stun gun, a stunt-type shield and pepper spray in an attempted cell extraction while the detainee was naked, unarmed and hiding behind his toilet were sufficient to state an excessive force claim under § 1983. The court denied qualified immunity for the officer, even though the detainee had not responded to the officers' commands to come out of his cell. The court noted that the law clearly established that police officers could not use a stun gun on a detainee who did not pose a threat and who merely failed to comply with commands. (City of Willows Police Department, California)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
MISDIAGNOSIS  
PRETRIAL DETAINEE

*Caiozzo v. Koreman*, 581 F.3d 63 (2<sup>nd</sup> Cir. 2009). The estate of a pretrial detainee who died in custody at a county jail, brought a § 1983 action against county corrections officials and medical staff, alleging deliberate indifference to the detainee's serious medical condition in violation of the Fourteenth Amendment. The district court granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed. The appeals court held: (1) the subjective standard for analyzing a claim of deliberate indifference to medical needs of a convicted prisoner held in state custody also applied to the pretrial detainee, overruling *Liscio v. Warren* and

*Benjamin v. Fraser*; (2) the estate was required to prove that the defendants disregarded a risk of harm to the detainee of which the defendants were aware; and (3) a nurse was not deliberately indifferent to the detainee's serious medical condition of alcohol withdrawal. The court noted that the nurse incorrectly believed that the detainee was intoxicated, and there was no evidence that the nurse actually believed that the detainee was in danger of imminent severe alcohol withdrawal. The detainee had previously been incarcerated at the facility on at least 27 separate occasions, and had been treated for chronic alcoholism by the facility's medical staff. (Albany County Correctional Facility, New York)

U.S. District Court  
COSTS

*Campbell v. Credit Bureau Systems, Inc.*, 655 F.Supp.2d 732 (E.D.Ky. 2009). An inmate brought an action under the Fair Debt Collection Practices Act (FDCPA) against collection agencies, stemming from purported charges for medical care while incarcerated. The district court granted the defendants' motions for summary judgment. The court held that the inmate's certified letters to collection agencies, notifying them that he disputed the debt and requesting validation, did not entitle the inmate to protection under the Fair Debt Collection Practices Act (FDCPA) provision requiring agencies to temporarily cease collection efforts and assist debtors in understanding the source and nature of the debt, where the letters were not timely delivered. But the court held that the collection agencies failed to establish that the inmate initiated the action in bad faith or with nefarious motive, for the purposes of a fee request. (Federal Medical Center in Lexington, Kentucky)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
SPECIAL DIETS

*Cardinal v. Metrish*, 564 F.3d 794 (6<sup>th</sup> Cir. 2009). A prisoner brought an action against a warden seeking monetary damages, as well as declaratory and injunctive relief. The prisoner asserted violations of the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the failure to provide him with kosher food which resulted in his not eating for eight days. The district court granted summary judgment in favor of the warden. The prisoner appealed. The court held that the warden was entitled to Eleventh Amendment immunity on the prisoner's claim seeking monetary damages for the alleged violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) for not providing him with kosher meals. According to the court, even though the state accepted federal funds for its prisons, RLUIPA did not contain a clear indication that receipt of federal prison funds was unambiguously conditioned on a state's consent to be sued for monetary damages. The court held that there was no evidence that the warden knew of and disregarded an excessive risk to the prisoner's health or safety, as required to support the prisoner's claim against the warden for deliberate indifference to his medical needs in violation of the Eighth Amendment based on failure to provide him with kosher food. (Hiawatha Correctional Facility, Michigan)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
PRETRIAL DETAINEE

*Christian v. Wagner*, 611 F.Supp.2d 958 (S.D.Iowa 2009). A pretrial detainee brought an action against county jail officials and employees, seeking to recover damages for injuries he allegedly sustained as a result of his exposure to a cleaning solvent used to clean cells. Following a jury verdict in favor of the defendants, the detainee filed a combined motion for a new trial and for judgment as a matter of law. The district court denied the motion. The court held that the detainee's claim was properly construed as a deliberate indifference to a serious medical need claim, not a general conditions of confinement claim. According to the court, whether the detainee had a serious medical need to be removed from the cleaning solvent was an issue for the jury. (Johnson County Jail, Iowa)

U.S. District Court  
AIDS-Acquired Immune  
Deficiency Syndrome  
CONTAGIOUS  
DISEASES  
DELIBERATE  
INDIFFERENCE

*Clark v. Williams*, 619 F.Supp.2d 95 (D.Del. 2009). An inmate sued state corrections officials, claiming that they violated his Eighth Amendment rights when he was incarcerated in a cell with an inmate infected with human immunodeficiency virus (HIV) and Hepatitis B, and by failing to provide him with medical treatment when he contracted Hepatitis B. The district court held that the inmate had no administrative remedy, and thus, the exhaustion requirement of the Prison Litigation Reform Act (PLRA) did not have to be met. The court ruled that the issue of whether prison officials were aware that the inmate was living under conditions that exposed him to a communicable disease that posed an unreasonable risk of serious harm to his future health was a triable fact issue. According to the court, the medical services administrator and a physician were not deliberately indifferent to the inmate's medical needs. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE  
MISDIAGNOSIS

*Conseillant v. Alves*, 599 F.Supp.2d 367 (W.D.N.Y. 2009). A prisoner brought a § 1983 action against a physician employed by the New York State Department of Correctional Services (DOCS) alleging improper or inadequate treatment, in violation of his rights under the Eighth Amendment. The district court granted summary judgment in favor of the physician. The court held that the prisoner's allegations that a nurse practitioner misdiagnosed him as suffering from hepatitis, and that the defendant physician knew of this misdiagnosis but allowed the prisoner to think he had a deadly disease, were insufficient to demonstrate deliberate indifference. The court noted that the prisoner's medical treatment was not so inadequate as to amount to "cruel or unusual punishment" prohibited by the Eighth Amendment. According to the court, the prisoner did not establish that he had a "serious medical need," or that the physician ignored any serious medical need. The court noted that the physician was not personally involved in any misdiagnosis, as the evidence only showed that the physician ordered follow-up testing, not that he told the prisoner that he had an active hepatitis infection. (New York State Department of Correctional Services)

U.S. District Court  
NEGLIGENCE

*Creed v. Virginia*, 596 F.Supp.2d 930 (E.D.Va. 2009). The father of a prisoner who died while in custody brought an action in state court against the state of Virginia, a county sheriff, a prison supervisor, a prison director, and various prison employees. The father alleged that the prisoner died when he was placed in a choke hold and stopped breathing during a medical examination before his planned transfer to a hospital for involuntary commitment, asserting civil rights and supervisory liability claims under § 1983, as well as state law claims for negligence, gross negligence, and willful and wanton negligence. After the case was removed to federal court the prisoner's father and state moved to remand. The district court granted the motion. (Prince William-Manassas Regional Adult Detention Center, Virginia)

<p>U.S. Appeals Court  CONTRACT SERVICES  INADEQUATE CARE  NEGLIGENCE</p>	<p><i>Dominguez v. Correctional Medical Services</i>, 555 F.3d 543 (6<sup>th</sup> Cir. 2009). A prisoner brought an action against a registered nurse and other defendants, asserting a state law claim of gross negligence and § 1983 claims for alleged subjection to excessive force and inadequate medical care in violation of the Eighth Amendment. The nurse moved for summary judgment. The district court denied summary judgment as to the § 1983 claim of inadequate medical care and the state law claim of gross negligence. The nurse appealed. The appeals court affirmed. The court held that summary judgment was precluded due to a genuine issue of material fact as to whether the nurse acted with deliberate indifference to the prisoner's serious medical needs. The court also found summary judgment was precluded by a genuine issue of material fact as to whether the nurse's conduct in providing care for the prisoner was the proximate cause of the prisoner's injury. (Carson City Correctional Facility, Michigan)</p>
<p>U.S. District Court  CONTRACT SERVICES  FAILURE TO PROVIDE CARE  NEGLIGENCE  SUICIDE</p>	<p><i>Edwards v. District of Columbia</i>, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before bringing an action under FTCA and that the court lacked subject matter jurisdiction over the FTCA claims and claims against the District. (District of Columbia Jail)</p>
<p>U.S. District Court  CONTRACT SERVICES  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE CARE</p>	<p><i>Estate of Henson v. Wichita County, Tex.</i>, 652 F.Supp.2d 730 (N.D.Tex. 2009). Daughters of a pre-trial detainee, who died from chronic obstructive pulmonary disease while being held in a county jail, brought a § 1983 action against the county and jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail physician was a supervisor, whether a policy of intimidation of jail nurses was a moving force behind the alleged violation of the rights of the detainee, whether the physician failed to supervise nurses, and, if so, whether his failure to supervise amounted to deliberate indifference. The court held that the jail physician was entitled to assert a defense of qualified immunity, even though he was a contract physician. (Wichita County Jail, Texas)</p>
<p>U.S. District Court  ADEQUACY OF CARE  DELIBERATE  INDIFFERENCE  MENTAL HEALTH  PRIVATE PHYSICIAN  PRIVATE PROVIDER  RIGHT TO REFUSE</p>	<p><i>Estate of Rice ex rel. Rice v. Correctional Medical Services</i>, 596 F.Supp.2d 1208 (N.D.Ind. 2009). The estate of a prisoner who died while detained at a county jail, where he suffered from schizophrenia and various complications as the result of his refusal to take his medication and his self-imposed starvation, brought an action against a private hospital and a physician at the hospital. The estate alleged that the physician deprived the prisoner of his constitutional rights in violation of § 1983, and that the hospital and physician negligently failed, under state law, to provide adequate medical care and treatment to the prisoner. The district court granted summary judgment for the defendants in part. The court held that an expert's summary judgment report, in which he stated, among other things, that the treating physician was fully aware that the deceased prisoner had been refusing food, drink, and medications, and that she had no reason to believe that the same pattern would not subsequently continue back in jail, was admissible. The court also found that the expert's summary judgment report that the physician who treated the schizophrenic prisoner prior to his death showed indifference to the prisoner's serious medical condition "by turning a blind eye to the likely outcome of a return to jail" was admissible. The court noted that the expert was not offering a legal conclusion as to the treating physician's subjective knowledge.</p> <p>The court found that the prisoner had a serious medical need, as an element of his alleged Eighth Amendment violation. The court noted that the prisoner went to a hospital because he was not taking his medications, was not eating, had lost 50 pounds in 13 months, and was uncommunicative. Medical records indicated that the prisoner had severe mental problems, including schizophrenia, which posed a risk of serious damage to his future health. The physician who treated the prisoner acknowledged the seriousness of his condition in her medical recommendation, and ten weeks after his hospital stay, the prisoner died from malnutrition. (Elkhart County Jail, Indiana)</p>
<p>U.S. District Court  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE CARE</p>	<p><i>Farnam v. Walker</i>, 593 F.Supp.2d 1000 (C.D.Ill. 2009). A state prisoner who suffered from cystic fibrosis filed a civil rights action against a prison under the Eighth Amendment alleging deliberate indifference to his serious medical needs. The prisoner filed a motion for preliminary injunction which the district court granted. The court noted that the risk of irreparable harm had not abated and an inference existed that at least some prison personnel participated in, and acquiesced to, deliberate indifference to the prisoner's cystic fibrosis. According to the court, personnel with medical training and the ability to intervene subjectively knew of the prisoner's needs and yet disregarded them in such a way that a nominally competent professional would not have, and the prison denied the prisoner's appointment at a cystic fibrosis center via a "corporate utilization review" for no stated reason or explanation. (Graham Correctional Center, Illinois)</p>
<p>U.S. District Court  DELIBERATE  INDIFFERENCE  MEDICATION</p>	<p><i>Fleming v. Sharma</i>, 605 F.Supp.2d 399 (N.D.N.Y. 2009). The wife of a deceased prisoner, individually and as administratrix of the prisoner's estate, brought an action under § 1983 against a prison physician and a medical director, alleging that the defendants were deliberately indifferent to the prisoner's serious medical needs in violation of his Eighth Amendment rights, and seeking loss of consortium as a result of the prisoner's death. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison physician and medical director were deliberately indifferent to the serious medical needs of the prisoner, who suffered from congestive heart failure, and who died while under the defendants' care. The defendants allegedly failed to provide the prisoner with medication to stabilize his heart condition, despite the recommendations of four different physicians that the prisoner be treated with the medication. According to the court, the prison physician and the medical</p>

director were not entitled to qualified immunity from the § 1983 claim brought by the wife where the very nature of the action called into question the reasonableness of the defendants' decision not to administer medication. (Mohawk Correctional Facility, New York)

U.S. District Court  
ADA-Americans with  
Disabilities Act  
MEDICATIONS

*Flynn v. Doyle*, 630 F.Supp.2d 987 (E.D.Wis. 2009). Prisoners at a state correctional institution brought a class action against a governor and other defendants, alleging that medical and mental health care provided to them at the institution violated the Eighth Amendment and Title II of Americans with Disabilities Act (ADA). The prisoners moved for a preliminary injunction and the district court granted the motion. The court found that the class of prisoners was reasonably likely to succeed at trial on the merits of its Eighth Amendment claims against a governor, institution and other defendants alleging that continued use of correctional officers to distribute medications at the institution posed a substantial risk of serious harm to members of the class. According to the court, the defendants knew of the risk but failed to take reasonable steps to abate it. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court  
ADA- Americans with  
Disabilities Act  
EQUAL PROTECTION  
INADEQUATE CARE  
RA- Rehabilitation Act  
STAFF

*Flynn v. Doyle*, 672 F.Supp.2d 858 (E.D.Wis. 2009). Female inmates filed a class action alleging that medical, dental, and mental health care provided to prisoners at a state facility violated the Eighth Amendment, Equal Protection Clause, Title II of Americans with Disabilities Act, and Rehabilitation Act. The officials moved for partial summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether there were systemic and gross deficiencies in staffing, facilities, and procedures at the state correctional facility that resulted in provision of inadequate medical care for female inmates. The court also found that summary judgment was precluded on the inmates' claim that the state violated Title II of ADA by failing to provide access to programs to inmates with mobility, visual, and hearing disabilities. The court found a genuine issue of material fact as to the effectiveness of accommodations offered to disabled inmates at a state correctional facility. The court found that the female inmates' allegation that the state provided inpatient mental health services for male inmates, but not for female inmates, was sufficient to state claim against the state under the Equal Protection Clause, despite the state's contention that the disparity was natural outgrowth of the historically small number of female inmates in the state. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INTAKE SCREENING  
MENTAL HEALTH  
PRETRIAL DETAINEE  
PRIVATE PHYSICIAN  
RECORDS  
SUICIDE

*Francis ex rel. Estate of Francis v. Northumberland County*, 636 F.Supp.2d 368 (M.D.Pa. 2009). The administrator of the estate of a detainee who committed suicide while in a county prison brought an action against the county and prison officials, asserting claims for Fifth and Fourteenth Amendment reckless indifference and Eighth Amendment cruel and unusual punishment under § 1983. The administrator also alleged wrongful death under state law. The county defendants brought third-party claims against a psychiatrist who evaluated the detainee, and the psychiatrist counter-claimed. The county defendants and psychiatrist moved separately for summary judgment. The court held that the County, which paid \$360,000 in exchange for a release of claims brought by the estate of the detainee, would be entitled to indemnity on third-party claims against the psychiatrist who evaluated the detainee if a jury determined that the psychiatrist was at fault in the detainee's suicide. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the evaluating psychiatrist knew the pretrial detainee was a suicide risk and failed to take necessary and available precautions to prevent the detainee's suicide as would show deliberate indifference to the detainee's medical needs; (2) whether the evaluating psychiatrist was an employee of the county prison entitled to immunity under the Pennsylvania Political Subdivision Tort Claim Act (PSTCA) or was an independent contractor excluded from such immunity; (3) whether the evaluating psychiatrist's failure to appropriately document the pretrial detainee's medical records led to the detainee's removal from a suicide watch; (4) whether the recordation of the pretrial detainee's suicide watch level was customary, precluding summary judgment as to whether the evaluating psychiatrist had a duty to record this information; (5) whether the evaluating psychiatrist's failure to communicate the appropriate suicide watch level to county prison officials resulted in the pretrial detainee's suicide; and (6) whether the evaluating psychiatrist communicated the appropriate suicide watch level for the pretrial detainee to county prison officials and whether the psychiatrist was required to record the watch level in the detainee's medical records.

The court found that the county prison had an effective suicide policy in place and thus the psychiatrist who evaluated the pretrial detainee had no viable Fourteenth Amendment inadequate medical care and failure to train counterclaims under § 1983 against the county. According to the court, while at least one individual at the prison may have failed to carry out protocols for the diagnosis and care of suicidal detainees, the policy would have been effective if properly followed as was customary at the prison.

The court held that the county prison warden adequately trained subordinates with regard to protocols for the care and supervision of suicidal inmates and adequately supervised execution of these protocols, and thus the psychiatrist who evaluated the pretrial detainee had no viable counterclaim under § 1983 against the warden for failure to adequately train or supervise under the Fourteenth Amendment. (Northumberland County Prison, Pennsylvania)

U.S. Appeals Court  
DELAY IN TREATMENT  
DELIBERATE  
INDIFFERENCE  
MEDICATION

*Giles v. Kearney*, 571 F.3d 318 (3<sup>rd</sup> Cir. 2009). A state inmate filed a § 1983 action against correctional officers and others, alleging excessive force and deliberate indifference to his medical needs. The district court entered summary judgment in favor of some officers, and entered judgment in favor of the remaining defendants. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate had ceased resisting before correctional officers kicked or "kneed" him in the side. According to the court, an administrative assault determination and a state court no contest plea for the inmate's hitting of a correctional officer, before he was wrestled to the ground, did not provide a blank check justification for the correctional officers' excessive use of force thereafter. The court held that the district court's determination that correctional officers did not act with deliberate indifference to the inmate's serious needs when they denied his request for pain medication and administered pepper spray to subdue the inmate after he became agitated was not a clear error. The court noted that

the inmate was in an infirmary, had suffered a broken rib and a punctured lung, and was at risk of death as the result of a delay in diagnosis and transfer to a hospital. The officer checked with the nurse on duty and found that no medication was prescribed, the inmate ignored repeated requests to calm down and continued shouting and hitting and shaking a door late at night, and the officers administered a single spray of pepper spray. (Sussex Correctional Institution, Delaware)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
EQUAL PROTECTION

*Goodson v. Willard Drug Treatment Campus*, 615 F.Supp.2d 100 (W.D.N.Y. 2009). A state prisoner filed a pro se § 1983 action against prison officials and a prison's drug treatment facility, claiming violation of his rights under the Eighth Amendment and the Equal Protection Clause. The district court granted summary judgment for the defendants. The court held that the prison's assignment of the prisoner to a top bunk from which he fell and was injured while confined in the prison's drug treatment facility, where he was sent for medical reasons relating to a herniated disc in his lower back, did not deprive the prisoner of his Eighth Amendment right to be free from cruel and unusual punishment. The court noted that the prisoner did not have a serious medical need for a lower bunk, and the prison did not make the top bunk assignment in deliberate indifference to the prisoner's medical needs. (Willard Drug Treatment Campus, New York State Department of Correctional Services)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE

*Griffin v. Arpaio*, 557 F.3d 1117 (9<sup>th</sup> Cir. 2009). A state inmate brought a § 1983 action against a county sheriff and others, alleging cruel and unusual punishment and unsafe living conditions based on their failure to assign him a lower bunk for medical reasons. The defendants moved to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The district court granted the motion and the inmate appealed. The appeals court affirmed. Although the court found that a prison grievance need only alert the prison to the nature of the wrong for which redress is sought and the inmate's failure to grieve deliberate indifference to his serious medical needs did not invalidate his exhaustion attempt, the inmate did not properly exhaust administrative remedies under PLRA. The court held that the inmate's grievance regarding his need for a lower bunk assignment did not provide sufficient notice of the staff's alleged disregard of his lower bunk assignments to allow officials to take appropriate responsive measures, as required to properly exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) before he brought a § 1983 action. The officials responding to the inmate's grievance reasonably concluded that a nurse's order for a lower bunk assignment solved the inmate's problem. (Maricopa County Sheriff, Arizona)

U.S. Appeals Court  
CONTAGIOUS DISEASE  
DELIBERATE  
INDIFFERENCE

*Hagan v. Rogers*, 570 F.3d 146 (3<sup>rd</sup> Cir. 2009). Fourteen state prisoners jointly filed a single § 1983 complaint, on behalf of themselves and a purported class, claiming violation of their Eighth and Fourteenth Amendment rights by prison officials' purported deliberate indifference to the exposure of prisoners to an outbreak of a serious and contagious skin condition, allegedly scabies. The prisoners sought class certification, requested to proceed in forma pauperis (IFP) under the Prison Litigation Reform Act (PLRA), and sought appointment of counsel. The district court denied joinder (combining actions), dismissed with leave to amend for all except one prisoner, and denied class certification. The prisoners appealed. The appeals court reversed in part, vacated in part, and remanded. The appeals court held that: (1) IFP prisoners were not barred from joinder by PLRA; (2) each joined prisoner was required to pay the full individual filing fee; and (3) the typicality and commonality requirements were satisfied for class certification. The court noted that prisoners proceeding in forma pauperis (IFP) remained within the definition of "persons" under the permissive joinder rule, and thus, the prisoners were not categorically barred from joinder in their civil rights action, despite concerns that joinder would undermine PLRA by permitting split fees or avoiding the three-strike rule that limited IFP status. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court  
FAILURE TO PROVIDE  
CARE

*Hamilton v. Lajoie*, 660 F.Supp.2d 261 (D.Conn. 2009). An inmate filed a pro se § 1983 action against the State of Connecticut, a warden, and correctional officers, seeking compensatory and punitive damages for head trauma, abrasions to his ear and shoulder, and post-traumatic stress due to an officers' alleged use of unconstitutionally excessive force during a prison altercation. The inmate also alleged inadequate supervision, negligence, and willful misconduct. The court held that the inmate's factual allegations against correctional officers, in their individual capacities, were sufficient for a claim of excessive force in violation of the inmate's Eighth Amendment rights. The officers allegedly pinned the inmate to the ground near his cell, following an inspection for contraband, and purportedly sprayed the inmate in the face with a chemical agent despite his complaints that he had asthma. The court found that the inmate's allegations against the warden in his individual capacity were sufficient for a claim of supervisory liability, under § 1983, based on the warden's specific conduct before and after the altercation between the inmate and correctional officers. The inmate alleged that the warden was responsible for policies that led to his injuries and for procedures followed by medical staff following the incident, and the warden failed to properly train officers, to adequately supervise medical staff, to review video evidence of the incident, and to order outside medical treatment of the inmate's injuries even though a correctional officer received prompt medical care at an outside hospital for his head injury sustained in the altercation. (Corrigan-Radgowski Correctional Center, Connecticut)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
EQUAL PROTECTION  
FAILURE TO PROVIDE  
CARE

*Harris v. City of Circleville*, 583 F.3d 356 (6<sup>th</sup> Cir. 2009). A pretrial detainee brought a § 1983 action against a city and police officers, alleging that he was subjected to excessive force and inadequate medical care, and discriminated against on account of his race, while being booked at a jail. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by fact issues on the excessive force claim, the deliberate indifference claim, and the equal protection claim. The court held that summary judgment was precluded by genuine issues of material fact as to whether police officers' use of force against the detainee, in yanking at the detainee's neck and kicking his leg out from under him causing the detainee to fall and hit his head, in using a takedown maneuver to get the detainee down on the floor in a booking area, and in kicking the detainee in the ribs, was objectively reasonable or shocked the conscience. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the detainee had a serious need for medical care that was so obvious that even

a layperson would easily recognize the need for a doctor's attention, following the police officers' exercise of force against him. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether police officers used excessive force and delayed medical treatment of the detainee on account of his African-American race. (Circleville City Jail, Ohio)

U.S. District Court  
CHILDREN  
DELAY IN CARE  
FAILURE TO PROVIDE  
CARE  
FEMALE PRISONERS

*Havard v. Puntner*, 600 F.Supp.2d 845 (E.D.Mich.,2009). The guardian of a minor child, who was born in a county jail while her mother was incarcerated there, brought a § 1983 action against jail employees for injuries sustained during and immediately after the birthing process. The district court denied the employees' motion to dismiss. The court held that the minor child was a "person" within the Fourteenth Amendment at the time of her § 1983 claims against jail employees, for injuries allegedly sustained as a result of alleged unconstitutional conduct during and immediately after the birthing process. The child was allegedly injured by the employees' failure to provide medical attention to the mother in violation of the child's due process rights, such that the child was not in a hospital at the time of her birth, the physicians and the facilities of the hospital were not available to resuscitate her when she was born, and she was not resuscitated until she arrived at the hospital following transport from the jail, at which time she had no respiration or heartbeat. The court found that deputies and a nurse at the county jail were not entitled to qualified immunity from the § 1983 action brought on behalf of the minor child, where the constitutional duty to care for helpless infants who have newly come into the world, including the duty to care for them by anticipation, during the birthing process, was clearly established at the time of the birth. The court noted that the defendants allegedly left the mother in her cell for two hours even though they were aware that she was in active labor, crying out for help, and that, once called, paramedics did not arrive until the child was being delivered and did not have the equipment to resuscitate the child when she was delivered. (Wayne County Jail, Michigan)

U.S. District Court  
CONTRACT SERVICES  
EYE CARE  
PRIVATE PROVIDER

*Hinton v. Corrections Corp. of America*, 624 F.Supp.2d 45 (D.D.C. 2009). An inmate, acting pro se and in forma pauperis, brought a § 1983 action against a private corporation that operated the treatment facility where the inmate was held in custody, alleging the facility failed to provide prescription eyeglasses in violation of the Eighth Amendment. The district court dismissed the case. The court held that the inmate's allegations were insufficient to state a § 1983 claim for an Eighth Amendment violation. According to the court, the corporation had no duty to provide eye glasses, eye care, or eye treatment, as the corporation's contract with the government did not stipulate that the corporation was to provide eye care, and a separate entity, other than the corporation, was under contract to provide eye care to inmates at the facility. (Central Treatment Facility, District of Columbia, operated by Corrections Corporation of America)

U.S. Appeals Court  
MALPRACTICE  
MEDICATION  
MENTAL HEALTH  
PRIVACY  
SUICIDE

*Hunter v. Amin*, 583 F.3d 486 (7<sup>th</sup> Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)

U.S. Appeals Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
X-RAY

*Jenkins v. County of Hennepin, Minn.*, 557 F.3d 628 (8<sup>th</sup> Cir. 2009). An inmate brought a § 1983 action against a county, the supervisor of a jail's nursing staff, and others alleging he received constitutionally inadequate medical care while incarcerated. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed. The court found that the supervisor of the jail's nursing staff did not act with deliberate indifference to the inmate's serious medical condition when she determined that the inmate should be sent for an x-ray in a day or two. The inmate was unable to open his jaw completely, blow his nose, or chew. According to the court, the decision reflected a medical judgment that the inmate's injury, though possibly serious, was not urgent and nothing indicated that a one-day delay was detrimental to the inmate's recovery. The court held that the inmate failed to establish that any of the jail's official policies reflected deliberate indifference to his serious medical needs, as required to support his § 1983 claim. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court  
DELAY OF CARE  
DENIAL

*Jennings v. Hart*, 602 F.Supp.2d 754 (W.D.Va. 2009). The administrator of an inmate's estate brought an action against a sheriff and several other current or former officers in a county sheriff's department, alleging claims under § 1983 and a state wrongful death act for one officer's alleged wrongful denial of medical care to an inmate in the county jail. The district court denied the officers' motion to dismiss on the grounds of sovereign immunity. The district court held that the officers lacked the discretion to keep the inmate at the jail and deny her the opportunity to be seen by a neurologist or other medical professional for ten days following referral by a nurse practitioner. The officers allegedly ignored the inmate's repeated requests for help and worsening physical condition, including severe headaches, dizziness, pressure in her head, loss of appetite, and fluid drainage in her ears. By the time the officers contacted outside medical professionals, the inmate was suffering from brain abscesses and a stroke which lead to her death. (Culpeper County Jail, Virginia)

<p>U.S. District Court POLICIES FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Jones v. Pramstaller</i>, 678 F.Supp.2d 609 (W.D. Mich. 2009). The personal representative for a prisoner's estate brought a § 1983 action against prison employees and others, alleging that the defendants were deliberately indifferent to the prisoner's known serious medical need in violation of his Eighth Amendment right to be free of cruel and unusual punishment. The representative also brought state law claims for gross negligence and recklessness. Several employees moved for judgment on the pleadings, or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the personal representative stated a claim against a prison physician by alleging that the physician should have realized the likely gravity and urgency of the prisoner's condition when he read a report that the prisoner had lost control of his muscles, could not walk, and had his eyes rolling back in his head involuntarily, but failed to order an immediate examination of the prisoner. The court also held that a claim was stated against the prison's coordinator of healthcare services by alleging that the coordinator failed to investigate whether the prisoner was under a physician's care after his symptoms and complaints indicating a grave and urgent medical condition were reported to her, and to act promptly once she learned that he was not. According to the court, the prison's warden and deputy director were entitled to rely on the judgment of the healthcare risk management coordinator, indicating that she had checked on the prisoner's well-being and assuring them that his medical needs were being addressed, and, thus, they were not liable under § 1983 for deliberate indifference to the prisoner's known serious medical need. The court ordered further discovery to determine whether the director and coordinator failed to put in place policies and procedures requiring that prisoner complaints, symptoms, or diagnoses of a certain type or severity be communicated to officials within a certain time period after the information became available. (Ernest Brooks Correctional Facility, Michigan)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act DELIBERATE INDIFFERENCE EYE CARE FAILURE TO PROVIDE CARE</p>	<p><i>Kemppainen v. Aransas County Detention Center</i>, 626 F.Supp.2d 672 (S.D.Tex. 2009). An inmate brought an action against a county, alleging that jail personnel were deliberately indifferent to his serious medical needs because they failed to provide him prescription eyeglasses in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA). The county moved for summary judgment, and the inmate moved to amend his complaint. The district court denied both motions. The court held that summary judgment was precluded by genuine issues of material fact as to whether the county had a policy or practice of denying eye examinations and prescription eyeglasses to indigent inmates due to funding issues, and whether that policy amounted to deliberate indifference to the inmate's serious medical needs, in violation of Eighth Amendment. According to the court, the inmate was not substantially limited in the major life activity of seeing, and thus was not disabled within the meaning of the Americans with Disabilities Act (ADA), since the inmate's sight was correctable through prescription eyeglasses. (Aransas County Detention Center, Texas)</p>
<p>U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE WORK ASSIGNMENT</p>	<p><i>Knight v. Wiseman</i>, 590 F.3d 458 (7<sup>th</sup> Cir. 2009). A state prisoner brought a § 1983 action against correctional officers, alleging that they violated his Eighth and Fourteenth Amendment rights by requiring him to work despite a prior shoulder injury and delaying medical treatment following a subsequent re-injury. The district court granted summary judgment in favor of officers and the prisoner appealed. The appeals court affirmed. The court held that state correctional officers' conduct, in making the prisoner with a previous shoulder injury engage in work gang duty along a highway upon arrival to the work camp, did not constitute an Eighth Amendment deliberate indifference to any serious medical condition involving the prisoner's shoulder injury, absent evidence showing that the officers knew of his prior shoulder injury before he reinjured it. According to the court, even if the correctional officers knew of the prisoner's previous shoulder injury when they made him engage in work gang duties along the highway, such conduct did not constitute Eighth Amendment deliberate indifference to the prisoner's serious medical needs since the prisoner did not have any medical work restrictions on his record. The court noted that as soon as the prisoner informed the officers that he was so hurt that he could not do any work at all, the officers took the necessary steps to secure him the medical treatment to which he was entitled, which a doctor determined to be ibuprofen and bed rest. The court held that the period of time between when the prisoner re-injured his shoulder during work gang duty and when he received medical treatment did not constitute Eighth Amendment deliberate indifference on the part of the correctional officers supervising the work, notwithstanding an independent decision of a van driver to take a brief, mile-long detour on the trip back to the work camp. The court noted that the officers could not abandon the remainder of the work gang and the severity of the injury did not appear to call for the cancellation of the detail altogether, so they placed the prisoner on the next available transport back to the work camp, and two and a half hours, at most, passed between the injury and the treatment. (Vandalia Correctional Center, Illinois)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Krout v. Goemmer</i>, 583 F.3d 557 (8<sup>th</sup> Cir. 2009). The administratrix of a pretrial detainee's estate brought a § 1983 action against police officers and correctional officers alleging excessive force and deprivation of medical care. The district court denied the defendants' motions for summary judgment and the defendants appealed. The appeals court dismissed in part, affirmed in part, and reversed in part. The appeals court held that the correctional officers' response to the pretrial detainee's inability to walk or feel his legs and difficulty breathing was not deliberately indifferent to his medical needs under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainee was closely monitored and checked by an officer every 15 minutes, the detainee did not want medical attention, the detainee stated he was doing fine, emergency medical services (EMS) technicians examined the detainee's neck and neuromuscular function and determined there was nothing unusual, the detainee declined to go to a hospital at least three times, and officers repositioned the detainee's neck to ease his breathing. (Pope County Detention Center, Russellville Police Department, Arkansas)</p>
<p>U.S. District Court ADEQUACY OF CARE DELIBERATE INDIFFERENCE</p>	<p><i>Lewis v. Naku</i>, 650 F.Supp.2d 1090 (E.D.Cal. 2009). An inmate brought a § 1983 suit claiming that a prison physician was deliberately indifferent to his medical needs in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The physician moved for summary judgment. The district court granted the motion. The court held that the physician was not deliberately indifferent to the inmate's medical needs when he failed to properly diagnose the inmate's back injury. According to the court, the physician was at most, negli-</p>

gent in his diagnosis. The court noted that at one visit, the inmate did not inform the physician that he had back pain, and at a subsequent visit at which the inmate's back pain was at issue, the physician examined the inmate and determined that he was not in distress and that his lumbar spine was remarkable only for point tenderness at the mid back, and then diagnosed the inmate with osteoarthritis and wrote him a prescription for a pain killer and a muscle relaxant. (Salinas Valley State Prison, CSP–Solano, California)

U.S. District Court  
CONTAGIOUS  
DISEASES  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
QUARANTINE

*Malles v. Lehigh County*, 639 F.Supp.2d 566 (E.D.Pa. 2009). A prisoner, who allegedly contracted Methicillin Resistant Staphylococcus Aureus (MRSA) while incarcerated at a county prison, brought an action under § 1983 against the county prison and the prison medical provider, alleging that the defendants unconstitutionally failed to provide him timely, adequate medical care and to protect him from getting infected, and that the provider was negligent under state law. The district court granted the defendant's motion for summary judgment. The court held that neither prison nurses' perfunctory examinations of the prisoner nor their failure to recognize the prisoner's MRSA for five days constituted deliberate indifference to the prisoner's serious medical needs. The court found that the failure of the county prison and/or the company which contracted with the county to provide medical services to inmates at the prison to fully execute their own plans to more aggressively prevent the spread of MRSA did not provide the basis for the prisoner's Eighth Amendment failure-to-protect claim in his § 1983 action. The court noted that the county and/or the company certainly could provide inmates with conditions that exceeded the relatively low bar of the Eighth Amendment, but they were not required to do that simply because they made plans to do so. The court held that the alleged failure of the county prison and the company which contracted with the county to provide medical services to inmates at the prison to quarantine inmates infected with MRSA, to properly clean and maintain shower facilities, to warn inmates about MRSA and educate them about prevention, and generally to take more precautions against the spread of MRSA did not deprive the prisoner who allegedly contracted MRSA at the prison of life's necessities according to contemporary standard of decency, as would constitute cruel and unusual punishment under Eighth Amendment. According to the court, the county prison and company which contracted with the county to provide medical services to inmates were not deliberately indifferent to the risk that the prisoner would contract MRSA in prison, as would violate the Eighth Amendment, where the prison and company engaged in some efforts to stop the spread of MRSA, even if they did not do everything they could or planned to do. (Lehigh County, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE  
PRETRIAL DETAINEE

*Mann v. Taser Intern., Inc.*, 588 F.3d 1291 (11<sup>th</sup> Cir. 2009). The administrators of an estate, the husband, and guardians of the children of an arrestee who died following her arrest by sheriff's deputies and her admission to a county jail, brought an action under § 1983 and state law against the deputies and the manufacturer and distributor of the stun gun used by deputies during the arrest. The district court granted summary judgment to the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the use of the stun gun constituted reasonable force where the arrestee's behavior was violent, aggressive and prolonged, demonstrating that she was clearly a danger to herself and others, and the deputy warned the arrestee to stop her behavior and discharged his stun gun only after she refused to comply with the his orders. According to the court, the plaintiffs failed to establish that the arrestee's death was caused by the use of a stun gun. The court noted that the plaintiffs' own medical expert testified that, while it would have been naive of him to say that the use of the stun gun did not contribute in some degree to the arrestee's death, he was unable to declare to a reasonable degree of medical certainty that the arrestee would have survived but for its use.

The court held that the sheriff's deputies were not deliberately indifferent to the arrestee's serious medical condition of "excited delirium" when they opted to take her to jail instead of to a hospital. Although one deputy had knowledge of the arrestee's past methamphetamine use, and the arrestee's mother and another person told a different deputy that the arrestee was sick and needed to go to the hospital, the deputies had no prior knowledge of the medical condition called "excited delirium" or its accompanying risk of death. The court noted that the arrestee's physical resistance and verbal communication suggested to the deputies that, although agitated, the arrestee was not in immediate medical danger, which was an opinion shared by emergency medical personnel called to the scene by the deputies. (Whitfield County Sheriff's Office, Georgia)

U.S. District Court  
DELAY IN CARE  
DENTAL CARE  
SPECIAL DIETS

*Marquez v. Quarterman*, 652 F.Supp.2d 785 (E.D.Tex. 2009). A prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action complaining about the prison system's refusal to provide him with dentures. The district held that the prisoner's allegations were sufficient to state an Eighth Amendment "deliberate indifference to medical needs" claim under § 1983, where the prisoner complained about an inability to chew food, stomach cramps, gas, and spastic colon, which resulted in a loss of weight of 13 pounds since his arrival at the prison system. According to the court, the prisoner did not state an Eighth Amendment deliberate indifference claim under § 1983 against the dental clinic, where the hygienist was not involved in the denial of dentures, but instead referred the prisoner to dentists for screening to see if he should receive dentures. The court noted that the hygienist was receptive to the prisoner's request and forwarded his name for consideration, as opposed to being deliberately indifferent by automatically denying his request for dentures. The court allowed the prisoner to proceed with his deliberate indifference claims against a food services officer, who purportedly denied him a soft food diet, despite the prescription for it. (Polunsky Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
INTAKE SCREENING

*Martinez v. Beggs*, 563 F.3d 1082 (10<sup>th</sup> Cir. 2009). A pretrial detainee's estate brought a § 1983 action against a sheriff, deputies, and board of county commissioners alleging violations of the Fourteenth Amendment for deliberate indifference to the detainee's serious medical needs after the detainee died while in police custody. The district court granted summary judgment in favor of the defendants on qualified immunity grounds. The plaintiff appealed. The appeals court affirmed. The court held that the arresting officers and custodial officers had no reason to suspect that the detainee, who was intoxicated, posed a risk of heart attack and death, as required to support a claim that the officers violated the Fourteenth Amendment by being deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Oklahoma)

U.S. Appeals Court  
ADA-Americans with  
Disabilities Act  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Mason v. Correctional Medical Services, Inc.*, 559 F.3d 880 (8<sup>th</sup> Cir. 2009). A state prisoner brought an action against the manager of his prison housing unit and the director of prison medical services, alleging that they violated his Eighth Amendment rights by failing to facilitate or render adequate medical treatment. The prisoner also brought an action against the Missouri Department of Corrections (MDOC), alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the director and the MDOC. Following a jury verdict in favor of the manager, the district court denied the prisoner's post-trial motion for judgment as a matter of law. The prisoner appealed. The appeals court affirmed. The court held that there was no admissible evidence that the director of prison medical services was informed of the prisoner's serious medical need arising from a blood clot in his left eye, and thus there was no basis for an Eighth Amendment claim against the director alleging deliberate indifference to this serious medical need. The court held that even if the defendant knew of the prisoner's serious medical need, he is not liable under the Eighth Amendment if he believed, albeit unsoundly, that the risk to which the facts gave rise was insubstantial or nonexistent. The court found that recreational activities, medical services, and educational and vocational programs at state prisons are "benefits" within the meaning of the ADA, and qualified individuals with a disability are entitled to meaningful access to such benefits. The court held that the blind prisoner was provided with meaningful access to prison benefits, including library benefits, which required him to read and write, as required by the ADA. According to the court, given the sufficiency of the accommodations provided, the prison was not required to provide alternative accommodations such as Braille materials or computer software that would read written materials aloud. The prisoner was provided with an inmate reader, who was available to read to the prisoner in person and to create audio tapes of written material at the prisoner's request. The prisoner was also granted access to audio materials by mail and to a tape recorder.

The court held that the prison did not deny the blind prisoner meaningful access to prison facility benefits, in violation of the ADA, when it did not provide the prisoner with a trained outside assistant capable of assisting him in his day-to-day activities. The prisoner was provided with an inmate assistant, and the court found that it would be unduly burdensome to require the prison to furnish the prisoner with a trained handler from outside the prison, given that such a person would not be trained in safety and security matters, and would require the escort of a prison guard at all times. The court found that the prison did not deprive the blind prisoner of meaningful access to the prison's exercise and recreation facilities, in violation of the ADA, where the prison provided the inmate an assistant who walked with the prisoner, and the prisoner chose not to engage in other activities, such as weightlifting. According to the court, the prisoner was not denied meaningful access to his prison housing unit's ADA compliance officer, in violation of the ADA. The prisoner knew the identity of the ADA compliance officer, the officer had answered requests that the prisoner submitted and had not refused the prisoner's requests for assistance, and the prisoner was not entitled to a general disability assessment. (Northeast Correctional Center, Missouri)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE  
MEDICATION  
SPECIAL DIET  
TREATMENT

*Mastroianni v. Reilly*, 602 F.Supp.2d 425 (E.D.N.Y. 2009). An inmate brought a § 1983 action against a sheriff and medical personnel at a county correctional center, alleging a violation of his Fifth, Eighth, and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the inmate's treatment by the jail's director of psychiatry and its mental health group did not pose any particular risk of harm or result in actual adverse consequences to the inmate, as would constitute deliberate indifference to serious medical needs in violation of the Eighth Amendment. The inmate was seen by someone in the mental health department, including the director, on a regular basis, and when he saw the director, he examined the inmate and discussed his problems. The inmate's medications were changed during the course of his treatment as a result of meeting with practitioners in the mental health department, and on one occasion the inmate complained to the director about his medication being discontinued and the director reacted appropriately and had it reinstated. The court found that jail medical staff were not deliberately indifferent to the inmate's medical needs for the treatment of kidney stones in violation of the Eighth Amendment. Although the inmate disagreed with the course of treatment he received, he received regular medical attention for the condition and underwent the necessary diagnostic tests. At the onset of symptoms, the inmate filled out a sick call form and was brought to the the medical department where he was given a urine test and instructed to drink water. He returned to medical approximately every three days during this episode and was prescribed pain medication. He was then given a sonogram test and passed the stone naturally without surgical intervention.

The court held that jail medical staff were not deliberately indifferent to the inmate's medical needs for treatment of a back injury sustained as a result of a fall down the dormitory stairs. Immediately following the accident, the inmate was taken to a hospital and sometime thereafter he was given a magnetic resonance imaging (MRI) as a result of continuing back pain. The inmate was diagnosed with herniated disks following the fall. After leaving jail, the treatment recommended by a specialist was stretching and exercise, which the inmate indicated was helpful to the condition. According to the court, jail staff was not, in violation of the Eighth Amendment, deliberately indifferent to a known or obvious risk that the inmate would develop diabetes from an allegedly high starch diet, and staff was not deliberately indifferent to the inmate's medical needs when he developed diabetes while incarcerated. Prior to his incarceration, the inmate's physicians had advised him to observe a low-salt, low-fat diet. The inmate did not recall his physicians advising him that starches and sugars could increase his blood sugar. Upon discovery of the inmate's elevated blood sugar levels, he was placed on a diabetic diet, received daily blood glucose tests, and was prescribed diabetic medications.

The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail's medical staff disregarded a serious risk of harm to the inmate in response to his repeated complaints of worsening heart symptoms, and as to whether the jail staff's alleged failure to provide the inmate with prescribed doses of medication for his high blood pressure, heart condition, and diabetes up to 150 times during a two-year period caused the deterioration of the inmate's health or posed an unreasonable future risk of harm. (Nassau County Correctional Center, New York)

<p>U.S. Appeals Court  DELIBERATE  INDIFFERENCE  FAILURE TO PROVIDE  CARE  MISDIAGNOSIS</p>	<p><i>McRaven v. Sanders</i>, 577 F.3d 974 (8<sup>th</sup> Cir. 2009). The guardian of an incapacitated detainee brought a § 1983 action on behalf of the detainee against a supervising detention facility officer, a practical nurse, and other detention facility officers, alleging deliberate indifference to the detainee's medical needs. The district court denied qualified immunity to the defendants and they appealed. The appeals court affirmed. The court held that the supervising officer could not have reasonably relied on the practical nurse's opinion that the detainee did not require hospitalization and, thus, was not entitled to qualified immunity. The court noted that the officer was aware of the cocktail of potent drugs the detainee had consumed and that circumstances strongly suggested he did not consume the drugs in prescribed dosages, the officer was aware the detainee exhibited symptoms of extreme intoxication, and the officer knew or reasonably should have known that the practical nurse based his assessment on the faulty assumption that the detainee was under the influence of alcohol, not drugs. The court held that summary judgment was precluded by genuine issues of material fact as to the deputies' and sergeant's subjective knowledge of the detainee's medical need, and the care that the nurse provided to the detainee. The court also found that a sergeant who was trained in cardiopulmonary resuscitation (CPR) and who made no attempt to resuscitate the detainee was not entitled to qualified immunity, since the sergeant was aware of the detainee's medical need and was capable of providing assistance, but failed to do so. (Garland County Adult Detention Center, Arkansas)</p>
<p>U.S. Appeals Court  CONTRACT SERVICES</p>	<p><i>Medical Development Intern. v. California Dept. of Corrections and Rehabilitation</i>, 585 F.3d 1211 (9<sup>th</sup> Cir. 2009). A medical services provider for two California Department of Corrections and Rehabilitation (CDCR) prisons brought an action in state court against CDCR and the receiver appointed by the United States District Court for the Northern District of California to oversee the delivery of medical care to prisoners incarcerated by the CDCR. The provider sought damages for the receiver's refusal to pay for services it provided under contract with CDCR. After the case was removed to the district court, the court granted the receiver's motion to dismiss. The provider appealed, but the appeal was stayed to allow the provider to seek leave from the Northern District to sue the receiver. Subsequently, the Northern District denied the provider's request, and then denied the provider's motion for clarification. The provider appealed. The appeals court affirmed in part, vacated in part, and remanded to the United States District Court for the Eastern District of California. The appeals court held that the receiver was not immune in his official capacity from the claim of a medical services provider seeking damages for the receiver's refusal to pay for services it provided under contract with CDCR. The court noted that the receiver held "all powers vested by law in the Secretary of the CDCR as they relate[d] to the administration, control, management, operation, and financing of the California prison medical health care system," which necessarily included the power to control CDCR with regard to paying the provider. (California Department of Corrections and Rehabilitation)</p>
<p>U.S. District Court  DELAY IN CARE  DELIBERATE  INDIFFERENCE  NEGLIGENCE</p>	<p><i>Moore v. Thomas</i>, 653 F.Supp.2d 984 (N.D.Cal. 2009). A state prisoner filed a civil rights action in California state court against prison defendants, alleging various claims stemming from his incarceration. After removal to federal court, the defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the alleged force was applied by a correctional officer maliciously and sadistically to cause harm to the prisoner, or whether the officer was using the force necessary to subdue the prisoner, who was engaged in a mutual combat with a fellow inmate and refused to follow orders that he stop fighting. The court also found a fact issue as to whether the force used was excessive. The court held that a one month delay in the treatment of the prisoner's fractured jaw did not constitute deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment because the defendant physicians were not responsible for the delay in providing medical treatment. According to the court, even if the physicians had the opportunity to do so and knew that there was a substantial risk that the prisoner's condition would worsen without receiving treatment, the delay may have amounted to negligence, but was not enough to establish deliberate indifference and also did not cause substantial harm because the type of jaw fracture the prisoner had sustained was one that would heal normally over a relatively short period of time. (Pelican Bay State Prison, California Medical Facility)</p>
<p>U.S. District Court  ADA-Americans with  Disabilities Act  DELIBERATE  INDIFFERENCE</p>	<p><i>Nails v. Laplante</i>, 596 F.Supp.2d 475 (D.Conn. 2009). A state prisoner filed a civil rights action alleging that physicians had been deliberately indifferent to his medical needs and violated his rights under the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the prisoner's disagreement over the treatment provided by the defendant physicians was insufficient to show that the physicians actually were aware of a substantial risk that the prisoner would suffer serious harm as the result of their actions or inactions, as required for a claim of deliberate indifference under Eighth Amendment, or a claim under Title II of ADA. The court noted that a private suit for money damages under Title II of ADA could have been maintained against the physicians in their official capacities only if the prisoner, as plaintiff, could have established that the Title II violation had been motivated by either discriminatory animus or ill will due to the prisoner's disability. (Osborn Correctional Institution, Connecticut)</p>
<p>U.S. Appeals Court  DELIBERATE  INDIFFERENCE  RESTRAINTS</p>	<p><i>Nelson v. Correctional Medical Services</i>, 583 F.3d 522 (8<sup>th</sup> Cir. 2009). A state inmate brought a § 1983 action against the director of the Arkansas Department of Correction (ADC), and a corrections officer, alleging that while giving birth to her child she was forced to go through the final stages of labor with both legs shackled to her hospital bed in violation of the Eighth Amendment. The district court denied the defendants' motion for summary judgment. On rehearing en banc, the Court of Appeals affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections officer's conduct in forcing the inmate to go through the final stages of labor with both legs shackled to her hospital bed constituted "deliberate indifference" in violation of the Eighth Amendment. The appeals court held that the inmate, in the final stages of labor, had a "clearly established" right not to be shackled absent clear and convincing evidence that she was a security or flight risk, and thus a government official would not be protected from § 1983 liability for violating that right based on qualified immunity. (Arkansas Department of Correction, McPherson Unit)</p>

<p>U.S. District Court          DELIBERATE          INDIFFERENCE          FEMALE PRISONERS          NEGLIGENCE</p>	<p><i>Parlin v. Cumberland County</i>, 659 F.Supp.2d 201 (D.Me. 2009). A female former county jail inmate brought an action against jail officers, a county, and a sheriff, under § 1983 and Maine law, alleging deliberate indifference to her serious medical needs, negligence, and excessive force. The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officers were not deliberately indifferent to a serious medical need; (2) an officer who fell on the inmate did not use excessive force; (3) the county was not liable for deprivation of medical care; and (4) the county was not liable for failure to train. The court held that the officers were not entitled to absolute immunity from excessive force claims where a genuine issue of material fact existed as to whether the officers used excessive force in transferring the jail inmate between cells. According to the court, there was no evidence that jail officers were subjectively aware of the jail inmate's serious medical condition, where the inmate made no mention of her shoulder injury to the officers other than crying out "my shoulder" after she had fallen. (Cumberland County Jail, Maine)</p>
<p>U.S. District Court          ADA- Americans with          Disabilities Act          HANDICAP          FACILITIES          PRETRIAL DETAINEE          RA- Rehabilitation Act          WHEELCHAIR</p>	<p><i>Phipps v. Sheriff of Cook County</i>, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paraplegic and partially-paralyzed pretrial detainees currently and formerly housed at a county prison brought a class action against the county and county sheriff, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The parties cross-moved for summary judgment. The district court denied the motions for summary judgment. The court held that the sheriff waived the affirmative defense that the plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the sheriff raised that defense for the first time in his motion for summary judgment. The court held that paraplegic and partially-paralyzed pretrial detainees who were formerly housed at the county prison were not "prisoners confined in jail" for the purposes of the Prison Litigation Reform Act (PLRA), and thus their civil rights claims were not subject to, or barred by, PLRA.</p> <p>The court held that the pretrial detainees adequately alleged discrimination based on the prison's failure to provide wheelchair-accessible bathroom facilities. According to the court, the detainees met the PLRA physical injury required. In addition to alleging mental and emotional harm, the detainees complained of bed sores, infections, and injuries resulting from falling to the ground from their wheelchairs and toilets, which were undeniably physical injuries. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements.</p> <p>The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were "services" and "programs" within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)</p>
<p>U.S. Appeals Court          ADA-Americans with          Disabilities Act          INADEQUATE CARE</p>	<p><i>Plata v. Schwarzenegger</i>, 560 F.3d 976 (9<sup>th</sup> Cir. 2009). In a class action brought on behalf of state prisoners, alleging that state officials were providing inadequate health care in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA), the receiver appointed to oversee the provision of health care at state prisons moved for an order of contempt based on the state's failure to fund the receiver's capital projects. The district court ordered the state to fund the projects and to show cause why it should not be held in contempt. The state appealed, and alternatively filed a petition for a writ of mandamus. The appeals court dismissed the appeal and denied the writ of mandamus. According to the court, the state failed to prove that it would be damaged or prejudiced in a way not correctable on appeal, weighing against granting the state's petition for a writ of mandamus to prevent the district court from holding it in contempt based on its failure to fund the receiver's capital projects. (California Department of Corrections and Rehabilitation)</p>
<p>U.S. District Court          DELIBERATE          INDIFFERENCE          FAILURE TO PROVIDE          CARE          SUICIDE</p>	<p><i>Powers-Bunce v. District of Columbia</i>, 594 F.Supp.2d 54 (D.D.C. 2009). The mother of a detainee who hung himself in a holding cell at a police precinct headquarters brought an action against the District of Columbia and individual police and Secret Service officers alleging constitutional violations and tort claims for her son's suicide. The detainee hung himself shortly after he was arrested by the Secret Service for cocaine possession and driving with a suspended license. The detainee had been placed in a jail cell away from other detainees around 2:00 a.m. No one checked on the detainee while he was alone in his cell between 2:30 a.m. and 4:16 a.m. He was found hanging from the bars of the jail cell by his tube socks tied in a knot around 4:16 a.m. The district court dismissed claims against the police officers and the Secret Service officers in their entirety. The court held that the arresting Secret Service officers were not the custodians of the detainee and therefore had no "special relationship" with the detainee giving rise to an affirmative duty to resuscitate the detainee, as would support the due process claims of the detainee's mother against the officers for deliberate indifference in their failure to resuscitate. According to the court, although the officers had taken temporary custody of the detainee and might have obtained a key to the cell, the District, not the officers, was the custodian which owed an affirmative duty of protection to the detainee. (Metro Police Dept., Third District Precinct Headquarters, District Columbia)</p>
<p>U.S. District Court          DELAY IN CARE          DELIBERATE          INDIFFERENCE          INTAKE SCREENING          PRETRIAL DETAINEE          SUICIDE</p>	<p><i>Powers-Bunce v. District of Columbia</i>, 659 F.Supp.2d 173 (D.D.C. 2009). A mother, for herself and as the personal representative of an arrestee who hanged himself in a holding cell at a police precinct shortly after he was arrested by the United States Secret Service, brought an action against the District of Columbia and several police and Secret Service officers. The District of Columbia moved for judgment on the pleadings, or in the alternative, for summary judgment. The district court granted the motion. The court held that: (1) the District of Columbia did not violate the Fifth Amendment right of the arrestee to be free from deliberate indifference to his substantial risk of committing suicide; (2) the District of Columbia could not be held liable for a police officers' failure to attempt to revive the arrestee; and (3) the District of Columbia could not be held liable for officers' inadequate training and supervision. The court noted that although a Secret Service officer suspected the arrestee was under the influence of cocaine after he had observed his jittery behavior and discovered a half-used bag of</p>

cocaine on the arrestee during a search at the precinct, there was no evidence that cocaine-users were a greater suicide risk or that jittery behavior was a warning sign of impending suicide. According to the court, there was no evidence that police officers who accepted custody of the arrestee had subjective knowledge of his suicidal tendencies or actually drew the inference that the arrestee was a suicide risk, and there was no evidence that a Secret Service officer communicated either his suspicion of the arrestee's cocaine use or his observation of jittery behavior to either police officer. The court held that inadequate training and supervision of District of Columbia police officers, who failed to follow police department procedures when they did not attempt to revive the arrestee who had hanged himself in his cell, failed to expeditiously obtain assistance from Emergency Medical Services, and failed to maintain and operate the video surveillance system, did not reflect a deliberate or conscious choice by the District of Columbia, as required to hold the District of Columbia liable under § 1983 for the detainee's death. (District of Columbia Metropolitan Police Department, Third District Precinct)

U.S. Appeals Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
DENIAL

*Rodriguez v. Plymouth Ambulance Service*, 577 F.3d 816 (7<sup>th</sup> Cir. 2009). A prisoner, proceeding in forma pauperis, brought a § 1983 action against medical providers alleging that, while acting under the color of state law, they violated the Eighth Amendment's prohibition against cruel and unusual punishment by exhibiting deliberate indifference to his serious medical needs. The district court dismissed the case and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the prisoner's allegation that after an emergency medical technician-paramedic (EMT) inserted an intravenous line (IV) in his right arm, EMTs ignored his complaints of pain, would be sufficient to state an Eighth Amendment claim of deliberate indifference against the EMTs under § 1983, if the prisoner could establish that the EMTs were state actors. The court found that the ambulance service company was not liable to the prisoner under § 1983 for the alleged actions of its employees in being deliberately indifferent to the prisoner's serious medical needs, absent allegations of wrongdoing on the part of the company. According to the court, the hospital that affirmatively declined to assume the state's responsibility to provide medical care to the prisoner did not operate under the color of state law in providing care to the prisoner, and thus the hospital could not be liable under § 1983 for exhibiting deliberate indifference to prisoner's serious medical needs. The court held that the prisoner sufficiently alleged a state action against the hospital, as required to state a claim for deliberate indifference against the hospital under § 1983, by alleging he was placed in a prison ward of the hospital, an allegation suggesting the hospital had an ongoing relationship with the prison authorities for the care of prisoner-patients in need of hospitalization, and that his stay at the facility was not simply for emergency medical treatment, but rather involved a stay of several days. (St. Agnes Hospital, Waupun Memorial Hospital, Kettle Moraine Correctional Institution, Wisconsin)

U.S. Appeals Court  
INFORMED CONSENT  
MALPRACTICE  
PRIVACY

*Sanchez v. Pereira-Castillo*, 590 F.3d 31 (1<sup>st</sup> Cir. 2009). A state prisoner brought a § 1983 claims against correctional officials, a prison warden, a prison's correctional officer, and a physician, and medical battery and medical malpractice claims against the physician, relating to strip searches, x-rays, rectal examinations, and exploratory surgery to detect and recover suspected contraband. The district court dismissed the suit and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the digital rectal examinations were not unreasonable where the procedures were the direct culmination of a series of searches that began when a metal detector used to scan the prisoner's person gave a positive reading, the prisoner had two normal bowel movements before the searches were conducted, a physician examined him upon arrival at the hospital and found him to be asymptomatic, and several lab tests were found to be "within normal limits." The court noted that the searches were carried out by medical professionals in the relatively private, sanitary environment of a hospital, upon suspicion that the prisoner had contraband, namely a cell phone, in his rectum, and with no abusive or humiliating conduct on the part of the law enforcement officers or the doctors.

But the court found that the exploratory surgery of the abdomen of the prisoner was unreasonable where the surgery required total anesthesia, surgical invasion of the abdominal cavity, and two days of recovery in the hospital. The court noted that the surgery was conducted despite several indications of the absence of contraband, including the results of two monitored bowel movements and two rectal examinations. According to the court, an x-ray, as a much less invasive procedure, could have confirmed the results. The court held that the prisoner's signed consent form for the exploratory surgery of his abdomen did not preclude the prisoner's claim that he was deprived of his Fourth Amendment rights, where the prisoner was pressured and intimidated into signing the consent, had been under constant surveillance for more than a day prior to the surgery, had been forced to submit to searches, x-rays, and invasive rectal examinations prior to his signing the consent form, and had twice been forced to excrete on a floor in the presence of prison personnel. The court held that the prisoner's allegations against correctional officers were sufficient to allege that the officers caused the hospital's forced exploratory surgery on the prisoner, as required to state a § 1983 claim against the officers. The prisoner alleged that the officers were directly involved in all phases of the search for contraband and in the ultimate decision to transport the prisoner to the hospital for a rectal examination or a medical procedure to remove the foreign object purportedly lodged in the prisoner's rectum. According to the court, the prisoner's allegation that correctional officers exerted pressure on hospital physicians that examined the prisoner was sufficient to allege the state compulsion necessary to state a claim of § 1983 liability against a surgeon.

The court found that correctional officers' conduct, in forcing the prisoner to undergo an invasive abdominal surgery, was a violation of a clearly established constitutional right, such that the officers were not entitled to qualified immunity from § 1983 liability. (Bayamón 501 Unit of the Commonwealth of Puerto Rico Administration of Corrections, and Río Piedras Medical Center)

U.S. District Court  
ADA- Americans with  
Disabilities Act  
DELIBERATE  
INDIFFERENCE

*Schaub v. County of Olmsted*, 656 F.Supp.2d 990 (D.Minn. 2009). An inmate at a county detention center brought an action against a county, detention center, center director, probation officer, and several unnamed defendants, alleging that he was injured as result of failure to accommodate his medical condition of paraplegia. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether members of county detention center staff were deliberately indifferent to the inmate's serious medical needs arising from paraplegia; (2) whether failure to oversee nursing staff at the detention center was the "moving force" behind the delay in treating the inmate's

wounds and pressure sores on his return to the county detention center; (3) whether the county detention center's unwritten policy barring medical care to work-release inmates was the "moving force" behind the inmate's injuries during his first two months in the center; and (4) whether the county detention center's modifications in permitting the inmate to attend to his hygiene at home, or rely on nursing staff to bathe him, were reasonable, and whether the inmate was excluded from appropriate medical care because of his disability. (Olmsted County Adult Detention Center, Minnesota)

U.S. Appeals Court  
INADEQUATE CARE  
MEDICATION

*Shepherd v. Dallas County*, 591 F.3d 445 (5<sup>th</sup> Cir. 2009). A pretrial detainee sued a county under § 1983, alleging that conditions of confinement, specifically the jail's failure to administer pills he needed to ameliorate chronic hypertension, violated his due process right to medical care while in custody. The district court, entered judgment on jury verdict for the detainee. The county appealed. The appeals court affirmed, finding that the action was an attack on conditions of confinement rather than on episodic acts or omissions of particular jail officials. The court noted that the jail medical director testified that the jail's medical services were inadequate, and a clinical pharmacist testified that the administration of medication at the jail was so inadequate that half or more of the inmates did not receive their prescription medications. The court held that a Department of Justice (DOJ) report concerning jail conditions was not excludable as being more prejudicial than probative, inasmuch as the report was relevant in that it provided strong support for the claim that medical care at the jail was constitutionally inadequate, and, although findings in the report were prejudicial to the county's cause, they were probative as well. (Dallas County Jail, Texas)

U.S. Appeals Court  
ADA- Americans with  
Disabilities Act  
DELIBERATE  
INDIFFERENCE  
RA- Rehabilitation Act

*Shomo v. City of New York*, 579 F.3d 176 (2<sup>nd</sup> Cir. 2009). A pro se prisoner brought a § 1983 action, alleging deliberate indifference to a serious medical condition in violation of the Eighth Amendment, and violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the ADA and Rehabilitation Act claims, and granted summary judgment in favor of the defendants on the Eighth Amendment claims. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the prisoner's allegations that he was disabled based on the physical limitations in the use of his arms, and that the defendants denied him access to infirmary-style housing and other prison services on the basis of his disability, were sufficient to suggest that the prisoner could have viable claims against prison officials under the ADA and the Rehabilitation Act, and thus, the pro se prisoner was entitled leave to re-plead his dismissed complaint. (New York City Department of Corrections)

U.S. District Court  
CONTRACT SERVICES  
INADEQUATE CARE  
PROSTHESES

*Silva v. Clarke*, 603 F.Supp.2d 248 (D.Mass. 2009). An inmate brought a civil rights suit against the Commissioner of the Massachusetts Department of Correction (DOC), a subcontracted medical provider and an employee of the provider, claiming that his Eighth Amendment rights were being violated due to inadequate medical care. The inmate moved for a preliminary injunction and a defendant moved to dismiss. The district court dismissed the action, finding that the inmate's assertion that he was not being provided with medically-required footwear failed to state a claim. The court noted that the inmate did not allege a complete denial of medical treatment, but rather that prison officials refused to follow the recommendation of one of the physicians who examined him, and he was examined by several doctors and given custom made orthotics. (Souza-Baranowski Correctional Facility, Massachusetts)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE

*Sledge v. Kooi*, 564 F.3d 105 (2<sup>nd</sup> Cir. 2009). A state inmate brought a § 1983 action alleging violation of his Eighth Amendment rights, against a physician at a state correctional facility. The inmate alleged deliberate indifference in refusing to provide him with proper medical treatment for his alleged eczema, back pain, stomach disorders, allergies, and asthma. The district court granted summary judgment for the physician and the inmate appealed. The appeals court affirmed. The court held that the inmate's alleged medical conditions did not constitute a serious medical need. (Auburn Correctional Facility, New York)

U.S. District Court  
INADEQUATE CARE  
POLICIES

*Smith v. District of Columbia*, 674 F.Supp.2d 209 (D.D.C. 2009). The parent of a deceased inmate brought an action against the District of Columbia, stemming from the inmate's death following incarceration. Prior to being incarcerated, the inmate was partially paralyzed and confined to a wheelchair as a result of gunshot wounds. The parent alleged that while confined, these injuries prompted the inmate to make repeated "requests for medical care treatment, and attention including, but not limited to, providing medication when ordered by his physicians, providing prompt and adequate dressing changes to prevent the formation and growth of decubitus sores, [and] providing sanitary cell conditions." The parent alleged that the District failed to "provide a healthcare system that included prompt, proper, adequate, and reasonable medical care and treatment to all persons incarcerated under their care, custody, and supervision." The inmate died eight months after his release from the facility. The district court granted the District's motion for dismissal. The court held that the parent failed to assert a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. (Correctional Treatment Facility, District of Columbia)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Smith v. Smith*, 589 F.3d 736 (4<sup>th</sup> Cir. 2009). An inmate brought a § 1983 action against a prison nurse alleging she exhibited deliberate indifference to his serious medical need in violation of the Eighth Amendment. The district court dismissed the complaint. The inmate appealed. The appeals court reversed and remanded, finding that the inmate stated a claim for deliberate indifference by alleging that he was prescribed treatment by a doctor and that when he sought to receive that treatment, he was unable to do so because the prison nurse ripped up the order to report slip (OTR), which authorized his treatment. (Evans Correctional Institute, South Carolina)

U.S. Appeals Court  
INTAKE SCREENING  
PRETRIAL DETAINEE

*Spears v. Ruth*, 589 F.3d 249 (6<sup>th</sup> Cir. 2009). The estate of a deceased detainee brought a § 1983 action against a police officer and a city, alleging deliberate indifference to the detainee's serious illness or injury while in the officer's care. The district court denied summary judgment and the officer and city brought an appeal. The appeals court reversed and remanded. The court held that the pretrial detainee's condition and need for medical

attention was not so obvious to the police officer as to establish the existence of a serious medical need, for the purposes of a claim of deliberate indifference in violation of due process. The officer allegedly failed to inform emergency medical technicians (EMT) on the scene and at the jail that the detainee, who later died from respiratory and cardiac failure resulting from cocaine use, had admitted that he smoked crack cocaine. According to the court, the EMTs and jail nurse, who presumably had a greater facility than the average layperson to recognize an individual's medical need, observed the detainee's behavior and administered tests based on those observations, and both the EMTs and the jail officers concluded that the detainee did not need to be transported to the hospital. After admission to the jail, the detainee continued to hallucinate and officers placed him in a restraint chair "for his own safety," tasing him to "relax his muscles." The detainee remained restrained for approximately three and a half hours, during which time he was calm but continued to hallucinate. Shortly after the officers released him from the chair, the detainee began to shake and spit up blood and then became unconscious. He was taken to a hospital where he was diagnosed with respiratory and cardiac failure and multi-organ failure resulting from cocaine use. He lapsed into a coma and died eleven months later. (City of Cleveland, Bradley County Justice Center, Tennessee)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
INTAKE SCREENING  
PRETRIAL DETAINEE

*Tamez v. Manthey*, 589 F.3d 764 (5<sup>th</sup> Cir. 2009). Survivors of a pretrial detainee, who died while in custody from acute cocaine intoxication when the bag of cocaine that he swallowed before his arrest burst in his intestines, brought a § 1983 action, alleging that police officers and prison officials were deliberately indifferent to the detainee's need for medical care. The district court granted the summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed. The court held that police detectives were not deliberately indifferent to the medical needs of the detainee. The court noted that the detectives' knowledge that the detainee had pupils that were maximally dilated and that he needed medical clearance did not show that the detectives were aware of an unjustifiably high risk to the detainee's health, or that the risk to the detainee's health was so obvious that they should have inferred such a risk. According to the court, jailers were not deliberately indifferent to the medical needs of the detainee. According to the court, the fact that the jailers were told the detainee needed medical clearance and that he had dilated pupils did not show that the jailers knew or should have known of a substantial risk to the detainee's health. (Harlingen City Jail, Cameron County Carrizales-Rucker Detention Center, Texas)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE

*Teague v. Mayo*, 553 F.3d 1068 (7<sup>th</sup> Cir. 2009). A prisoner brought a § 1983 action against corrections officers. The district court granted summary judgment for the officers on the claim of deliberate indifference to the prisoner's serious medical needs, and, following a jury trial, entered judgment for the officers on an excessive force claim. The prisoner appealed. The appeals court affirmed. The court held that while the prisoner was in segregation, two corrections officers could not have been deliberately indifferent to his serious medical needs relating to his degenerative joint disease and other back problems, in violation of Eighth Amendment, where the officers were not assigned to the segregation unit at the time. (Menard Correctional Institution, Illinois)

U.S. District Court  
ADA-Americans with  
Disabilities Act  
DELAY IN CARE  
HANDICAP  
PROSTHESES  
RA-Rehabilitation Act

*Thomas v. Pennsylvania Dept. of Corr.*, 615 F.Supp.2d 411 (W.D.Pa. 2009). A state prison inmate who was an above-the-knee amputee brought a § 1983 action against the Pennsylvania Department of Corrections and individual corrections officials and medical personnel, alleging that denial of his request for a handicap cell, and the delay in replacing and inadequate replacement of his prosthesis, violated the Eighth Amendment, Rehabilitation Act, Americans with Disabilities Act (ADA), and state law. The district court granted summary judgment for the defendants. The court found that there was no evidence that state corrections officials were aware that the amputee prisoner was at risk of assault at the hands of fellow inmates due to the denial of his request for a handicap cell, as required to support the prisoner's Eighth Amendment failure-to-protect claim against officials. Except for a single reference to an altercation with a fellow prisoner, the prisoner's requests for a handicap cell included no indication that the prisoner was concerned about being attacked, only that he was having difficulty moving about in a standard cell. The court held that the officials' and medical personnel's delay in replacing the amputee prisoner's prosthesis did not amount to deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment, even if the replacement process took longer than it should have. The court noted that the prisoner had been without the use of his former prosthesis for approximately two years before coming under the protection of the state corrections system, during which time he ambulated well on crutches, and once in the system, efforts were made to repair his old prosthesis, and failing that, to provide him with a new prosthesis.

According to the court, the state medical personnel's denial of the amputee prisoner's requests for a handicap cell did not amount to deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. Each request for a handicap cell was reviewed, but a determination was made that since the prisoner ambulated well with crutches and subsequently was fitted with a prosthesis, a handicap cell was medically unnecessary. The court found that the prisoner's disagreement with that determination did not render it deliberate indifference. The court held that state corrections officials and medical personnel provided the prisoner with reasonable accommodation for his disability, in the form of a non-hydraulic replacement prosthetic following the loss of his hydraulic prosthetic, precluding recovery in the prisoner's ADA Title II failure-to-accommodate claim. (State Correctional Institution at Camp Hill, State Correctional Institution at Houtzdale, Pennsylvania)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE  
INTERFERENCE

*Tommassello v. Stine*, 642 F.Supp.2d 910 (D.Minn. 2009). A federal prisoner, who suffered from recurrent skin cancers, brought an action against prison officials, alleging a violation of his Eighth Amendment right to be free from cruel and unusual punishment by delaying needed surgeries and by interfering with post-surgical wound care. The defendants moved for dismissal or for summary judgment on the basis of qualified immunity. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officers, one of whom told federal prisoner "I told you I'd teach you a lesson" and the other who said "I don't care" in response to the prisoner's complaint about his serious infection and request for medical care for the serious infection, were deliberately indifferent to the prisoner's infection. The court also found a fact issue as to whether a prison doctor acted with deliberate indifference toward the prisoner's serious infection when he visited the prisoner twice in segregation and saw that his back was

seeping pus and blood yet ignored his condition and did nothing to help him. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the federal prison camp's clinical director acted with deliberate indifference as to his role in the prisoner's delay in having cancer lesions, caused by his Gorlin syndrome, treated by a micrographic surgeon. (Federal Prison Camp in Duluth, Minnesota, Federal Medical Center, in Rochester, Minnesota)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Vann v. Vandenbrook*, 596 F.Supp.2d 1238 (D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner stated a § 1983 claim against the intervention worker and the unknown officer where they were aware of the prisoner's suicide risk when the worker refused to place the prisoner in an observation program and the officer provided the prisoner with a razor and a nail clipper and left the prisoner unattended. The court found that the registered nurse's failure to provide treatment to the prisoner constituted deliberate indifference to the prisoner's serious medical needs, as required for the prisoner to state a § 1983 claim for violation of the Eighth Amendment, where the prisoner had sustained 133 self-inflicted wounds that were bleeding and the nurse merely inspected his wounds. According to the court, the corrections officers who performed an emergency cell extraction of the prisoner following his suicide attempt, transported him to a day room where the prison's registered nurse performed an inspection of the prisoner's wounds, thus precluding the prisoner's § 1983 claim against the officer for deliberate indifference to his serious medical needs in violation of Eighth Amendment. The court held that the prisoner's proffered reasons for appointment of counsel—that the case was legally and factually complex, that the claim required the testimony of medical experts, and that he lacked legal training to present the case, especially in front of a jury, were universal among pro se litigants and thus constituted insufficient grounds for the appointment of counsel. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
DENIAL  
MEDICATION

*Vaughn v. Gray*, 557 F.3d 904 (8<sup>th</sup> Cir. 2009). A detainee's sister brought a § 1983 action against several officers and county employees alleging they were deliberately indifferent to the detainee's serious medical needs which resulted in his death. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court affirmed. The court held that a genuine issue of material fact existed as to whether jail officials deliberately disregarded the medical needs and condition of the detainee. The detainee was charged with first-degree sexual assault. During the jail's intake procedure, he completed a medical intake form, indicating that he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although the detainee had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. He received his medication for several days until the prescription ran out. He missed several doses before a new prescription arrived. During the time he was without medication, his cellmate told jail employees that the detainee had been ingesting shampoo and engaging in other odd behavior. The detainee was moved to an isolation cell to be monitored on an hourly basis. He was observed vomiting and asked to see a nurse but he was not provided access. He was later found dead in his cell. An autopsy determined that he died of natural causes: arteriosclerotic cardiovascular disease, causing a heart attack that resulted in his death. (Greene County Jail, Arkansas)

U.S. District Court  
COSTS  
WORK ASSIGNMENT

*Vuncannon v. U.S.*, 650 F.Supp.2d 577 (N.D.Miss. 2009). A parolee brought an action against a county and others, alleging claims under § 1983 arising out of injuries he sustained in an accident while operating a forklift as part of a work release project. The court held that summary judgment for the county on the hospital's claim was precluded by a genuine issues of material fact as to (1) whether the parolee was a county prisoner, indigent, and unable to pay; (2) whether the parolee was in need of hospitalization for the entire length of time; and (3) whether the hospital's charges were reasonable and customary. (Shelby County Health Care Corporation, Tennessee, and Tippah County, Mississippi)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE  
MALPRACTICE  
MEDICATION  
MENTAL HEALTH  
NEGLIGENCE

*Wade v. Castillo*, 658 F.Supp.2d 906 (W.D.Wis. 2009). A state prisoner brought a § 1983 action against prison psychiatrists, alleging that the psychiatrists committed medical malpractice and exhibited deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The psychiatrists moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact existed as to whether the prisoner, who was diagnosed with a psychotic disorder, had a serious medical need at the time the prison psychiatrist discontinued the prisoner's medications, and whether the psychiatrist was aware that he was exposing the prisoner to a substantial risk of serious harm by taking him off the medications. The court held that the refusal of the prisoner's treating psychiatrist to prescribe psychotropic medication did not amount to deliberate indifference to the prisoner's serious medical need, as would violate the Eighth Amendment, where the psychiatrist did not prescribe medication because he was uncertain whether the prisoner had a psychotic disorder. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prisoner's treating psychiatrist met the requisite standard of care for psychiatrists when he refused to prescribe psychiatric medication to the prisoner and in providing psychiatric care to the prisoner, and as to whether the psychiatrist's alleged negligence was a substantial factor in causing the prisoner's harm. (Green Bay Correctional Institution, Dodge Correctional Institution and Racine Correctional Institution, Wisconsin)

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE

*Williams v. Correctional Medical Services*, 629 F.Supp.2d 360 (D.Del. 2009). An inmate brought a pro se § 1983 action against a corporation that provided medical services to correctional facilities and the correctional facility's medical authority, commissioner and warden, among others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court held that the correctional facility's medical authority's mistaken belief that the inmate suffering from a suspected hernia was transferred to a

different facility, allegedly resulting in a delay in his medical care, was not deliberate indifference to his serious medical needs in violation of the Eighth Amendment, absent evidence that the authority ignored the inmate's condition. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether the corporation that provided medical services to correctional facilities was deliberately indifferent to the inmate's serious medical needs when the provider delayed treatment of the inmate's suspected hernia for approximately two years after a physician first recommended treatment. (James T. Vaughn Correctional Center, Delaware)

#### 2010

U.S. District Court  
MENTAL HEALTH

*Antonetti v. Skolnik*, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court found that the prisoner's allegations that he was subjected to a policy of a minimum of five hours of outside exercise per week but that administrative regulations provided for a minimum of seven hours and controlling consent decrees required eight hours, were sufficient to state a colorable § 1983 claim under the Eighth Amendment. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for violations of his Fourth Amendment right to be free of unlawful searches and Eighth Amendment right to be free of cruel and unusual punishment. The prisoner alleged that whenever he was moved from his cell to any other location he was made to stand in a brightly lit shower in full view of female employees, made to strip naked, place his bare feet on a filthy floor covered in insects and scum, spread his buttocks, lift his penis, then put his fingers in his mouth without any opportunity to wash his hands, and that the process was unnecessary because inmates were in full restraints, escorted and solitary at all times. The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
POLICIES  
TRAINING

*Beatty v. Davidson*, 713 F.Supp.2d 167 (W.D.N.Y. 2010). A former pretrial detainee brought a § 1983 action against a county, jail officials, and a nurse, alleging that the defendants denied him adequate medical care while he was a pretrial detainee, in violation of his Fourteenth Amendment rights. The defendants moved for summary judgment. The district court denied the motion. The court held that the detainee's diabetic condition was a serious medical condition and that a genuine issue of material fact existed as to whether the nurse was deliberately indifferent to the detainee's diabetic condition, precluding summary judgment for the nurse. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were grossly negligent in supervising subordinates who allegedly violated the former pretrial detainee's constitutional rights. According to the court, a genuine issue of material fact existed as to whether the county lacked a system at its jail for managing chronically ill inmates and failed to train and properly supervise its staff, precluding summary judgment for the county on the former pretrial detainee's municipal liability claim under § 1983. (Erie County Holding Center, Pennsylvania)

U.S. Appeals Court  
DENTAL CARE  
DELIBERATE  
INDIFFERENCE

*Berry v. Peterman*, 604 F.3d 435 (7<sup>th</sup> Cir. 2010). A state prisoner brought a pro se § 1983 action against a prison nurse, doctor, and jail administrator, alleging deliberate indifference to his tooth pain and decay, which ultimately required a root canal. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner who suffered from tooth decay and serious pain, which ultimately required a root canal, had an objectively serious medical condition, as required to support the prisoner's § 1983 Eighth Amendment deliberate indifference action, based on the alleged failure of a prison nurse and doctor to refer him to a dentist. The court found that the jail administrator did not act with deliberate indifference to the state prisoner's serious medical condition of tooth pain and decay, by failing to refer the prisoner to a dentist for treatment, and thus, the administrator was not liable, where the administrator consulted with the prison medical staff, forwarded the prisoner's concerns to the state Department of Corrections (DOC), and responded timely to the prisoner's complaints. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison doctor acted with deliberate indifference to the state prisoner's serious medical condition of tooth decay and severe pain, by failing to refer the prisoner to a dentist for treatment, despite the prisoner's persistent complaints.

The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse acted with deliberate indifference to the state prisoner's serious medical condition by failing to recommend a dental visit or deferring to the prison doctor's determination that the prisoner could wait to see the dentist, despite prisoner's persistent complaints. (Waushara County Jail, Wisconsin)

U.S. District Court  
FEMALE PRISONERS  
RESTRAINTS

*Brawley v. Washington*, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion for summary judgment, which the district court granted in part and denied in part. The court held that

the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE  
POLICIES  
STAFF

*Brown v. Callahan*, 623 F.3d 249 (5<sup>th</sup> Cir. 2010). The estate of a pretrial detainee, who died of a gastrointestinal hemorrhage while in pretrial custody, brought a § 1983 action against a county sheriff in his individual and official capacity for failure to train and supervise the jail's medical employees and for maintaining an unconstitutional policy of deliberate indifference to serious medical needs. The district court denied the sheriff's motion for summary judgment based on qualified immunity. The sheriff appealed. The appeals court reversed. The court held that the county sheriff was not deliberately indifferent to a known or obvious risk of inadequate medical care toward pretrial detainees arising from the supervising jail physician's unpleasant attitude or practice of intimidation toward jail nurses, which allegedly discouraged nurses from calling the physician or sending patients to the emergency room. The court noted that the detainee's gastrointestinal hemorrhage was neither referred for treatment by a hospital emergency room nor treated by the jail's supervising physician. According to the court, despite the physician's bad temper, despite one nurse's expressed fear of an "ass-chewing" from the physician had she sent the detainee to the emergency room, and even though the nurses and physician had disagreed in two instances on whether inmates should be sent to an emergency room, the two nurses had previously decided to send inmates to the emergency room over the physician's objections. The sheriff had reportedly counseled the physician and ordered the nurses to act appropriately notwithstanding the physician's distemper, and there was no prior instance in which the sheriff's instruction to the nurses was not followed. (Wichita County Jail, Texas)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FEMALE PRISONERS  
NEGLIGENCE

*Castro v. Melchor*, 760 F.Supp.2d 970(D.Hawai'i 2010). A female pretrial detainee brought a § 1983 action against correctional facility officials and medical staff, alleging the defendants were deliberately indifferent to his serious medical needs resulting in the delivery of a stillborn child. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's medical staff subjectively knew the pretrial detainee's complaints of vaginal bleeding presented a serious medical need. The court held that the staff's failure to ensure the detainee received an ultrasound and consultation was no more than gross negligence, and the medical staff did not deny, delay, or intentionally interfere with the pretrial detainee's medical treatment. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the correctional facility officials' actions and inactions in training the facility's medical staff resulted in the alleged deprivation of the pretrial detainee's right to medical treatment and whether the officials consciously disregarded serious health risks by failing to apply the women's lock-down policies. Following a verbal exchange with a guard, two officers physically forced the detainee to the ground from a standing position. While she was lying on the ground on her stomach, the officers restrained her by holding their body weights against her back and legs and placing her in handcuffs. The detainee was approximately seven months pregnant at the time. (Oahu Community Correctional Center, Hawai'i)

U.S. District Court  
SUICIDE

*Choate v. Merrill*, 685 F.Supp.2d 146 (D.Me. 2010). The estate of a prison inmate who committed suicide brought an action against individual prison officers, administrators of the correctional facility, and the facility's health care provider, claiming that their violations of the inmate's civil and constitutional rights caused his death. All defendants moved to dismiss and/or for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate was in fact dead when a prison officer first discovered him hanging in his cell. (Special Management Unit, Maine State Prison)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
PRETRIAL DETAINEE

*Christian v. Wagner*, 623 F.3d 608 (8<sup>th</sup> Cir. 2010). A pretrial detainee brought a § 1983 action against jail officials and employees, alleging a due process violation arising out of his exposure to a cleaning solvent. After a jury found in favor of the defendants, the district court denied the detainee's motion for a new trial or judgment as a matter of law. The detainee appealed. The appeals court affirmed. The appeals court held that the jury could reasonably find that the detainee failed to show that a physician or other medical personnel had diagnosed him with a serious medical need while incarcerated, as would support a finding that such need was objectively serious. The court noted that medical personnel who examined the detainee found no objective evidence supporting a diagnosis, and the record did not contain a medical order to jail employees. The court also held that evidence supported the finding that the detainee's need for medical attention was not so obvious that a layperson must have recognized it, as would support a finding that such need was objectively serious. According to the court, the detainee's testimony that he informed jail employees that he coughed up blood and experienced difficulty breathing was corroborated only by his mother, whereas several jail employees testified they did not observe the detainee suffering adverse reactions to cleaning solutions and had no recollection of his complaining of a medical problem. (Johnson County Jail, Iowa)

U.S. Appeals Court  
INTERFERENCE WITH  
TREATMENT  
MENTAL HEALTH  
SUICIDE  
DELIBERATE  
INDIFFERENCE

*Clouthier v. County of Contra Costa*, 591 F.3d 1232 (9<sup>th</sup> Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk. The court held that summary judgment was precluded by a genuine issue of material fact as to whether

the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity. The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time. The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have a longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee.

The court found that the affidavit of the estate's expert, who opined that custodial staff and mental health staff did not work together as a team, was speculative and conclusory, and thus was insufficient to avoid summary judgment. The court noted that the factual basis for the expert's declaration was limited to a sequence of events and statements of participants surrounding the detainee's transfer to the general population in the jail, and the report did not address the key question of whether the alleged disconnect was so obvious as to have been deliberate indifference. (*Contra Costa County Martinez Detention Facility, California*)

U.S. Appeals Court  
CONTAGIOUS DISEASES

*Duvall v. Dallas County, Tex.*, 631 F.3d 203 (5<sup>th</sup> Cir. 2010). A pretrial detainee brought a § 1983 action against a county for personal injuries stemming from a staph infection that he contracted while incarcerated in the county's jail. At the conclusion of a jury trial in the district court the detainee prevailed. The county appealed. The appeals court affirmed. The court held that: (1) sufficient evidence supported the finding that the county's actions in allowing the infection were more than de minimis; (2) sufficient evidence existed to support the finding that the county had an unconstitutional custom or policy in allowing the infection to be present; and (3) sufficient evidence supported the finding that the detainee contracted the infection while in jail. The court noted that physicians testified that there was a "bizarrely high incidence" of the infection and that they were not aware of a jail with a higher percentage of the infection than the county's jail. According to the court, there was evidence that jail officials had long known of the extensive infection problem yet continued to house inmates in the face of the inadequately controlled staph contamination, and that the county was not willing to take the necessary steps to spend the money to take appropriate actions. The court noted that there was evidence that the jail had refused to install necessary hand washing and disinfecting stations and had failed to use alcohol-based sanitizers, which were the recommended means of hand disinfection. (*Dallas County, Texas*)

U.S. District Court  
ALCOHOL/DRUGS  
POLICIES  
DELIBERATE  
INDIFFERENCE

*Estate of Crouch v. Madison County*, 682 F.Supp.2d 862 (S.D.Ind. 2010). An inmate's estate brought a § 1983 suit against a county and corrections officers, claiming that the officers were deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment, and that the county was liable for failure to train its officers or establish policies regarding the medical care of inmates. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate did not show signs of an objectively serious need for medical attention prior to 3:00 a.m. on the day of his death from a drug overdose, at which time he was found unresponsive. According to the court, the Indiana Tort Claims Act entitled the corrections officers and county to immunity on state law negligence claims arising from the inmate's death, which occurred while he was assigned to a community corrections program maintained under the supervision of a governmental entity. (*Madison County Community Justice Center, Indiana*)

U.S. District Court  
GID- Gender Identity  
Disorder  
TRANSSEXUAL

*Fields v. Smith*, 712 F.Supp.2d 830 (E.D.Wis. 2010). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The court held that: (1) GID or transsexualism was a "serious medical need" for the purposes of the Eighth Amendment; (2) as matter of first impression, enforcement of the statute against the inmates violated the Eighth Amendment; (3) as matter of first impression, the statute was facially unconstitutional under the Eighth Amendment; (4) the possibility that certain inmates seeking treatment for gender issues might have had conditions not requiring hormone therapy did not repel a facial challenge to the statute; and (5) as matter of first impression, the statute violated the Equal Protection Clause both as applied to the inmates and on its face. The district court granted the motion, issuing a "...permanent injunction that restrains the defendants from enforcing or attempting to enforce the provisions of Wis. Stat. § 302.386(5m), by direct, indirect or other means, against any prisoner to whom the statute would otherwise apply and specifically against the plaintiffs." (*Wisconsin Department of Corrections*)

U.S. Appeals Court  
DENTAL CARE  
DELIBERATE  
INDIFFERENCE

*Flanory v. Bonn*, 604 F.3d 249 (6<sup>th</sup> Cir. 2010). A prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the Eighth Amendment. The district court granted the defendants' motions to dismiss. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's deprivation of dental care was not temporary, as required for his Eighth Amendment claim, where the inmate was denied toothpaste for 337 days. According to the court, the prisoner's deprivation of toothpaste by the prison

caused him physical injury, as required for his Eighth Amendment claim, where the inmate was diagnosed with periodontal disease of the gums and one tooth was extracted. The court held that the prisoner's allegations that he was denied toothpaste for 337 days, that he filed various grievances about the deprivation, and that he was diagnosed with periodontal disease of the gums and one tooth was extracted as a result of the deprivation, were sufficient to plead that prison officials were deliberately indifferent to his hygiene needs, as required for his Eighth Amendment claims. (Newberry Correctional Facility, Michigan Department of Corrections)

U.S. Appeals Court  
INTAKE SCREENING  
MEDICATION  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE

*Gayton v. McCoy*, 593 F.3d 610 (7<sup>th</sup> Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. But the appeals court held that the district court abused its discretion in finding the physician unqualified to offer expert testimony that the detainee's vomiting combined with her diuretic medication may have contributed to her tachycardia and subsequent death from non-specific heart failure. The court held that a correctional facility nurse who examined the detainee during intake was not deliberately indifferent to his serious medical needs posed by her heart condition, as required to establish violation of the detainee's due process right to adequate medical care in the § 1983 action. The court noted that, even though the nurse failed to follow the facility's protocol requiring her to contact a doctor when an inmate complained of chest pains, the nurse placed the detainee on a list to have her vital signs checked each morning, and the nurse arranged for the detainee to get her congestive heart failure medication. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the nurse who examined the detainee following her complaints of nausea was deliberately indifferent to his serious medical needs posed by her heart condition and vomiting. In its decision, the court noted that "On the other hand, Nurse Pam Hibbert was presented with ample evidence that Taylor needed medical treatment." (Peoria County Jail, Illinois)

U.S. District Court  
CONTRACT SERVICES  
INADEQUATE CARE  
PRIVATE PROVIDER

*George v. Sonoma County Sheriff's Dept.*, 732 F.Supp.2d 922 (N.D.Cal. 2010). A county inmate's estate and survivors filed a § 1983 action alleging that the inmate received inadequate medical care from medical staff at a county detention facility and at a medical center. The court held that the medical center, that was contractually obliged to undertake medical treatment of inmates from the county detention center, and its physicians, were state actors, and thus were subject to liability under § 1983 in action alleging that county inmate's death was result of inadequate treatment he received at the center, even though the center was a privately owned facility that cared for patients other than inmates, and inmates could be sent to other facilities. The court held that summary judgment for the defendants was precluded by genuine issues of material fact as to whether physicians at the medical center with which the county had contracted to provide care for its inmates had an ulterior financial motive to discharge the inmate before his condition had stabilized, had a predetermined length of inmate's hospital stay, and had no intention of fully treating the inmate. (Sonoma County Main Adult Detention Facility, and Sutter Medical Center, California)

U.S. Appeals Court  
PSYCHOTROPIC DRUGS  
SPECIAL HOUSING

*Graves v. Arpaio*, 623 F.3d 1043 (9<sup>th</sup> Cir, 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE  
WORK ASSIGNMENT

*Hardy v. 3 Unknown Agents*, 690 F.Supp.2d 1074 (C.D.Cal. 2010). A state prisoner brought a § 1983 action against prison physicians, alleging that the physicians failed to provide adequate medical care, in violation of the Eighth Amendment, and that one physician retaliated against him for filing grievances, in violation of the First Amendment. The physicians moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner had an ear infection, constituting a serious medical need, while under the prison physician's care, and, if so, whether the physician was deliberately indifferent to that need. The court found that a state prison physician was not entitled to qualified immunity from the prisoner's § 1983 claim alleging that the physician provided inadequate medical care for his ear infection, where a reasonable physician would have understood that failure to examine and treat the prisoner's ear in response to his complaints about ear pain and difficulty hearing would violate the Eighth Amendment. According to the court, the state prison physician's prescribing of medication for the prisoner's psoriasis without actually examining the prisoner's back did not amount to deliberate indifference to the prisoner's serious medical needs, as would violate the Eighth Amendment. The court noted that whether or not the physician's prescribing of medication without a back examination was sound medical practice, it was hardly a failing of constitutional magnitude.

The court held that the prison physician was not deliberately indifferent to the prisoner's serious medical

needs, in violation of the Eighth Amendment, in refusing to approve a “lay-in” or reduction of duties based on the prisoner's back problems. The court found that the reasons given for the physician's decision, including lack of documentation as to whether the prisoner underwent back surgery and his observations of the prisoner, were reasonable. (California State Prison-Los Angeles County)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INTAKE SCREENING  
PRIVATE PHYSICIAN

*Hardy v. City of New York*, 732 F.Supp.2d 112 (E.D.N.Y. 2010). An inmate brought an action against a city correctional department and correctional officers, among others, alleging deliberate indifference, false arrest, and malicious prosecution. The defendants moved to dismiss and for summary judgment. The district court granted the motions in part and denied in part. The court held that the inmate failed to demonstrate that correctional center officers were deliberately indifferent to his serious ear condition in violation of the Eighth Amendment, notwithstanding the contention that he was unreasonably forced to wait 10 days after his referral to see a specialist. The court noted that the inmate met with medical staff during intake and on at least four other occasions during his five-week incarceration, he was immediately and continually treated with oral antibiotics and other medications, and his symptoms were not so alarming as to indicate the need for immediate access to a specialist. The court held that summary judgment was precluded by a genuine issue of material fact as to whether it was objectively reasonable for correctional transit facility officers and correctional facility medical staff to believe that their conduct in dealing with the inmate's serious ear condition did not violate clearly established law. (City of New York Department of Correction, Otis Bantum Correctional Center)

U.S. Appeals Court  
ALCOHOL/DRUGS  
INTAKE SCREENING  
PRETRIAL DETAINEE  
DELIBERATE  
INDIFFERENCE

*Harper v. Lawrence County, Ala.*, 592 F.3d 1227 (11<sup>th</sup> Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. The court held that allegations that jailers were told by other inmates and other jail staff that the pretrial detainee was displaying erratic and strange behavior, and that jailers took no steps to secure immediate medical attention for the detainee, supported a § 1983 claim that jailers were deliberately indifferent to the detainee's serious medical needs under the due process clause. The court held that the detainee's estate failed to allege how the sheriff and jail administrators could possibly have had actual knowledge of the detainee's erratic and strange behavior while in jail, as required to support a § 1983 claim alleging deliberate indifference to the detainee's serious medical needs.

According to the court, for the purposes of a jailer's claim of qualified immunity from the § 1983 claim that he was deliberately indifferent to the pretrial detainee's serious medical needs under the due process clause, it was clearly established at the time of the detainee's confinement that a jail official who was aware of, but ignored, dangers of acute alcohol withdrawal and waited for an emergency before obtaining medical care was deliberately indifferent to the inmate's constitutional rights. The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning a prior similar incident, satisfied the pleading standards for stating a § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. Appeals Court  
NEGLIGENCE  
PRETRIAL DETAINEE

*Harriman v. Hancock County*, 627 F.3d 22 (1<sup>st</sup> Cir. 2010). An arrestee brought an action against a county, sheriff, and corrections officers alleging excessive force, false arrest, conspiracy, deprivation of due process, negligence, and intentional infliction of emotional distress. The district court granted the defendants' motion for summary judgment and the arrestee appealed. The appeals court affirmed. The court held that in the detainee's excessive force claim the detainee's assertion that officers' accounts of his fall in his jail cell were inconsistent and inherently unbelievable was insufficient to defeat the defendants' motion for summary judgment. The court noted that the detainee conceded he had no recollection of an alleged beating, the officers were consistent in reporting that they saw the detainee fall and heard sounds in his cell that resembled a fall, all officers reported that they did not strike the detainee and did not see anyone strike the detainee, and a neurologist did not opine on the cause of the detainee's injuries. (Hancock County Jail, Maine)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
TRANSFER  
TRANSPORTATION

*Hartmann v. Carroll*, 719 F.Supp.2d 366 (D.Del. 2010). A state inmate filed a § 1983 action alleging that prison officials failed to provide professional prevention, diagnosis, and treatment for his thyroid disease and failed to provide medical transportation. The district court granted summary judgment in favor of the defendants. The court held that the officials were not liable for failing to provide a medical transfer, where the officials had no personal involvement in the transfer decision, and were not aware of the risk of serious injury that could have occurred to the inmate and purposefully failed to take appropriate steps. The court found that a state prison medical official was not deliberately indifferent to the inmate's thyroid disease, in violation of the Eighth Amendment, where the inmate received medical care for his throat complaints and his thyroid condition. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court  
EQUIPMENT  
MALPRACTICE  
NEGLIGENCE  
CONTRACT SERVICES

*Jaundoo v. Clarke*, 690 F.Supp.2d 20 (D.Mass. 2010). A state prisoner brought an action against various Massachusetts Department of Correction (DOC) and UMass Correctional Health Service (UMCH) officials and employees, alleging that the defendants unlawfully deprived him of necessary medical care by confiscating his crutches while he was incarcerated in a maximum security prison. The prisoner moved for leave to file an amended complaint. The district court granted the motion in part and denied in part. The court held that UMCH had sovereign immunity from the prisoner's proposed negligence and medical malpractice claims and that a UMCH employee had immunity from liability for her alleged negligence and medical malpractice, under the

Massachusetts Tort Claims Act (MTCA). The court held that the prisoner stated a deliberate indifference claim under § 1983 against a Massachusetts Department of Correction (DOC) employee, a correctional officer, by alleging that the officer intentionally created and submitted an incident report in which he falsely claimed that he had seen prisoner running, for the purpose of depriving the prisoner of his crutches. The court found that supervisory and failure to train claims were precluded, where officials and employees did not directly participate in the decision to deprive the prisoner of his crutches. (Massachusetts Department of Correction, UMass Correctional Health Service, MCI-Cedar Junction)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
FEMALE PRISONERS  
PRETRIAL DETAINEE  
SUICIDE ATTEMPT

*Jessup v. Miami-Dade County*, 697 F.Supp.2d 1312 (S.D.Fla. 2010). A pre-trial detainee who had been placed on suicide precaution status at a county detention center for women, filed a state action against a corrections officer and the county, asserting negligence and claims under § 1983 for the officer's deliberate indifference to his serious medical needs, and against the county for failure to train or discipline staff. The defendants removed the case to federal court and moved for summary judgment. The district court granted the motion. The court held that the detainee's actions of drinking from a toilet, smearing menstrual blood on a window, and stepping on and off a ledge in her cell, did not indicate a "strong likelihood" that she was about to inflict self-harm, as required for jail officials to be liable for deliberately disregarding the detainee's serious medical needs in violation of the Fourteenth Amendment, when they failed to place her in four-point restraints. The detainee subsequently injured her head. The court noted that the detainee's activities were bizarre but not violent, aggressive or out of control as would require restraints. According to the court, a jail official did not act in a fashion "beyond gross negligence," as required to hold her liable for deliberate disregard of the pre-trial detainee's serious medical needs, in violation of the Fourteenth Amendment, when the official failed to act to stop the detainee from self-inflicting head and nose injuries by banging her head against a cell wall during her confinement after being placed on a suicide watch. The officials immediately ordered the detainee to stop head banging activity and tried to open her cell. (Miami-Dade Women's Detention Center, Florida)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
HANDICAP  
WORK ASSIGNMENT

*Jones v. Michigan*, 698 F.Supp.2d 905 (E.D.Mich. 2010). A state inmate brought a § 1983 action against a state correctional facility's classification director and a correction officer. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate's grievance against the classification director and correction officer gave fair notice of his claim that he was harassed and forced to perform work as a sports equipment handler, despite fact that he was wearing a neck brace and walking with a cane due to injuries arising from an automobile accident. But the court found that the correction officer was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the officer was never told by the inmate that he could not perform work duties as a sports equipment handler. Similarly, the classification director was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the director was never advised of an accommodation notice or of the physician's diagnoses that the inmate could not perform work duties. (Saginaw Correctional Facility, Michigan)

U.S. Appeals Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE  
EMERGENCY CARE  
NEGLIGENCE

*Jones v. Muskegon County*, 625 F.3d 935 (6<sup>th</sup> Cir. 2010). A father, as the personal representative of the estate of a deceased pretrial detainee, brought an action against a county and various corrections officers and medical staff, alleging constitutional claims pursuant to § 1983, gross negligence and intentional infliction of emotional distress. The district court granted the defendants' motions for summary judgment. The father appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that assignment charts listing corrections officers assigned to the pretrial detainee's area during the period in which his health deteriorated, and affidavits from other detainees who witnessed his deterioration and the officers' alleged failure to assist the detainee, were insufficient to create a fact issue as to whether the officers were deliberately indifferent towards the detainee's serious medical needs in violation of the Fourteenth Amendment. The court noted that the affidavits referred to "guards" in a general sense without specifying wrongdoing attributable to any particular officer, and did not specify which officers observed the detainee's deterioration or ignored his requests for medical care.

The court found that a correctional officer's failure to immediately call an ambulance upon observing the pretrial detainee's deteriorating health condition was not deliberate indifference towards his serious medical needs as would violate the Fourteenth Amendment, where the officer believed the decision to call an ambulance was not hers to make but was command's, and the officer attended to the detainee's medical needs and made efforts to make him more comfortable. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether prison nurses were aware of the risk to the pretrial detainee's health and chose to disregard the risk, and whether the prison nurses were grossly negligent under Michigan law as to the pretrial detainee's medical care. (Muskegon County Jail, Michigan)

U.S. District Court  
INADEQUATE CARE

*Kasiem v. Switz*, 756 F.Supp.2d 570 (S.D.N.Y. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against the New York Department of Correctional Services (DOCS) and prison employees, alleging violations of his rights involving the defendants' purported failure to adequately treat his claimed hearing problems and related ear pain. The district court granted summary judgment for the defendants. The court held that the prisoner failed to exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action, where any grievances possibly covering his claims were never fully exhausted or became exhausted only months after the suit was filed. (Sullivan Correction Facility, New York)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
DENIAL  
GID- Gender Identity  
Disorder

*Konitzer v. Frank*, 711 F.Supp.2d 874 (E.D.Wis. 2010). A prisoner, a biological male suffering from Gender Identity Disorder (GID), brought an action against prison officials alleging violation of Eighth Amendment's prohibition against cruel and unusual punishment by denying him certain medical services related to his disorder. The district court granted summary judgment for the prison officials in part and denied in part. The court held that the prisoner's Gender Identity Disorder (GID) was a "serious medical need," as required to establish the prisoner's § 1983 claim alleging that denial of his request for the opportunity to live as a female, as part of his treatment for GID, violated his Eighth Amendment rights. According to the court, although the prisoner had

received some hormonal therapy to provide relief from GID symptoms, denial of the opportunity to live as a female allegedly caused the prisoner to be depressed, resulting in self-mutilation of his genitals and suicide attempts. The court held that summary judgment was precluded by a genuine issue of material fact as to whether triadic therapy for Gender Identity Disorder (GID), which consisted of hormone therapy, real-life experience living as the preferred gender, and sex reassignment surgery, was the appropriate treatment for the prisoner. The court also found that summary judgment was precluded by genuine issues of material fact regarding whether prison officials' denial of a request by the male prisoner to live as a female by, for example, wearing makeup and female undergarments and removing facial hair, constituted deliberate indifference to the prisoner's serious medical needs, and whether security concerns justified such denial. (Wisconsin Department of Corrections)

U.S. District Court  
NEGLIGENCE  
TRANSFER

*Lin Li Qu v. Central Falls Detention Facility Corp.*, 717 F.Supp.2d 233 (D.R.I. 2010). A federal immigration detainee's widow sued the Government under the Federal Tort Claims Act (FTCA), asserting claims arising out of the detainee's care while he was detained by Immigration and Customs Enforcement (ICE). The government moved to dismiss. The district court denied the motion. The court held that the widow met the FTCA's notice requirement and that her FTCA claims were not barred by the independent contractor defense. The court held that the widow stated negligence claims actionable under the Federal Tort Claims Act (FTCA), when she alleged that after the Government was aware, or should have been aware, of the detainee's deteriorating medical condition, it acted negligently when it ordered the transfers of the detainee to different facilities and when it improperly reviewed the basis for his custody and detention. (Immigration and Customs Enforcement, Wyatt Detention Center, Rhode Island, Franklin Co. House of Corrections, Greenfield, Mass., Franklin County Jail, Vermont)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
PRETRIAL DETAINEE

*Lum v. County of San Joaquin*, 756 F.Supp.2d 1243 (E.D.Cal. 2010). An arrestee's survivors brought an action against a county, city, and several city and county employees, alleging § 1983 claims for various civil rights violations and a state law claim for wrongful death arising from the arrestee's accidental drowning after his release from the county jail. The defendants moved to dismiss portions of the complaint and the survivors moved for leave to amend. The district court granted the defendants' motion in part and denied in part, and granted the plaintiffs' motion. The survivors alleged that the city's police sergeants made a decision to arrest the individual for being under the influence in public, despite lack of evidence of alcohol use and knowledge that the individual was being medicated for bipolar disorder, and to book him on a "kickout" charge so that he would be released from jail six hours later. The court found that the arresting officers, by taking the arrestee into custody, created a special relationship with the arrestee, similar to the special relationship between a jailer and a prisoner, so as to create a duty of care for the purposes of wrongful death claim under California law, arising from the arrestee's accidental drowning following his release from the county jail. The court noted that it was foreseeable that the arrestee needed medical attention and that there was a risk posed by releasing him without providing such attention. The court held that the county, city, and arresting officers were entitled to immunity, under a California Tort Claims Act section related to liability of public entities and employees for the release of prisoners, for the wrongful death of the arrestee, only as to the basic decision to release the arrestee from the county jail, but not as to the defendants' ministerial acts after the initial decision to release the arrestee. The court noted that the arrestee had a lacerated foot, was covered with vomit and had trouble walking, and had a seizure while he was in a holding cell. The arrestee's body was found floating in the San Joaquin River, approximately two miles west of the county jail, shortly after he was released. (San Joaquin County Jail, California)

U.S. Appeals Court  
DENTAL CARE  
DELAY OF TREATMENT  
DELIBERATE  
INDIFFERENCE

*McGowan v. Hulick*, 612 F.3d 636 (7<sup>th</sup> Cir. 2010). A prisoner who suffered complications from an upper molar extraction brought a pro se action, under § 1983 and Illinois law, against a dentist, a prison's dental director, the regular prison physician, and the prison warden, alleging that they were all negligent and deliberately indifferent to his plight. The district court dismissed the complaint with prejudice and denied the plaintiff's motion for reconsideration. The appeals court vacated and remanded. The court held that the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim against the dental director for delay in obtaining treatment. According to the court, the prisoner was forced to wait three months to see a dentist after he first complained of dental pain, the prison dental director knew that the prisoner needed to see an oral surgeon after a botched extraction yet required him to wait in pain for two months until a contract oral surgeon was scheduled to come to the prison, and the director stalled in authorizing a referral to an outside surgeon after the contract surgeon cancelled his planned visit. The court held that the prisoner's allegation that the prison dentist decided to extract his tooth rather than to fill it, was insufficient to state an Eighth Amendment deliberate indifference claim, where there was no allegation that the dentist chose extraction without exercising professional judgment. (Menard Correctional Center, Illinois)

U.S. District Court  
MEDICATION  
DELIBERATE  
INDIFFERENCE  
DENIAL

*Miller v. Beard*, 699 F.Supp.2d 697 (E.D.Pa. 2010). An inmate brought a § 1983 suit against prison officials, a health care provider and medical personnel, alleging deliberate indifference to his serious medical needs under the Eighth and Fourteenth Amendment. The defendants moved for summary judgment. The court held that a prison nurse was not deliberately indifferent to the inmate's mental health issues, thus defeating his § 1983 claim of an Eighth Amendment violation, despite the claim that she engineered the discontinuance of his psychotropic medications by falsely accusing him of hoarding his medication. According to the court, the nurse had a reasonable subjective fear that the inmate was hoarding his medication. The court held that summary judgment was precluded by genuine issues of material fact as to whether a physician failed to provide adequate treatment for the inmate after taking the inmate off powerful psychotropic medications, and whether the abrupt discontinuance of the medications had a negative impact on the inmate's mood and behavior.

The court found that the injuries the inmate suffered as a consequence of the physician's refusal to provide him with asthma, allergy, and migraine medication were not "serious," thus defeating the inmate's § 1983 claim of an Eighth Amendment violation in deliberate indifference to his serious medical needs. (State Correctional Institution at Pittsburgh, Pennsylvania)

<p>U.S. District Court          DELIBERATE          INDIFFERENCE          NEGLIGENCE          PRETRIAL DETAINEE</p>	<p><i>Molina v. New York</i>, 697 F.Supp.2d 276 (N.D.N.Y. 2010). A juvenile detainee brought an action against a state, its Office of Children and Family Services (OCFS) that operated a youth correctional facility, state and facility officials, and detention aides, asserting § 1983 claims and claims of negligence and assault and battery. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the juvenile detainee's allegations that detention aides at the youth correctional facility broke his arm while restraining him were sufficient to support a plausible Eighth Amendment claim that the aides used excessive force. The court held that the detainee's allegations that he had to wait approximately 15 hours before being diagnosed and scheduled for surgery despite the obviousness of his injuries and his own pleading for assistance, were sufficient to state an Eighth Amendment claim of deliberate indifference to his serious medical needs. (Louis Gossett Jr. Residential Center, New York)</p>
<p>U.S. District Court          DENTAL CARE          EMERGENCY CARE          DELIBERATE          INDIFFERENCE</p>	<p><i>Mosby v. Cavey</i>, 686 F.Supp.2d 868 (W.D.Wis. 2010). A pretrial detainee sued medical personnel at a county jail, asserting a Fourteenth Amendment claim of deliberate indifference to his serious medical need. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to when the inmate's impacted wisdom tooth presented an emergency condition requiring surgery, and whether dentists refused to refer him to an outside oral surgeon because they were not permitted to make such referrals. The court also found genuine issues of material fact as to whether a failure of prison nurses to schedule the inmate to see the dentists or consult with the dentists was intentional mistreatment likely to seriously aggravate the inmate's serious dental condition. (Dane County Jail, Wisconsin)</p>
<p>U.S. Appeals Court          DELIBERATE          INDIFFERENCE          PSYCHOTROPIC DRUGS</p>	<p><i>Orr v. Larkins</i>, 610 F.3d 1032 (8<sup>th</sup> Cir. 2010). An inmate brought a § 1983 claim against prison officials alleging his rights under the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment were violated when he was kept in administrative segregation for nine months. The district court dismissed the complaint as frivolous and the inmate appealed. The appeals court affirmed. The court held that the inmate's nine-month stay in administrative segregation did not constitute an atypical and significant hardship when compared to the burdens of ordinary prison life, as required to support the inmate's claim that his liberty interests under the Fourteenth Amendment were violated. The court found that prison officials who provided the inmate with anti-depressants, and later with anti-psychotic medication, during his nine-month stay in administrative segregation, were not deliberately indifferent to the inmate's worsening mental illness, as required to support the inmate's Eighth Amendment claim. (Eastern Reception, Diagnostic and Correctional Center, Missouri)</p>
<p>U.S. District Court          ADA-Americans with          Disabilities Act          DENIAL          EQUIPMENT          HANDICAP          HEARING IMPAIRED          RA-Rehabilitation Act</p>	<p><i>Paulone v. City of Frederick</i>, 718 F.Supp.2d 626 (D.Md. 2010). An arrestee, a deaf woman, brought an action against a state, a county board, and a sheriff alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and related torts. The state and sheriff moved to dismiss or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the arrestee failed to allege that any program or activity she was required to complete following her arrest for driving under the influence (DUI) and during her subsequent probation, received federal funds, as required to state Rehabilitation Act claims against the state for discriminating against her and denying her benefits because of her deafness. The court found that the arrestee stated an ADA claim with her allegations that, after her arrest and during her detention, police officers denied her the use of a working machine that would have allowed her to make a telephone call, help in reading and understanding forms, and access to a sign language interpreter. (Frederick County Board of County Commissioners, Frederick County Adult Detention Center, Maryland)</p>
<p>U.S. Appeals Court          DELAY IN TREATMENT          DELIBERATE          INDIFFERENCE          FEMALE PRISONERS</p>	<p><i>Pourmoghani-Esfahani v. Gee</i>, 625 F.3d 1313 (11<sup>th</sup> Cir. 2010). A female pretrial detainee brought a § 1983 action against a deputy sheriff, alleging excessive force and deliberate indifference to her serious medical needs. The district court denied the deputy's motion for summary judgment and the deputy appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the deputy sheriff was not qualifiedly immune from the pretrial detainee's § 1983 excessive force claim, since the deputy's alleged actions, including slamming the detainee's head to the floor seven to eight times while she was restrained, if proven, were obviously beyond what the Constitution would allow under the circumstances. The court held the deputy sheriff's alleged actions or inactions following her altercation with the pretrial detainee, if proven, did not constitute deliberate indifference to the detainee's serious medical needs, where: the detainee alleged that the deputy dispatched her to her cell directly after the altercation; the nurse saw her within approximately two minutes of her arrival in the cell; the nurse informed the deputy that the detainee had a possible nose injury but that her nose was not broken; the nurse and an officer then attended to the detainee within approximately five minutes of the detainee's cellmate's first signals for help; and, the detainee then received continuous medical care until she was taken to hospital. The court noted that no preexisting law clearly established that an approximately two-to-five-minute delay of medical care, either while the detainee moved from a waiting room to her cell following an altercation or while her cellmate waited for the guard to respond to her signaling, was a constitutional violation.</p> <p>The appeals court accepted the depiction of events from recordings from closed-circuit video cameras placed throughout jail, rather than crediting the detainee's account of the altercation, where the video obviously contradicted the detainee's version of the facts. But the court noted that video failed to convey spoken words or tone and sometimes failed to provide unobstructed views of the events, and the court credited the detainee's version where no obviously contradictory video evidence was available. (Hillsborough County Jail, Florida)</p>
<p>U.S. Appeals Court          CONTRACT SERVICES          DENIAL</p>	<p><i>Reed-Bey v. Pramstaller</i>, 603 F.3d 322 (6<sup>th</sup> Cir. 2010). A state prison inmate brought a § 1983 action against the Michigan Department of Corrections, the health-management company that provided medical services for a prison, and several prison and company officials. The inmate alleged that the defendants violated his Eighth Amendment rights by denying him adequate medical care for a separated shoulder he suffered during a prison basketball game. The district court granted the defendants' motions for summary judgment and dismissal for the inmate's failure to exhaust administrative remedies. The inmate appealed. The appeals court reversed. The court</p>

held that the inmate properly exhausted administrative remedies as required under the Prison Litigation Reform Act (PLRA) with respect to his § 1983 claim that prison officials violated his Eighth Amendment rights, even though the inmate failed to identify the “names of all those involved” in the grievance as required by the prison’s internal grievance policies. The court noted that the inmate invoked one complete round of the prison’s three-step grievance procedure and the prison addressed the merits of the inmate’s claim at each step of the process rather than defaulting the inmate’s claim as procedurally barred. (Mound Correctional Facility, Michigan Department of Corrections, and Corrections Medical Services, Inc.)

U.S. District Court  
ADA-Americans with  
Disabilities Act  
DELIBERATE  
INDIFFERENCE  
EQUIPMENT  
RA- Rehabilitation Act

*Robinson v. Catlett*, 725 F.Supp.2d 1203 (S.D.Cal. 2010). A state inmate filed a § 1983 action against prison officials alleging constitutional violations and violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The officials moved for summary judgment. The district court granted the motion. The court held that the decision to assign the inmate to an upper bunk did not demonstrate deliberate indifference to his serious medical needs. The court noted that the inmate requested a vacant cell, rather than a lower bunk assignment, and officials assigned the inmate to a lower bunk once they understood problem. The court held the confiscation of the inmate’s cane did not demonstrate deliberate indifference to his serious medical needs and did not violate the Rehabilitation Act. The cane was confiscated after the inmate attempted to strike another prisoner with it. The court found that prison officials’ denial of the disabled inmate’s request for his own cell did not amount to intentional discrimination on the basis of a disability, required to warrant the award of monetary damages under ADA or the Rehabilitation Act, even though officials had initially placed the inmate in an upper bunk. (Calipatria State Prison, California)

U.S. Appeals Court  
ADA- Americans with  
Disabilities Act  
MENTAL HEALTH  
SUICIDE  
DELIBERATE  
INDIFFERENCE

*Simmons v. Navajo County, Ariz.*, 609 F.3d 1011 (9<sup>th</sup> Cir. 2010). Parents of a pretrial detainee who committed suicide while in custody brought a state-court action against various jail personnel, their supervisors, and their county employer, asserting claims under state tort law, § 1983, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the parents appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no evidence that a prison nurse knew the pretrial detainee who subsequently committed suicide was in substantial danger of killing himself, as required to demonstrate the prison nurse was deliberately indifferent to such risk in violation of the Fourteenth Amendment. According to the court, although the nurse was aware that the detainee had previously attempted to take his own life, suffered from depression, and was at some risk of making another attempt, at the time detainee killed himself, over a month had elapsed since his suicide attempt, during which time the detainee received counseling, took antidepressants, and by all accounts, was doing better. The court found that prison nurses were not deliberately indifferent, under the Fourteenth Amendment, to the detainee who committed suicide, because they failed to ensure that the detainee had daily evaluations pursuant to the suicide prevention policy, absent evidence that they knew detainee was in a suicidal crisis. According to the court, the prison nurses’ failure to retrieve the used gauze the pretrial detainee used to hang himself did not constitute deliberate indifference in violation of the Fourteenth Amendment, absent evidence that the prison nurses were aware the pretrial detainee had accumulated the gauze. The court found that the teenage pretrial detainee waved the prison nurse away on the morning of the day he committed suicide, when the nurse tried to speak with him, because he was absorbed in watching television, did not show that the prison nurse was subjectively aware of the detainee’s risk of suicide, so as to support a deliberate indifference claim against the prison nurse under the Fourteenth Amendment. (Navajo County Jail, Arizona)

U.S. Appeals Court  
ALCOHOL/DRUGS  
FAILURE TO PROVIDE  
CARE  
FEMALE PRISONER  
PRETRIAL DETAINEE

*Smith v. County of Lenawee*, 600 F.3d 686 (6<sup>th</sup> Cir. 2010). A female detainee’s estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee’s death while in the county’s custody. The district court denied the parole agent’s motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent’s failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the “proximate cause” of the detainee’s death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee’s condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff’s Department, and Michigan Department of Corrections)

U.S. District Court  
DENIAL

*Stack v. Karnes*, 750 F.Supp.2d 892 (S.D.Ohio 2010). An inmate brought a § 1983 action against a county and the county Board of Commissioners, alleging violations of the Eighth and Fourteenth Amendments. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the county was not entitled to immunity afforded under Ohio law to counties. The court found that the inmate’s allegations that the county historically had a policy, custom, and practice of failing to implement adequate training programs for jail personnel, and that he was denied medical treatment for his diabetes, were sufficient to state a Monell claim against the county for violation of the Eighth Amendment. According to the court, the county Board of Commissioners had no duty to keep a safe jail, and therefore, could not be liable in the inmate’s § 1983 action alleging he was denied adequate medical care in violation of the Eighth Amendment, where the sheriff was the entity in charge of the jail, rather than the Board. (Franklin County Corrections Center, Ohio)

U.S. District Court  
DENTAL CARE  
INADEQUATE CARE

*Swan v. U.S.*, 698 F.Supp.2d 227 (D.Mass. 2010). A prisoner brought a pro se action against the United States under the Federal Tort Claims Act (FTCA), asserting negligence after federal medical center officials allegedly failed to provide him with adequate dental care. The government moved for summary judgment. The district court held that a fact issue as to whether the prisoner was afforded the right to preventative dental care precluded

summary judgment. Despite his periodontal disease, the prisoner did not receive a dental cleaning for almost one year following his arrival. (Federal Medical Center Devens, Massachusetts)

U.S. District Court  
DENIAL  
TRANSFER

*Tafari v. McCarthy*, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment. The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. The court found that even if a correctional officers' captain failed to thoroughly investigate the alleged incident in which one officer threw urine and feces on the prisoner to wake him up, such failure to investigate did not violate the prisoner's due process rights, since the prisoner did not have due process right to a thorough investigation of his grievances.

According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired. The court held that there was no evidence that the state prisoner suffered any physical injury as result of an alleged incident in which a correctional officer spit chewing tobacco in his face, as required to maintain an Eighth Amendment claim based on denial of medical care. The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous. The court held that summary judgment was precluded by a genuine issue of material fact as to whether state correctional officers used excessive force against the prisoner in the course of his transport to a different facility. The court held that state correctional officers were not entitled to qualified immunity from the prisoner's § 1983 excessive force claim arising from his alleged beating by officers during his transfer to a different facility, where a reasonable juror could have concluded that the officers knew or should have known that their conduct violated the prisoner's Eighth Amendment rights, and it was clearly established that prison official's use of force against an inmate for reasons that did not serve penological purpose violated the inmate's constitutional rights. The inmate allegedly suffered injuries, including bruises and superficial lacerations on his body, which the court found did not constitute a serious medical condition.

The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. District Court  
FAILURE TO PROVIDE  
CARE  
DELIBERATE  
INDIFFERENCE

*Tate v. Troutman*, 683 F.Supp.2d 897 (E.D.Wis. 2010). A county jail inmate filed a § 1983 action alleging that officials failed to provide constitutionally sufficient medical care. The inmate moved for the entry of a default judgment. The district court granted the motion in part and denied in part. The court held that a county jail officer and medical officials were not personally involved in the allegedly inadequate medical treatment provided to the inmate after a fall in his cell, and thus were not liable under § 1983 for any compensatory or nominal damages for an Eighth Amendment violation. The court noted that even though the inmate suffered pain after the fall and had blood in his bowel movements, the inmate had a history of severe low back and bilateral neck pain, headaches, and rectal bleeding before the fall. The court held that county jail officials failed to provide adequate medical care for the inmate's dislocated shoulder, in violation of the Eighth Amendment, and thus the inmate was entitled to an award of compensatory damages for past pain and suffering. The court noted that the jail physician refused to see the inmate or speak to him, jail officials rejected the inmate's grievances regarding his inadequate medical treatment, and the inmate experienced physical pain and emotional distress for three or four weeks due to his lack of adequate diagnosis and treatment of his shoulder injury by immobilization.

The court concluded that an award of \$27,000 was the appropriate amount to compensate the inmate for his past pain and suffering, where the inmate experienced pain and suffering for about one month. The court found that county jail officials showed callous indifference towards the inmate's medical needs, and thus a punitive damages award of \$9,000 was warranted to deter or punish the Eighth Amendment violation. The court also found that the inmate was entitled to prejudgment interest on the compensatory damage award at an average monthly prime rate compounded annually from the period beginning on the date of his injury through the date of the entry of judgment. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court  
CONTRACT SERVICES  
POLICIES  
DELIBERATE  
INDIFFERENCE

*Thomas v. Cook County Sheriff's Dept.*, 604 F.3d 293 (7<sup>th</sup> Cir. 2010). A mother brought a § 1983 and state wrongful death action against a county, sheriff, and various officers and medical technicians at a county jail after her son died from pneumococcal meningitis while being held as a pretrial detainee. The mother asserted a claim of deliberate indifference to medical needs as well as a common-law claim for wrongful death. Following a jury verdict for the mother, the district court, ordered the reduction of the total damage award from \$4,450,000 to \$4,150,000. The defendants appealed. The appeals court affirmed in part and reversed and remanded in part. The

court held that the issue of whether county corrections officers were subjectively aware of the pretrial detainee's serious medical condition that culminated in death from pneumococcal meningitis, as required to support the detainee's survivor's § 1983 deliberate indifference action against a county and officers, was for the jury, given the cellmates' and other witnesses' accounts of the detainee's vomiting and exhibiting other signs of serious illness within plain view of officers without any response from them, and given testimony as to the inmates' various complaints to officers regarding his condition. According to the court, issues of whether the county had a custom or practice of failing to timely review jail inmates' medical requests, and a causal link between such failure and the death of the pretrial detainee from pneumococcal meningitis were for the jury. The court noted that the supervisor and individual medical technicians for the contractor that handled medical services for inmates testified to the practice of not retrieving inmate medical requests on a daily basis, and the detainee's fellow inmates testified to having filed numerous medical requests on the detainee's behalf.

The court found that a causal link was not shown between the county sheriff's department's alleged policy of understaffing the county jail and the pretrial detainee's death from pneumococcal meningitis. Although individual deputies employed as corrections officers were shown to have known of and ignored the detainee's medical needs, there was no evidence that such inaction was due to understaffing rather than other causes. The court found that a compensatory damages award of \$4 million was not excessive. The award was not out of line when measured against those in other similar cases, and the award had rational connection with evidence that the detainee was 32 years old, had three children whom he supported, and had died of a treatable illness after numerous fellow inmates had alerted corrections officers about his condition. (Cook County Jail, Illinois)

U.S. Appeals Court  
MISDIAGNOSIS  
DUE PROCESS  
DELIBERATE  
INDIFFERENCE

*Townsend v. Jefferson County*, 601 F.3d 1152 (11<sup>th</sup> Cir. 2010). A detainee who suffered a miscarriage at a county jail brought a civil rights action against the county, county sheriff, two deputies, and the nurse who had examined her. The district court denied the deputies' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court reversed and rendered. The court held that the injury suffered by the pregnant detainee who used crack cocaine daily and had a miscarriage at the county jail was not caused by any deliberate indifference to his serious medical needs by the deputies, in violation of due process. According to the court, the deputies knew that the detainee had spoken with a nurse at the jail who determined that the detainee's condition was not an emergency, and there was no evidence that the detainee's situation was so obviously dire that the deputies must have known that the nurse had grossly misjudged her condition. (Birmingham Jail, Jefferson County, Alabama)

U.S. District Court  
INVOLUNTARY  
MEDICATION  
MENTAL HEALTH

*U.S. v. Burhoe*, 692 F.Supp.2d 137 (D.Me. 2010). The government moved for order permitting involuntary administration of medication to render a defendant competent to stand trial on charge of possession of firearms after having been previously committed to a mental institution. The district court held that the government established an important governmental interest in the prosecution of the defendant, granting the motion. The court noted that the defendant was charged with the offense of possession of firearms after having been previously committed to a mental institution, arising out of an incident in which he allegedly fired a rifle at a state trooper and ultimately was shot by the police, and there were also state charges pending against the defendant for aggravated attempted murder and reckless conduct with a firearm, arising out of the same incident that brought about the federal charge. (Maine)

U.S. District Court  
ADA-Americans with  
Disabilities Act  
DELIBERATE  
INDIFFERENCE  
HEARING IMPAIRED

*Ulibarri v. City & County of Denver*, 742 F.Supp.2d 1192 (D.Colo. 2010). Deaf detainees, and the estate of one detainee who committed suicide, brought a civil rights action challenging their arrests and detentions by the members of city and county's police and sheriff departments. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that failure to provide a deaf detainee with a sign language interpreter during the intake process did not constitute disability discrimination. The court found that jail deputies were not deliberately indifferent to a deaf detainee's needs. But the court held that summary judgment was precluded by genuine issues of material fact as to whether the deaf detainee had access to the jail's services after he was booked and placed in his housing assignment to the same extent as inmates who could communicate verbally, and whether the detainee could access the jail's services without assistance.

The court held that jail deputies were not deliberately indifferent to needs of a deaf detainee who committed suicide, and because there was no underlying Eighth Amendment violation, supervisor defendants were not liable in either their official or individual capacities for the detainee's suicide, and the municipality was not liable for failure to adequately train and supervise the deputies. The court noted that no evidence indicated that the detainee had been suicidal prior to his incarceration or at the time of his medical screening, but rather, evidence established that the detainee could communicate through writing and otherwise sufficiently to at least alert medical staff that he needed assistance. The court noted that medical staff made regular and frequent visits to the jail. But the court also held that summary judgment was precluded by genuine issues of material fact existed as to whether the sheriff's department breached a duty to the detainee to take reasonable care to prevent the detainee from committing suicide, and whether any such breach proximately caused the detainee's suicide.

The court held that jail officials' late night release of the deaf detainee and the potential harm from being unable to communicate or get herself home did not demonstrate the level of outrageousness required to establish a substantive due process violation under a state-created danger theory. According to the court, the detainee failed to show that officers would have been aware of the risk that, instead of waiting in the facility for public transportation to begin, the detainee would leave and accept a ride from a stranger. The detainee was released at 2:00 a.m. and she was given bus tokens by a deputy sheriff. Her husband had called the facility to say that he was on his way to pick her up, but the message was not relayed to the detainee. There was a waiting area in the lobby of the facility but she did not notice it and attempted to get herself home on her own. (City and County of Denver Police and Sheriff Departments, Pre-arraignment Detention Facility, Denver County Jail, Colorado)

U.S. District Court  
EQUIPMENT  
TREATMENT

*Webster v. Fischer*, 694 F.Supp.2d 163 (N.D.N.Y. 2010). An inmate brought a civil rights action against prison officials, alleging discrimination, retaliation, harassment, and violations of his constitutional rights, federal statutes, state law, and regulations. The inmate sought declaratory judgment and injunctive relief, as well as money damages in the amount of \$500,000. The district court granted the defendants' motion for summary judgment. The court held that misbehavior reports and disciplinary actions were not in retaliation for the inmate's participation in an inmate liaison committee, where the inmate was found guilty of the charges in the misbehavior reports based on admissions at a disciplinary hearing. The court found that the inmate did not suffer from the infliction of any physical injury or pain as a result of a corrections officers' allegedly harassing conduct.

According to the court, the inmate did not suffer deprivation of a constitutionally protected liberty interest by confinement in a special housing unit for 90 days. The court held that the inmate's sleep apnea was not sufficiently serious to warrant Eighth Amendment protection, where the inmate admitted that he did not use a breathing machine for a 90-day period that he was confined to a special housing unit, and there was no evidence that the inmate experienced any physical deterioration or other consequences as a result of the lapse in treatment.

The court held that there was no evidence that the inmate was placed on a mail watch or that any of his mail was illegally opened or intentionally misdirected. (Cayuga Correctional Facility, New York State Department of Correctional Services)

U.S. District Court  
SUICIDE

*Wells v. Bureau County*, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor.

The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

U.S. District Court  
DELAY OF CARE  
DELIBERATE  
INDIFFERENCE  
PRETRIAL DETAINEE  
TRAINING

*Wereb v. Maui County*, 727 F.Supp.2d 898 (D.Hawai'i 2010). Parents of a pretrial detainee, a diabetic who died in custody, brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee died in a 2-cell police lockup. The court held that county police officers and public safety aids who did not interact with or observe the pretrial detainee not moving in his cell were not subjectively aware of the serious medical need of the detainee, and thus those officers and aids were not deliberately indifferent to that need, in violation of the detainee's due process rights. The court held that summary judgment as to the § 1983 Fourteenth Amendment deliberate indifference claim was precluded by a genuine issue of material fact as to whether county police officers who interacted with the pretrial detainee and/or a county public safety aid who did not see the detainee move around in his cell while she monitored him over video had subjective knowledge of the serious medical need of detainee, precluding summary judgment.

The court found that neither county police officers who interacted with the pretrial detainee, nor a county public safety aid who did not see the detainee move around in his cell while she monitored him over video, were entitled to qualified immunity from the § 1983 Fourteenth Amendment deliberate indifference claim brought by the detainee's parents, where at the time of the detainee's death, it was clearly established that officers could not intentionally deny or delay access to medical care. The court held that summary judgment was precluded on the § 1983 municipal liability claim by genuine issues of material fact as to whether the county adequately trained its employees to monitor the medical needs of the pretrial detainees, and, if so, as to whether the county's inadequate training of its employees was deliberately different, and as to whether inadequate training "actually caused" the death of the pretrial detainee. (Lahaina Police Station, Maui County, Hawaii)

U.S. Appeals Court  
NEGLIGENCE  
DELIBERATE  
INDIFFERENCE

*Williams v. Jackson*, 600 F.3d 1007 (8<sup>th</sup> Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that

officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a “shake down” of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate’s allegation that the prison’s maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
PRIVATE PHYSICIAN  
WORK ASSIGNMENT

*Wright v. Genovese*, 694 F.Supp.2d 137 (N.D.N.Y. 2010). A state prisoner, who underwent open-heart surgery, brought a § 1983 action against a private physician and three physicians who were employed by, or contractors for, the Department of Correctional Services (DOCS). The prisoner alleged that the physicians denied him constitutionally adequate medical care and equal protection of law. The district court granted the physicians’ motions for summary judgment. The court held that, to the extent the physicians were being sued in their official capacities, they were immune from suit. The court found that the private physician was not deliberately indifferent to the prisoner’s medical needs and that the primary treating physician and a consulting cardiologist did not act with deliberate indifference in how they addressed the prisoner’s work restrictions following his surgery. According to the court, the primary treating physician was not deliberately indifferent to the prisoner’s serious medical needs with respect to prescribing post-operative cardiac and pain medication. (Shawagunk Correctional Facility, New York).

U.S. District Court  
GID- Gender Identity  
Disorder  
POLICIES  
DELIBERATE  
INDIFFERENCE  
TRANSSEXUAL

*Young v. Adams*, 693 F.Supp.2d 635 (W.D.Tex. 2010). An inmate suffering from a gender identity disorder brought a pro se, in forma pauperis § 1983 suit against prison officials, claiming that they collectively denied him hormone treatment, in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. The district court dismissed the action for failing to comply with time limitations. The court noted that, even if the case had met the time limitations, medical staff at the correctional facility were not deliberately indifferent to the serious medical needs of an inmate, where the inmate did not meet the requirements to receive hormone treatment under the correctional facility’s policy for treatment of gender disorder, which included a confirmed parole or discharge date of 180 days. The court noted the inmate was referred to a mental health unit for evaluation, and he was an intact male who was still manufacturing testosterone. (Alfred D. Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

#### 2011

U.S. District Court  
DELAY IN CARE  
DELIBERATE  
INDIFFERENCE  
MEDICATION

*Alexander v. City of Muscle Shoals, Ala.*, 766 F.Supp.2d 1214 (N.D.Ala. 2011). A pretrial detainee sued a city, city police officers, jailers, a mayor, and city council members, asserting § 1983 claims alleging deliberate indifference to his serious medical needs and his health and safety. The court found that qualified immunity applied to bar the § 1983 liability of jailers for deliberate indifference to the serious medical needs of the pretrial detainee, because the detainee failed to argue against the qualified immunity defense. According to the court, once a defendant raises a defense of qualified immunity, the plaintiff bears the burden of establishing both that the defendant committed the constitutional violation and that the law governing the circumstances was already clearly established at the time of the violation, and the detainee failed to adequately respond to the qualified immunity defense. The court noted that the jailers did not contact medical professionals at the detainee’s request for four days at most, and that the detainee, who complained that he was in pain, at that point had been without prescription pain medication to which he was addicted for at least three days. The court also noted that the detainee had already faked a suicide attempt to garner jailers’ attention and had also been both combative and difficult. (City of Muscle Shoals Municipal Jail, Alabama)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
RECORDS-ACCESS

*Alsbaugh v. McConnell*, 643 F.3d 162 (6<sup>th</sup> Cir. 2011). A state prisoner filed a civil rights action alleging excessive force and deliberate indifference against numerous state and private defendants. The district court granted summary judgment against the prisoner. The prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner’s request for a videotape of a fight was of the nature that it would have changed legal and factual deficiencies of his civil rights action alleging excessive force, and thus the prisoner was entitled to production of it, since the videotape would have shown how much force had been used in subduing the prisoner. But the court held that the prisoner who was alleging excessive force and deliberate indifference was not entitled to the production of his medical records before considering the state’s motion for summary judgment, where the state and private defendants produced enough evidence to demonstrate that medical personnel were not deliberately indifferent to his medical needs. (Ionia Max. Security Corre’l Facility, Michigan)

U.S. Appeals Court  
GID- Gender Identity  
Disorder  
TRANSSEXUAL

*Battista v. Clarke*, 645 F.3d 449 (1<sup>st</sup> Cir. 2011). A Massachusetts civil detainee, who was anatomically male but suffered from gender identity disorder (GID), brought an action against Massachusetts officials alleging “deliberate indifference” to her medical needs, and seeking an injunction requiring that hormone therapy and female garb and accessories be provided to her. The district court granted preliminary injunctive relief, and the state officials appealed. The appeals court affirmed. The appeals court held that the record supported the district court’s conclusion that Massachusetts officials were deliberately indifferent to the medical needs of the civil detainee or exercised an unreasonable professional judgment by denying her female hormone therapy. The court noted that it had been fifteen years since the detainee first asked for treatment, and for ten years, health professionals had been recommending hormone therapy as a necessary part of the treatment. According to the court, when, during the delay, the detainee sought to castrate herself with a razor blade, state officials could be said to have known that the detainee was at a “substantial risk of serious harm.” (Massachusetts Treatment Center for Sexually Dangerous Persons)

<p>U.S. District Court          DELAY IN TREATMENT          DELIBERATE          INDIFFERENCE          POLICIES</p>	<p><i>Burgos v. Philadelphia Prison System</i>, 760 F.Supp.2d 502 (E.D.Pa. 2011). A pretrial detainee brought a § 1983 action against a city prison system, health service and officials, alleging wrongful delay in receiving medical treatment for his broken arm. The district court granted the defendants' motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the prison health service's actions in failing to timely refer the detainee to an orthopedic surgeon for treatment of a broken arm constituted an official "policy" of deliberate indifference to the detainee's serious medical needs, for the purposes of municipal liability under § 1983, and whether the prison health administrator significantly delayed the detainee's medical treatment for non-medical reasons. (Philadelphia Prisons Systems, Prison Health Services, Inc.)</p>
<p>U.S. Appeals Court          FAILURE TO PROVIDE          CARE          FEMALE PRISONERS</p>	<p><i>Cobige v. City of Chicago, Ill.</i>, 651 F.3d 780 (7<sup>th</sup> Cir. 2011). The estate of a deceased female arrestee brought a § 1983 action against a city and police officers, alleging failure to provide medical care in violation of the Fourth Amendment and the Illinois wrongful death law. After a jury verdict in favor of the estate, the city and officers filed motions for judgment as a matter of law and/or for a new trial. The district court denied the motions. The city and officers appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that evidence presented at trial in the estate's § 1983 action was sufficient to establish causation of the arrestee's death, where evidence from one of the arrestee's cellmates, two deputy sheriffs and a civilian aide at the lockup, permitted a jury to find that she experienced severe abdominal pain throughout her confinement. A professor and head of coronary care at university hospitals testified that the pain led the arrestee to produce more epinephrine, which combined with a pre-existing heart condition caused her death, and uterine tumors found during a post-mortem examination led to his conclusion that the arrestee had suffered serious abdominal pain. The court held that the probative value of evidence of the deceased arrestee's police record, time in prison, and drug addiction outweighed the danger of unfair prejudice, where the evidence bore directly on the appropriate amount of damages and that a new trial on the issue of damages was warranted. (Chicago Police Department lockup, Illinois)</p>
<p>U.S. Appeals Court          DELAY IN          TREATMENT          POLICIES          PRETRIAL DETAINEE</p>	<p><i>Craig v. Floyd County, Ga.</i>, 643 F.3d 1306 (11<sup>th</sup> Cir. 2011). A pretrial detainee who was admitted to a county jail after being cleared for admittance by a medical center to which he was transported following his arrest, brought a civil rights action against the county based on its nine-day delay in eventually providing him with surgical treatment for multiple fractures to his head. The district court granted the county's motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the pretrial detainee failed to show that a nine-day delay by medical personnel at the county jail in providing him with appropriate surgical treatment for multiple fractures to his skull was the result of any unconstitutional custom or policy of allegedly not referring detainees to physicians, of relying on hospital clearance forms instead of performing their own diagnostic tests on detainees transported to jail from a hospital, or of using the least costly means to treat detainees. The court noted that the detainee's only proof of any such policy or custom was that nine medical providers had evaluated him sixteen times at the county jail, before he was finally transported to a medical center when a tomography scan of his head revealed these fractures. According to the court, while nine different medical providers were involved in the detainee's treatment before a tomography was eventually ordered, this was insufficient to show that the county had a policy or custom of constitutional violations against detainees that was either persistent or so widespread as to have the force of law, as required to subject the county to liability under § 1983. (Floyd County Jail, Georgia)</p>
<p>U.S. District Court          INADEQUATE CARE          DELIBERATE          INDIFFERENCE          MENTAL HEALTH</p>	<p><i>Davis v. Correctional Medical Services</i>, 760 F.Supp.2d 469 (D.Del. 2011). A state inmate filed a § 1983 action alleging that prison medical officials failed to provide mental health treatment, failed to follow policies and procedures to prevent officers and other inmates from harassing him, and failed to provide adequate medical treatment for his broken nose. The district court granted the officials' motions to dismiss and for summary judgment. The court held that the failure of the prison's mental health administrator to speak to the inmate or to investigate his complaint regarding his treatment and his living conditions did not violate any recognizable constitutional right, as required to sustain the inmate's § 1983 claim against the administrator. According to the court, prison medical officials were not deliberately indifferent to the inmate's fractured nose, in violation of the Eighth Amendment, where the officials took an x-ray two months after the incident, the inmate did not complain about his nasal condition for seven months, once he did, the condition was consistently monitored and evaluated on several occasions, and the inmate was approved for surgery, but he refused to undergo the procedure. (James T. Vaughn Correctional Center, Delaware)</p>
<p>U.S. Appeals Court          GID- Gender Identity          Disorder          TRANSSEXUAL          DELIBERATE          INDIFFERENCE          FAILURE TO PROVIDE          CARE</p>	<p><i>Fields v. Smith</i>, 653 F.3d 550 (7<sup>th</sup> Cir. 2011). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The district court granted judgment on behalf of the plaintiffs and the defendants appealed. The appeals court affirmed. The appeals court held that: (1) enforcement of the statute constituted deliberate indifference to the inmates' serious medical needs; (2) the statute facially violated the Eighth Amendment; (3) deference to prison administrators in implementing the ban was not warranted; and (4) the district court did not abuse its discretion in enjoining the entirety of the Wisconsin Inmate Sex Change Prevention Act. (Wisconsin Department of Corrections)</p>
<p>U.S. District Court          DELIBERATE          INDIFFERENCE          DENTAL CARE</p>	<p><i>Francis v. Carroll</i>, 773 F.Supp.2d 483 (D.Del. 2011). A former inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a former warden and other Department of Correction administrators, alleging violations of the Eighth and Fourteenth Amendments. The defendants filed a motion for summary judgment and the district court granted the motion. The court held that denial of dental floss by the prison's medical provider to the inmate was not deliberate indifference to his dental needs by prison administrators, as would violate the Eighth Amendment, where the administrators were entitled to rely upon the provider to care for the inmate's</p>

dental needs, and the prison permitted dental loops that provided the same hygiene function as floss. According to the court, denial of dental floss to the inmate did not violate Fourteenth Amendment equal protection, where the inmate was treated no differently than other inmates, and the denial was based upon security concerns. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Hale v. Rao*, 768 F.Supp.2d 367 (N.D.N.Y. 2011). An inmate brought an action against prison officials alleging deliberate indifference to his serious medical needs, and alleging that the conditions of his confinement violated the Eighth Amendment. Prison officials moved for summary judgment. The district court granted the motion in part and denied in part. The court excused the state inmate's failure to exhaust administrative remedies prior to bringing the claim in federal court because prison staff had thrown out a grievance filled out by another inmate on the inmate's behalf, refused to provide the inmate with the materials needed to file another grievance, and threatened to physically assault him if he attempted to utilize the grievance procedure. The court noted that the inmate was illiterate and had a poor understanding of the grievance procedure. The court held that the inmate was adequately treated following an alleged assault by a corrections officer, precluding the inmate's claim under the Eighth Amendment alleging deliberate indifference to his serious medical needs. The inmate received medical treatment including at least ten stitches to close the open wounds on his left shin, and an x-ray of his leg to determine if the bone was fractured. Medical staff later re-evaluated his leg injury, cleaned the wound, and provided pain killers. The court found that allegations by the inmate that prison conditions were unsanitary due to the presence of insects in an infirmary room, and that medical staff pulled a staple out of his abdomen by hand, failed to establish the inmate's claim under the Eighth Amendment that his conditions of confinement constituted cruel and unusual punishment, absent evidence that the conditions at the prison prevented the inmate from receiving appropriate medical care. (Downstate Correctional Facility, New York)

U.S. District Court  
SUICIDE  
DELIBERATE  
INDIFFERENCE  
NEGLIGENCE

*Hawkins v. County of Lincoln*, 785 F.Supp.2d 781 (D.Neb. 2011.) The personal representative of a hospital patient brought a § 1983 action against the hospital, a county, a city, and related defendants for claims arising when the patient was brought to the hospital at the time of his arrest, was released by the hospital to a county jail, and subsequently hanged himself at the jail. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials were objectively aware that the prisoner posed a risk of harm to himself that included a risk of suicide. According to the court, although the prisoner had serious medical needs in connection with his risk of suicide, no prison correctional officers, jailers, and/or law enforcement officers were deliberately indifferent to the prisoner's needs, even though it might have been negligent for individual defendants to take the prisoner off a suicide watch without having him evaluated by a physician or other professional. According to the court, the defendants' conduct was not more blameworthy than mere negligence. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the county acted with deliberate indifference by failing to have a specific policy for determining when an inmate could be removed from a suicide watch and placed in a situation that could increase the likelihood of a successful suicide attempt. (Lincoln County Jail, Nebraska)

U.S. District Court  
MEDICATION

*Hodge v. Murphy*, 808 F.Supp.2d 405 (D.R.I. 2011.) A pretrial detainee brought a pro se action against a state prison warden and others, alleging the defendants failed to properly dispense his daily medication for migraines and pain resulting from a fractured lower back. The district court dismissed the action. The court held that the allegation that the pretrial detainee suffered undue pain as the result of prison officials' failure to properly dispense daily medication was insufficient to establish a serious medical need involving a substantial risk of serious harm, as required to state a due process claim against the prison officials under the Fourteenth Amendment. (Donald W. Wyatt Detention Facility, Central Falls, Rhode Island)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
DENTAL CARE  
INVOLUNTARY  
TREATMENT

*Holmes v. Fischer*, 764 F.Supp.2d 523 (W.D.N.Y. 2011). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by subjecting him to non-random urinalysis drug testing, confining him in a special housing unit (SHU), and denying medical care. The defendants moved for a more definite statement, to strike the complaint, and to dismiss. The district court denied the motion. The inmate alleged that, while incarcerated in a special housing unit (SHU): (1) he was routinely cuffed from behind, aggravating left shoulder and leg conditions resulting from previous injuries, (2) he was subjected to continuous illumination in his cell, rendering it impossible to sleep; (3) officials interfered with the inmate grievance he attempted to file regarding constant SHU cell illumination; (4) he was denied dental floss; (5) he was denied, during winter months, proper boots, gloves, hat, and thermos; (6) he was exposed to feces thrown by mentally-ill inmates confined to SHU; (7) he was denied proper medical treatment and tests; and (8) he was subjected to urinalysis testing which so traumatized him as to cause physical harm. The court held that these allegations were sufficient to state claims under the Eighth Amendment for cruel and unusual punishment and deliberate indifference to necessary medical care. According to the court, the inmate's allegations that he was subjected to urinalysis based on reports from confidential informants whose credibility and reliability had not been confirmed, despite the complete absence of any history of drug use, and that two random urinalysis tests to which he was subjected were done to retaliate against him for filing inmate grievances regarding non-random urinalysis testing, were sufficient to state an unreasonable search claim under the Fourth Amendment. The court found that the inmate's allegation that, as a result of repeated non-random urinalysis drug testing to which he was subjected, he suffered physical harm, including insomnia, nausea, headaches, burning eyes, aggravation of an old gunshot wound, inability to exercise, and appetite loss, was sufficient to state a cruel and unusual punishment claim under the Eighth Amendment. (Elmira Correctional Facility, and Southport Correctional Facility, New York)

U.S. District Court  
EQUIPMENT  
DELIBERATE  
INDIFFERENCE

*Jaundoo v. Clarke*, 783 F.Supp.2d 190 (D.Mass. 2011.) A state prisoner brought an action under § 1983 against various prison officials and employees, alleging that the defendants unlawfully deprived him of necessary medical care by confiscating his crutches while he was incarcerated in a maximum security prison. The district court held that summary judgment for a corrections officer was precluded by a genuine issue of material fact as to whether the prisoner's knee had healed sufficiently that he no longer needed crutches. According to the court,

summary judgment for a nurse was precluded by a genuine issue of material fact as to whether the nurse knew or had a reason to know of the prisoner's serious medical condition and whether it was reckless for the nurse to rely on a corrections officer's report that the prisoner had been moving around without his crutches. The court also found genuine issues of material fact as to whether another corrections officer falsely reported that the prisoner was running on both feet without his crutches, and whether that officer conveyed such information to induce prison medical staff to take away the prisoner's crutches. The court found that the conduct of a health services administrator, in failing to immediately investigate the confiscation of the prisoner's crutches, did not rise to the level of deliberate indifference to the prisoner's serious medical needs. (Massachusetts Correctional Institution at Cedar Junction)

U.S. Appeals Court  
AIDS- Acquired Immune  
Deficiency Syndrome  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
INADEQUATE CARE

*Leavitt v. Correctional Medical Services, Inc.*, 645 F.3d 484 (1<sup>st</sup> Cir. 2011). A state inmate brought a § 1983 action against a private contractor that provided medical care at a prison and the contractor's employees, among others, alleging that the defendants provided inadequate medical care for his human immunodeficiency virus (HIV) at a jail and a prison. The district court granted the defendants' motions for summary judgment and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the physician assistant at the jail was deliberately indifferent to the serious medical needs of the inmate, in failing to refer him to an infectious disease specialist or to otherwise treat his HIV in a timely manner, and as to whether the assistant's alleged deprivation of care subjected the inmate to serious harm, both short-term and long-term. The court held that the regional medical director employed by the private contractor that provided medical care did not act with deliberate indifference to the serious medical needs of the HIV positive inmate in failing to sign off on necessary referrals to specialists and in failing to follow up on the inmate after committing to intervene more personally in his care. The court noted that, after examining the inmate, the director not only ordered updated blood work, but also took the unusual step of ordering that the inmate's follow-up appointment specifically be with him, and when the director finally saw the inmate's lab results three months after the labs were drawn, the director approved the inmate's referral to specialists. (Maine State Prison, and York County Jail, Maine)

U.S. District Court  
ADA- Americans with  
Disabilities Act  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
RA- Rehabilitation Act  
WORK ASSIGNMENT

*O'Neil v. Texas Dept. of Criminal Justice*, 804 F.Supp.2d 532 (N.D.Tex. 2011.) The next friend to a deceased prisoner's minor daughter who died of an asthma attack while confined brought a § 1983 action against the Texas Department of Criminal Justice (TDCJ), a prison doctor, the company that provided health care services at the prison, and others, alleging violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a picket officer, in failing to respond to the emergency call button of the prisoner who was suffering from an asthma attack and in refusing to respond to the cellmate's verbal calls to help the prisoner during an asthma attack, knew of a substantial risk of serious harm to the prisoner and failed to act with deliberate indifference to that harm. The court found that the officer was not entitled to qualified immunity.

The court held that summary judgment on claims alleging violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA). Rehabilitation Act of 1973, was precluded by a genuine issue of material fact as to whether the Texas Department of Criminal Justice (TDCJ), in failing to put the prisoner who suffered from asthma on job restriction from temperature or humidity extremes, failing to allow the prisoner access to his medication on the day he died as the result of an asthma attack, and failing to provide the prisoner with periodic physician follow-up appointments, failed to accommodate the prisoner's disability. The court held that summary judgment on alleged violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) was precluded by a genuine issue of material fact as to whether the company that provided health care services at the prison, in failing to respond to emergency calls for help for the prisoner who suffered from asthma and failing to provide the prisoner with prompt medical attention on the day he died as the result of an asthma attack, failed to accommodate the prisoner's disability. (Jordan Unit, Texas Department of Criminal Justice)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
FAILURE TO PROVIDE  
CARE

*Ortiz v. City of Chicago*, 656 F.3d 523 (7<sup>th</sup> Cir. 2011). A female arrestee's estate brought a civil rights action against a city and a number of its police officers, alleging claims arising out of the arrestee's denial of medical care and death during detention. The district court barred the proposed testimony of the estate's medical expert, and granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether it was objectively unreasonable for police officers to take no action to seek medical care for the arrestee, and as to whether the arrestee would not have died or experienced pain and suffering prior to her death had the police officers taken her to a hospital. The court held that remand was required for the district court to determine whether the medical expert's testimony that, assuming the arrestee died of a heroin overdose, she would have suffered less if she had been taken to the hospital, would help a jury understand whether the police officers' failure to take the arrestee to the hospital exacerbated her injury. According to the court, the police officers were not entitled to qualified immunity where it was clearly established at the time of arrestee's death that the Fourth Amendment protected a person's rights until she had had a probable cause hearing, and that providing no medical care in the face of a serious health risk was deliberate indifference. (Chicago Police Department 23rd District Lockup, Illinois)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
TRAINING

*Palmer v. Board of Com'rs for Payne County Oklahoma*, 765 F.Supp.2d 1289 (W.D.Okla. 2011). A former pre-trial detainee in a county detention center filed a § 1983 action against a sheriff, deputy sheriff, and county jail administrator for alleged deliberate indifference to the detainee's serious medical needs in violation of the Due Process Clause. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a deputy sheriff was not deliberately indifferent to the pretrial detainee's serious medical needs, in violation of the Due Process Clause, due to a bacterial infection that required surgical excision of three gangrenous areas of the detainee's body, but rather, he took active and reasonable steps to abate

any harm to the detainee. According to the court, there was no evidence of inadequate training of jailers as to the passing on of doctor's instructions for inmates, as required to establish the deliberate indifference of the county sheriff to the serious medical needs of the pretrial detainee who contracted a bacterial infection, in violation of due process. (Payne County Jail, Oklahoma)

U.S. Appeals Court  
RESTRAINTS  
TRANSPORTATION

*Reynolds v. Dormire*, 636 F.3d 976 (8<sup>th</sup> Cir. 2011). A state prisoner filed a pro se § 1983 action against a prison warden and correctional officers (COs), asserting Eighth Amendment claims arising from refusal to remove the prisoner's restraints on a day-long journey to a medical appointment, and from his alleged injuries from falling five feet into a sally port pit designed to facilitate visual inspections of vehicle undercarriages at an entryway into the prison. The district court dismissed the complaint for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner's complaint was devoid of any allegation suggesting that correctional officers acted with deliberate indifference to the prisoner's safety in restraining him throughout the day, as required to support an Eighth Amendment claim in his § 1983 action, since the complaint merely alleged that the officers refused to remove the prisoner's restraints. But the court held that the prisoner's complaint sufficiently alleged claims of deliberate indifference to his safety in violation of the Eighth Amendment by two correctional officers, but not the other three officers who were simply on duty in the vicinity of the prisoner's accident in which he fell five feet into a sally port pit. According to the court, the complaint sufficiently pleaded that the two officers were aware of a substantial risk to the prisoner's safety but recklessly disregarded that risk. The prisoner alleged that one officer parked the prison van about three feet from edge of the pit, that the prisoner was obliged to back out of the van, using a stool to descend from the vehicle, with his legs shackled and his arms secured by a black box restraint, that the second officer supervising the prisoner's exit started backing away rather than assisting the prisoner, and that officers knew about the hazard because another prisoner had fallen into the same pit on the same day. (Northeast Correctional Center, Missouri)

U.S. Appeals Court  
DELIBERATE  
INDIFFERENCE  
DELAY IN CARE

*Schaub v. VonWald*, 638 F.3d 905 (8<sup>th</sup> Cir 2011). A paraplegic state prisoner brought an action against the director of a county adult detention center (ADC), the county, and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. Following a bench trial, the district court held that the director violated the prisoner's Eighth Amendment rights, and awarded the prisoner \$114,000 in lost wages, \$100,000 in pain and suffering, and \$750,000 in punitive damages. The director appealed. The appeals court affirmed. The appeals court held that: (1) the district court did not clearly err in finding that the prisoner's condition constituted a serious medical need; (2) the director was subjectively aware of the prisoner's serious medical needs; (3) the director knowingly and deliberately disregarded the prisoner's serious medical needs; (4) the prisoner's need for medical attention would have been obvious to a layperson, and thus submission of verifying medical evidence was unnecessary; (5) expert testimony on the causation of the prisoner's serious medical condition was unnecessary; (6) the director's conduct involved callous indifference to the prisoner's serious medical needs, and thus the award of punitive damages was warranted; and (7) the director had the burden to introduce evidence of his net worth to minimize a potential punitive damages award. The court noted that the prisoner's oozing sores and smell of infection due to pressure sores, made his serious medical needs obvious to a layperson, and a letter from the prisoner's doctor, summarizing the prisoner's medical condition and needs, and the prison medical staff's observations, documenting new areas of skin breakdown due to pressure sores, provided sufficient medical evidence verifying the escalating seriousness of the prisoner's condition. (Olmsted County Adult Detention Center, Minnesota)

U.S. District Court  
DELIBERATE  
INDIFFERENCE  
DENIAL

*Scott v. Antonini*, 764 F.Supp.2d 904 (E.D.Mich.2011). A prisoner brought a § 1983 action against doctors, alleging denial of his right to medical treatment. After the appeals court affirmed the dismissal of the complaint in part, reversed in part and remanded, the remaining doctor defendant filed a motion for summary judgment. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the prisoner's multiple complaints of severe and constant pain were a sufficiently serious medical need requiring treatment; (2) whether the doctor knew of and disregarded an excessive risk to the prisoner's health and safety; and (3) whether the prisoner had an obvious need for medical care. The prisoner alleged that the doctor was deliberately indifferent to his medical needs that arose after he had undergone radiation treatment for prostate cancer. (G. Robert Cotton Correctional Facility, Michigan)

U.S. District Court  
MENTAL HEALTH  
SUICIDE  
INADEQUATE CARE

*Smith v. Atkins*, 777 F.Supp.2d 955 (E.D.N.C. 2011). The mother of a schizophrenic inmate who committed suicide at a jail and the mother of the inmate's children brought a § 1983 action in state court against a county deputy sheriff, jail officials, a medical contractor, and a nurse employed by the contractor, alleging that the defendants violated the inmate's Eighth Amendment rights in failing to provide adequate medical care. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions. The court held that the deputy sheriff who happened to be at the jail delivering a prisoner when the inmate, who had been diagnosed with schizophrenia, committed suicide, did not know that the inmate was at a substantial risk of committing suicide or intentionally disregarded such risk. The court found that the deputy was not liable under § 1983 where the deputy did not know the inmate or anything about him, or have any responsibilities associated with the inmate's custody. The court also found that jail officials were not deliberately indifferent towards the schizophrenic inmate who was awaiting transfer to a state prison, as would violate the inmate's Eighth Amendment rights, because there was no indication that the officials subjectively knew that the inmate was at a substantial risk of committing suicide and intentionally disregarded that risk. According to the court, simply because the jail inmate, who was diagnosed with schizophrenia, had previously been on a suicide watch at the jail did not put jail officials on notice that he was suicidal during his subsequent incarceration two years later. The court held that jail officials' mere failure to comply with a state standard and a jail policy requiring a four-time per hour check on any prisoner who had ever been on a suicide watch did not violate the Eighth Amendment rights of the inmate. The court found that the mother of the inmate failed to show a direct causal

link between a specific deficiency in training and an alleged Eighth Amendment violation, as required to sustain the mother's § 1983 Eighth Amendment claim against jail officials based on their alleged failure to train jail employees. (Bertie–Martin Regional Jail, North Carolina)

U.S. District Court  
DENIAL  
INADEQUATE CARE

*Thomas v. U.S.*, 779 F.Supp.2d 154 (D.C.C. 2011). A federal prisoner brought an action against the United States, the Federal Bureau of Prisons (BOP), and the BOP's Administrator of National Inmate Appeals, alleging he was deprived of adequate medical treatment in violation of the Eighth Amendment. The defendants moved to dismiss. The court granted the motion in part and denied in part. The court held that the prisoner stated a claim for injunctive relief under the Eighth Amendment, seeking an order compelling prison officials to provide adequate medical treatment for his chronic ailments, "severe cramps all over his body" that were "debilitating," by alleging that he had not received proper treatment for his ailments. (Fed. Corr'l Complex, Terre Haute, Indiana)

U.S. District Court  
CONTRACT SERVICES  
DELIBERATE  
INDIFFERENCE  
MENTAL HEALTH

*Troy D. v. Mickens*, 806 F.Supp.2d 758 (D.N.J. 2011.) Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJC), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJC facilities; (2) whether placing the juvenile delinquent housed in temporary close custody and special observation status implicated a liberty interest; (3) whether a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities had procedural due process protections available to him upon a change of status; (4) whether the juvenile delinquent had a liberty interest implicated in his transfer to a more restrictive placement; (5) whether the juvenile delinquent had sufficient procedural due process protections available to him upon transfer to a more restrictive placement; and (6) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers acted with malice or reckless indifference. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

U.S. District Court  
FEMALE PRISONERS  
FAILURE TO PROVIDE  
CARE

*Webb v. Jessamine County Fiscal Court*, 802 F.Supp.2d 870 (E.D.Ky. 2011.) An inmate brought a § 1983 action against a county fiscal court, a judge, detention center, and jailers, alleging that the defendants were deliberately indifferent to his serious medical needs, resulting in her being forced to endure labor unassisted by medical personnel and to give birth to her child in a holdover cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pregnant inmate had a "serious medical need" during the overnight hours in which she, at the end of her pregnancy term, experienced readily recognizable symptoms of labor, and as to whether the county jailer who communicated with the inmate on the night in question, and who was purportedly a certified nursing assistant (CNA), perceived the facts necessary to draw the inference that a serious medical condition existed and then disregarded that condition. According to the court, the fact that the inmate gave birth to a healthy baby in a holdover cell following a normal and, by all appearances, unremarkable course of labor and delivery, went to the amount of damages to be awarded in the inmate's § 1983 action against the county defendants, but did not change the fact that the type of injury the inmate allegedly suffered was cognizable under the Eighth Amendment. (Jessamine County Detention Center, Kentucky)

U.S. District Court  
DENTAL CARE  
INADEQUATE CARE

*Wesolowski v. Harvey*, 784 F.Supp.2d 231 (W.D.N.Y. 2011.) A former prisoner brought a pro se civil rights action against the Superintendent of, and a dentist at, a correctional facility, alleging that he was subjected to cruel and unusual punishment in violation of his Eighth Amendment rights, due to a lack of dental care. The defendants moved for summary judgment. The district court granted the motion and dismissed the case. The court held that the allegation that the prisoner was subjected to a delay of seven months between his first request for dental treatment and his first examination by a dentist failed to state a claim for deliberate indifference to his serious medical needs. The court found that the allegation that the prisoner was only offered painkillers, with the option of immediate extraction of the three affected teeth, or fillings, was insufficient to state a claim for inadequate medical care. According to the court, the allegation that the prisoner was deprived of adequate dental care was insufficient to state a claim against the facility superintendent where no underlying constitutional deprivation occurred that the superintendent ignored, was informed of, created, permitted, or toward which he could have been deliberately indifferent. The court noted that the prisoner's prior requests for treatment were made at a different institution, to different persons, who were not parties to his lawsuit. (Southport Correctional Facility, New York)

