

Jail Management and Liability Issues in Iowa

By

Wilford H. Stone and Daniel M. Morgan

Lynch Dallas, P.C.

www.lynchdallas.com

June 27, 2022

County jails may process hundreds of inmates each week, or only a handful. Either way, liability reduction is key to preventing a landslide of lawsuits. Inmates are under county jails' care, custody and control, and rely on the county jails to provide medical care they could otherwise seek on their own. County jails have an obligation to inmates to provide the necessary medical care they may need within a reasonable amount of time. In addition to medical care, however, what is a county jail's duty to prevent suicides, protect inmates from others, preserve records, and other liability issues arising from use of the jail facilities? The discussion below is for alleged civil rights and common law violations under federal or state law in the state of Iowa unless otherwise noted.

1. **Alleged “deliberate indifference” towards an inmate subjecting the inmate to cruel and unusual punishment in violation of the Eighth amendment.**

Deliberate indifference to an inmate's serious medical needs violates the Eighth Amendment's ban against cruel and unusual punishments. See, e.g. *Redmond v Kosinski et. al*(S.D. of Iowa 2021, affirmed 8th Cir. 2021)(no deliberate indifference exists if jail and staff are allegedly merely negligent); *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009) (citing *Farmer v. Brennan*, 511 U.S. 825, 828 (1994)). The Supreme Court in *Farmer v. Brennan* further stated

that the Eighth Amendment imposes a duty on prison officials to, among other things, provide humane conditions during confinement. 511 U.S. 825, 825-26 (1994). Prison officials must ensure that inmates receive “adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates.” *Shipp v. Murphy*, 9 F.4d 694, 703 (8th Cir. 2021) (quoting *Farmer* 511 U.S. at 832).

Whether an official was deliberately indifferent requires both an objective and a subjective analysis. *Scott v. Benson*, 742 F.3d 335, 339–40 (8th Cir. 2014). “[I]nmates have no constitutional right to receive a particular or requested course of treatment.” See *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997). Under the objective prong, the plaintiff must show that he suffered from an objectively serious medical need that was either “diagnosed by a physician as requiring treatment” or “so obvious that even a layperson would easily recognize the necessity for a doctor’s attention.” *Id.* Whether an objectively serious medical need exists is based on the totality of the circumstances, irrespective of what the officer believes the cause to be. See *Vaughn v. Gray*, 557 F.3d 904, 909 (8th Cir. 2009) (denying qualified immunity to officers who claimed that they thought a prisoner’s vomiting “was caused by the ingestion of shampoo”); see also *McRaven v. Sanders*, 577 F.3d 974, 981 (8th Cir. 2009) (denying qualified immunity where an inmate exhibited symptoms of severe intoxication and circumstances suggested that the inmate had overdosed on prescription medications); *Grayson*, 464 F.3d at 809 (granting qualified immunity where an arrestee was under the influence of methamphetamines, but “sat calmly in the back of the patrol car, followed directions, answered questions posed, and remained quiet and seated on a bench inside the jail”).

Under the subjective prong, a plaintiff must show that an official “actually knew of but deliberately disregarded his serious medical need.” *Jackson v. Buckman*, 756 F.3d 1060, 1065 (8th Cir. 2014). This showing requires a mental state “akin to criminal recklessness.” *Id.* “An inmate must demonstrate that a prison doctor’s actions were so inappropriate as to evidence intentional maltreatment or a refusal to provide essential care.” *Id.* (quoting *Dulany v. Carnahan*, 132 F.3d 1234, 1240–41 (8th Cir. 1997)). The facts must demonstrate “more than negligence, more even than gross negligence.” *Id.* (quoting *Forte v. Faulkner County*, 746 F.3d 384, 387 (8th Cir. 2014)). Such a mental state can be inferred, however, from facts that demonstrate that a medical need was obvious and that the officers’ response was “obviously inadequate.” *Thompson v. King*, 730 F.3d 742, 747 (8th Cir. 2013). (“However, if a response to a known risk is obviously inadequate, this may lead to an inference that the officer ‘recognized the inappropriateness of his conduct.’”) (quoting *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009)). See also *Gordon v. Frank* (D. Minn. 2007) (\$330,000 verdict to inmate’s estate where he died approximately one day after he was arrested where it was alleged the jail failed to provide for his medical care knowing of his serious medical problems related to pneumonia, heart disease, and other physical illnesses, negligently failed to provide medical care and medication and displayed deliberate indifference to him on the night he died).

The deliberate indifference analysis applies equally in cases alleging denial of mental health needs. See *Steele v. Shah*, 87 F.3d 1266, 1270 (8th Cir. 1996) (“In this circuit, it is established that psychiatric needs can constitute serious medical needs and that the quality of psychiatric care one receives can be so substantial a deviation from accepted standards as to evidence deliberate indifference to those serious psychiatric needs”).

The subjective requirement that a deputy acted with an indifference “akin to criminal recklessness” is a difficult burden for a plaintiff. Deputies will often be able to testify that they had previously interacted with mentally ill inmates, for example, and found that restraint and de-escalation is an effective way to respond to such inmates.

The Eighth Circuit Court of Appeals recently affirmed summary judgment to Iowa jailers, doctors and nurse practitioners by Judge Rose where the plaintiff inmate alleged that defendants delayed treatment for a sore on his right foot, allowing it to become a major medical crisis resulting in a below the knee amputation. *Redmond v Kosinski et al* (8th Cir. 2021)(Affirming Judge Rose S.D. of Iowa) The Eighth Circuit denied the claim, stating that mere negligence is not enough. The Eighth Circuit noted the following in affirming summary judgment:

- plaintiff presented no medical evidence that the nurse practitioner’s standard of care or that her alleged four day delay in transferring him back to the hospital because deteriorate, without expert witness to the contrary. The court found no jury could conclude that the defendants made decisions that do not need a physician standard of care or because the plaintiff’s condition to worsen.
- The court rejected plaintiff’s arguments that the delay in his treatment would be obvious to a lay person. The Eighth Circuit distinguished *Moore v Jackson*, 123 F.3d 1082, 1086(8th Cir. 1997), where it found that an eight month delay in adequate treatment for toothache was obvious even the nonprofessionals).
- Plaintiff did not allege that the defendants delayed all treatment but that they allegedly “ failed to provide the proper treatment at the proper time to prevent his own from becoming infected and his condition from worsening.” However, the court found that a

prisoner alleging a delay in treatment must present verifying medical evidence that the prison officials ignored an acute or escalating situation or that those delays adversely affected his prognosis. If the treatment is for a sophisticated medical condition, “testimony is required to show proof of causation.” *Alberson v Norris*, 458 F.3d 762, 765(8th Cir. 2006)

Local governing bodies can be sued directly only where “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.” *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978). To satisfy the deliberate indifference standard, a plaintiff must provide “proof that a municipal actor disregarded a known or obvious consequence of his action.” *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410 (1997). County policymakers must also have actual or constructive notice of the issue or action. *Connick v. Thompson*, 563 U.S. 51, 61 (2011).

2. Qualified Immunity.

Even if an inmate can show a violation of his constitutional rights, deputies may be entitled to qualified immunity if they can show that “their conduct [did] not violate *clearly established* statutory or constitutional rights of which a reasonable [deputy] would have known.” *McCaster v. Clausen*, 684 F.3d 740, 746 (8th Cir. 2012) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The Eighth Circuit recently reversed the district court’s denial of summary judgment to a deputy rejecting qualified immunity in a claim alleging deliberate indifference

to a detainee's suicide risk. The court found that the deputy's conduct did not violate the detainee's "clearly established rights," and was entitled to qualified immunity. *Perry v. Adams*, 993 F.3d 584 (8th Cir. 2021). The Eighth Circuit stated that whether or not the deputy violated the Department's internal policy or whether as a matter of state law the deputy's actions might constitute negligence were irrelevant. *Id.* at 587. (citing *Cole v. Bone*, 993 F.3d 1328, 1334 (8th Cir. 1993) (the issue is whether the deputy violated the Constitution or federal law, not whether he violated the policies of a state agency)).

In *Nelson v. Correctional Med. Services.*, the Eighth Circuit held that qualified immunity would not protect an official who shackled a pregnant inmate who was in labor. 583 F.3d 522, 535 (8th Cir. 2009). Moreover, in *Irving v. Dormire*, the Eighth Circuit denied multiple officials qualified immunity for the following actions against an inmate: opening a door so another inmate could beat the inmate, objectively credible and fear inducing death threats made by a prison officer to the inmate, and falsely labeling Irving a "snitch." 519 F.3d 441, 447-452 (8th Cir. 2008). Lastly, in *Kahle v. Leonard*, the Eighth Circuit determined that a senior correctional officer was denied qualified immunity for the sexual assault of an inmate committed by an officer in training. 477 F.3d 544, 552 (8th Cir. 2007).

More recently, in *Stark v. L. County, Iowa*, Judge Ebinger denied a deputy's motion for qualified immunity in litigation alleging deliberate indifference based on the deputy's conduct. 993 F.3d 622 (8th Cir. 2021). In that case, the deputy was transporting plaintiff from a medical appointment to the L. County correctional center. *Id.* at 625. While they were in route, the city police dispatcher advised that an armed robbery was in progress at a nearby bank. *Id.* The deputy drove to the bank with the intent of observing the crime in progress and observed the suspect

flee on foot to a vacant lot. *Id.* The deputy drove his cruiser at approximately 20 to 25 mph through the lot to follow the fleeing suspect engaging in a car chase through an unmaintained field with the plaintiff shackled but not seat-belted in the backseat. *Id.* At one point, the deputy had to swerve to avoid gunfire from the suspect which allegedly caused lower back and neck pain to the plaintiff. *Id.* The plaintiff sued alleging that the deputy had failed to safeguard his health and safety. In reversing the District Court, the Eighth Circuit found that the deputy's actions in a quickly evolving emergency situation were not "anything more than negligent" and thus was clearly insufficient to constitute deliberate indifference arising to cruel and unusual punishment. *Id.* at 626. The court distinguished another Eighth Circuit case where the officer was found deliberately indifferent to an inmate's safety where the officer drove unsafely during "non exigent" circumstances. *Id.*

3. No special common law duty of care.

What about suing the jail for common law negligence? Iowa courts have held that law enforcement officers only have a duty of ordinary care to aid and protect those individuals who are under their custody and control. There is no heightened "special duty of care" in Iowa merely because inmates are taken into custody and handcuffed, for example. See *Gerard v. City of NL*, 908 N.W.2d 541 (Table) (Iowa Ct. App., August 16, 2017) (while being moved within the police station, plaintiff missed a step and fell. She sued alleging negligence in failing to warn her of the step in failing to protect her from falling down. The jury found defendants were not at fault, and the Iowa Court of Appeals affirmed finding that there was no special duty of care owed by the defendants to the plaintiff.) See also *Tinius v. C County Sheriff's Department*, 321 F. Supp. 2d 1064, 1084 (N.D. Iowa 2004) (court finding that law enforcement officers merely have a duty of care

to protect detainees from personal harm under a common law duty of care.) Under Iowa's comparative fault statute section 668.3, each party is responsible for damages in proportion to the percentage of fault that caused unless the plaintiff's negligence is 51% or greater.

4. Duty to Protect Prisoners from each other.

The Eighth Amendment also requires that prison officials protect prisoners from attacks of other prisoners. *Patterson v. Kelley*, 902 F.3d 845, 851 (8th Cir. 2018); *Farmer*, 511 U.S. at 832. To prevail on such a claim, an inmate must make both the objective and subjective showings: that there was an objectively substantial risk of harm to the inmate and the prison official was deliberately indifferent to that risk. *Patterson*, 902 F.3d at 851. To be deliberately indifferent to a risk "there must be some evidence showing that the defendants were exposed to the underlying facts revealing that risk." *Id.* at 852. As the Supreme Court explained in *Farmer v. Brennan*:

[I]f an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus must have known about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk.

511 U.S. at 842 (internal quotations omitted). The Eighth Circuit in *Patterson* held that summary judgment was proper when an inmate did not report the violence against him and "the record lacked evidence justifying an inference that the defendants subjectively disregarded a substantial risk of harm." 902 F.3d at 853; *Cf. Prater v. Dahm*, 89 F.3d 538, 541-42 (8th Cir 1996) (An inmate communicated with officials that he was in a relationship with an incoming inmate's wife, but stated it shouldn't be an issue and was later attacked; lawsuit dismissed on

qualified immunity because threats among inmates are common and that deputies' conduct did not violate the inmate's clearly established constitutional rights).

5. Prisoners' Right to Care for Serious Medical Needs.

The standard of care owed a prisoner was established in 1976 in *Estelle v. Gamble*, 429 U.S. 97 (1976), where the Supreme Court held that the deliberate failure of prison authorities to address the medical needs of an inmate would constitute cruel and unusual punishment. There, the prisoner was unable to get medical care despite repeated requests for it. Inmates rely on prison authorities to receive treatment. See *Id.* at 104. A facility's refusal of medical care and "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain. . ..'" *Id.*

Denial of medical care is analyzed under the Eighth Amendment's "deliberate indifference" standard. *Barton v. Taber*, 820 F.3d 958, 964 (8th Cir. 2016). Again, the standard requires "both an objective and subjective analysis." *Hall v. Ramsey County*, 801 F.3d 912, 920 (8th Cir. 2015) (quoting *Scott v. Benson*, 742 F.3d 335, 340 (8th Cir. 2014)). To meet the objective component, there must be facts sufficient to demonstrate that the inmate suffered from an objectively serious medical need. See *Grayson v. Ross*, 454 F.3d 802, 808-09 (8th Cir. 2006). "To be objectively serious, a medical need must have been 'diagnosed by a physician as requiring treatment' or must be 'so obvious that even a layperson would easily recognize the necessity for a doctor's attention.'" *Jackson v. Buckman*, 756 F.3d 1060, 1065 (quoting *Scott*, 742 F.3d at 340).

Whether an objectively serious medical need exists is based on the attendant circumstances, irrespective of what the officer believes the cause to be. See *Vaughn v. Gray*,

557 F.3d 904, 909 (8th Cir. 2009) (denying qualified immunity to officers who claimed that they thought a prisoner’s vomiting “was caused by the ingestion of shampoo”); *see also* *McRaven v. Sanders*, 577 F.3d 974, 981 (8th Cir. 2009) (denying qualified immunity where an inmate exhibited symptoms of severe intoxication and circumstances suggested that the inmate had overdosed on prescription medications); *Grayson*, 464 F.3d at 809 (granting qualified immunity where an arrestee was under the influence of methamphetamines, but “sat calmly in the back of the patrol car, followed directions, answered questions posed, and remained quiet and seated on a bench inside the jail”). The subjective component requires a showing that the officers actually knew that the inmate needed medical care and disregarded “a known risk to the [arrestee’s] health.” *Gordon ex rel. Gordon v. Frank*, 454 F.3d 858, 862 (8th Cir. 2006) (citing *Olson v. Bloomberg*, 339 F.3d 730, 736 (8th Cir. 2003)). “This showing requires a mental state ‘akin to criminal recklessness.’” *Jackson*, 756 F.3d at 1065 (quoting *Gordon ex rel. Gordon*, 454 F.3d at 862). The facts must demonstrate “more than negligence, more even than gross negligence.” *Id.* (quoting *Forte v. Faulkner County*, 746 F.3d 384, 387 (8th Cir. 2014)). Such a mental state can be inferred, however, from facts that demonstrate that a medical need was obvious and that the officers’ response was “obviously inadequate”. *Thompson v. King*, 730 F.3d 742, 747 (8th Cir. 2013) (“However, if a response to a known risk is obviously inadequate, this may lead to an inference that the officer ‘recognized the inappropriateness of his conduct.’” (quoting *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009))).

A denial of medical need is serious if “it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily

recognize the necessity for a doctor's attention.” *Brewer v. Blackwell*, 836 F. Supp. 631, 639 (S.D. Iowa 1993) (citing *Johnson v. Busby*, 953 F.2d 349, 351 (8th Cir. 1991)); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980).

While establishing the standard of care owed to a prisoner in *Gamble*, the Supreme Court explicitly identified the standard of care owed to prisoners is the same for prison guards and prison doctors alike. 429 U.S. at 104-5. Thus, a doctor’s indifference to prisoners’ needs is treated the same as a guard who delays, denies, or interferes with a prisoner’s medical care. *Id.* Nonetheless, the Court also took pains to explain that not every claim of inadequate medical treatment by a prisoner states a violation of the Eighth Amendment. *Id.* at 105. In other words, a simple medical malpractice claim does not rise to the level of an Eighth Amendment violation on its own; the prisoner must allege an act or omission “sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Id.* at 106. In any case, for situations involving either malpractice or deliberate indifference rising to a constitutional violation, civil liability may lie.

6. Suicide: Duty to Protect Prisoner.

It is often difficult to grasp the concept that a jail may be liable for an individual’s act of suicide. After all, no jail has an official policy endorsing or aiding prisoners in their attempts to end their lives. However, juries and courts have often shown sympathy toward the decedent’s families in these cases. These families have convinced courts that jails should be liable for the suicide, not because of any affirmative action but for *lack of action*. See, generally, *Letterman v. Does*, 789 F.3d 856 (8th Cir. 2015); Cf. *Gregoire v. Class*, 236 F.3d 413, 418-19 (8th Cir. 2000) (“While we expect that jailers will learn from their failures in preventing suicide,

they are not constitutionally liable for every failure, only those where they are deliberately indifferent to the risk of suicide.”).

In *Letterman*, Daniel Letterman was arrested for a 120 “shock sentence” for possession of marijuana. 789 F.3d at 859. Within a week of transfer to the correctional center, Letterman started experiencing mental health problems and it was recommended by psychologists that he be put on suicide watch. *Id.* Letterman later became manic—he beat his hand on the wall of the concrete cell, kicked the cell door repeatedly, and according to some, beat his head on the wall. *Id.* A five-person extraction team was assembled to move Letterman to a padded cell for his safety. *Id.* Due to the circumstances, several officers were required to be present to open the door of the padded cell. *Id.*

Letterman remained in a manic state and was placed on suicide watch. *Id.* Officers were required to conduct in-person check-ins four times an hour. *Id.* During these check ins, officers were supposed to receive an affirmative response from Letterman and if one was not received, officers were to notify “central command.” *Id.* Around 11:00 p.m., one officer, Lammers, was tasked with the shift check-ins. Instead of getting an affirmative response from Letterman—as required by prison policy—Lammers instead just watched him on a monitor. *Id.* Letterman began to mumble and stumble around the room and fell backwards and hit his head against a wall. *Id.* Approximately 20 minutes later, he stood up and fell backward again—this time, hitting his head on the door jam. *Id.* Lammers went to check on Letterman and Letterman told him he “injured his head and needed medical attention.” *Id.* Lammers and a nurse checked on Letterman through the door and obtained no additional responses from Letterman. *Id.*

Around 7:30 a.m., another officer took over, Gastineau, who was told that Letterman had fallen very hard around midnight and had not moved since. Brett Hook, a nurse, was also informed of the fall when she began his shift at 7:00 a.m. *Id.* Nothing further was done for Letterman until 9:00 a.m., when a psychologist came to check on him. *Id.* Officer Gastineau was told that the cell needed to be opened. *Id.* at 860. The lieutenant in charge told Gastineau to “let sleeping dogs lie” despite the apparent emergency. *Id.* It wasn’t until around noon that another lieutenant asked a team to open Letterman’s cell. *Id.* At this point Letterman needed urgent medical attention—his core temperature was below 90 degrees, his pulse was dangerously low, and his eyes were fixed and dilated. *Id.* At 860-61. He was taken to the hospital where he died three days later. *Id.* Doctors noted, “any lay person would have recognized the injury was serious in nature.” *Id.*

Upon review, the Eighth Circuit Court of Appeals affirmed the District Court’s denial of summary judgment as to the liability of two lieutenants, Farnsworth and Earls for deliberate indifference. *Id.* at 863-64. The Court held, that for both lieutenants, “a jury could infer from this evidence a person in their respective positions, ‘would have recognized a substantial risk of harm to [Letterman], acted inappropriately in light of the risk, and recognized the impropriety of his response.’” *Id.* at 863. *See also Slater v. S. County*, 2010 WL 11506382 (S.D. Iowa 2010, March 4, 2010) (jury awarding \$42,000 in damages and approximately \$221,000 in attorney’s fees where correctional officers and medical staff were alleged to have refused to provide medical assistance to plaintiff suffering from a painful flare-up of her sickle-cell anemia, placing her instead in a restraining chair for at least seven hours).

7. Alleged negligent medical treatment.

Under Iowa law, the elements of a medical negligence action are “(1) an applicable standard of care, (2) a violation of this standard, and (3) a causal relationship between the violation and injury sustained.” *Plowman v. Fort Madison Cmty. Hosp.*, 896 N.W.2d 393, 402 (Iowa 2017). Iowa courts have found that a jailer owes “a duty to exercise reasonable diligence with reference to the care of injured, ill, or diseased inmates.” *Heumphreus v. State*, 334 N.W.2d 757, 759 (Iowa 1983); see also *Lang v. City of Des Moines*, 294 N.W.2d 557, 560 (Iowa 1980) (\$65,000 verdict in wrongful death action against the city for death of prisoner alleging that female prisoner’s death resulted from city’s alleged negligence during the time she was in the city jail where she began experiencing delirium tremens as a result of alcoholism shortly after booking in and later suffered a fatal skull fracture caused by a seizure); *Smith v. Miller*, 40 N.W.2d 597, 598 (Iowa 1950) (“Aside from statutory requirements a sheriff owes a general duty to a prisoner to save him from harm and he is personally liable for negligence or wrongful acts causing the prisoner’s injury or death.”)

Iowa has also adopted § 314A(4) of the Restatement (Second) of Torts, which imposes a duty of care on one who takes custody of another. *Deppe v. Poweshiek Cnty.*, 542 N.W.2d 6, 8 (Iowa 1995) (Iowa law requires that “persons who take others into their custody owe a special duty to aid and protect them.”). Comments to section 314A(4) describe a jailer’s duty of care as limited:

The duty in each case is only one to exercise reasonable care under the circumstances. The defendant is not liable where he neither knows nor should know of the unreasonable risk, or of the illness or injury He is not required to take any action where the risk does not appear to be an unreasonable one.

Restatement (Second) of Torts § 314A(4) cmt. e. “This reasonableness standard is a lesser burden than the deliberate indifference standard.” *McManemy v. Tierney*, C17-3020-LTS, 2018 WL 2703158, at *10 (N.D. Iowa, June 5, 2018).

Notably, the Iowa Department of Corrections regulations governing county jail facilities impose minimum standards for jail medical services, starting with the requirement that a jail must:

establish a written policy and procedure to ensure that prisoners have the opportunity to receive necessary medical attention for the prisoners’ objectively serious medical and dental needs which are known to the jail staff. A serious medical need is one that has been diagnosed by a physician as requiring treatment or is one that is so obvious that even a lay person would easily recognize the necessity for a physician’s attention.

Iowa Admin. Code r. 201-50.15. The regulations also require jails to provide 24-hour access to a licensed medical provider as well as staff training and rigorous procedural requirements for administration of medication. *Id.* Violations of these rules do **not** give rise to a private right of action. See Iowa Code § 356.36 (“A violation of a rule does not permit any civil action to recover damages against the state of Iowa, its departments, agents, or employees or any county, its agents or employees, or any city, its agents or employees.”). At least one federal court has held that Iowa Code § 356.36 does not preempt a common law tort claim against a jail for negligent provision of medical services. *Arms-Adair v. Black Hawk County, Iowa*, C13-2008, 2013 WL 2149614, at *6 (N.D. Iowa, May 16, 2013) (rejecting argument that § 356.36 preempts negligence claims and holding that county jails “have a constitutional, statutory, and common-law duty to provide appropriate care to persons being held in their custody”).

Finally, with respect to causation, the “longstanding Iowa rule is that in a tort action the necessity of expert testimony or the quality of necessary expert testimony determines whether substantial evidence supports the submission of the causal relationship between the act of the wrongdoer and the injury.” *Doe v. Cent. Iowa Health Sys.*, 766 N.W.2d 787, 792 (Iowa 2009). “When the causal connection between the tortfeasor’s actions and the plaintiff’s injury is not within the knowledge and experience of an ordinary layperson, the plaintiff needs expert testimony to create a jury question on causation.” *Id.* at 793. In a medical negligence case, “proximate cause . . . cannot be based upon mere speculation.” *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 718 (Iowa 2001).

8. Importance of accurate record-keeping and Iowa Code Chapter 22.

In August of 2021, the Iowa State Auditor released a report on a special investigation of a County Sheriff’s office. The special investigation covered the period July 1, 2018, to August 13, 2020, and arose from concerns of the accuracy of the offices’ jail records. *Id.* Under Iowa Code § 356.6, the sheriff must keep accurate inmate records including date of intake, cause and term of commitment, and date of discharge (2022). The August 2021 investigation, however, revealed over 386 areas of concern including incomplete or inaccurate records. Fortunately, violation of a jail standard/rule does not impose strict liability. Iowa Code § 356.36 (2) does not “permit any civil action to recover damages against the county or city or their agents or employees.” Nevertheless, poor record-keeping could lead to violating prisoners’ constitutional rights. In addition, although facility records are confidential records under Chapter 22, deficient record-keeping may expose facilities, nevertheless. See Iowa Code § 22.2 (2022).

It is also advisable in situations where prisoners are arrested by one law enforcement department and booked into another department's jail, that both departments have a formal agreement stating when it is that a prisoner is considered to be in the care, custody, and control of the jail. Without such an agreement, questions may arise which can significantly affect liability. Jails should consider executing a hold harmless agreement with any other department which accepts their prisoners. This agreement should contain a provision whereby the receiving department indemnifies the transporting department from any injury or loss that may occur to a prisoner while incarcerated. Likewise, the receiving department should be indemnified by the transporting department for any injuries caused by the transporting department before the prisoner's incarceration.

Finally, regardless of how a prisoner may have come into a jail's custody, if the prisoner shows signs of or is complaining of injury or illness, the recommended procedure is to have the prisoner examined by a qualified healthcare provider. There should also be hold harmless/indemnification language with the qualified healthcare provider for any injury or loss that may occur while under the qualified healthcare provider's care. Both the arresting department and the jailing department should document the medical condition of every prisoner they take into custody. When a prisoner is booked into a jail, the transporting department should always give the receiving department any information it has about a prisoner's medical condition or disabilities.

9. Conclusion and best practices.

If a jail has been "deliberately indifferent" to a prisoner's medical needs resulting in injury, the jail and/or its employees may be liable for damages under 42 USC section 1983. The

law states that prisoners must be monitored when s/he exhibits suicidal behavior. All law enforcement officers who handle a prisoner should share information regarding the prisoner's medical condition or suicidal behavior and a written medical inventory or screening form should be kept for each prisoner taken into custody (e.g., morning reports, incident reports, commitment summary reports, prisoner intake sheets, support service memos, correctional health medical file, etc.) If a jail is on notice of a serious health condition, it should be properly documented; medication or treatment should be timely administered; and the inmate should be placed on heightened monitoring for the health condition. Preserve body worn and hall video pursuant to your normal document retention policies and train your employees on proper etiquette and conduct. Jails have a duty to protect prisoners from other prisoners when the jailers are aware of the imminent danger of injury. When transferring prisoners to another facility, follow the chain of custody including written agreements between both departments clearly setting forth the responsibilities for the prisoner's care and custody. Remember to include indemnification language so that any third parties possibly at fault are held liable for their conduct.

United States Court of Appeals
For the Eighth Circuit

No. 19-3299

Elvin Redmond

Plaintiff - Appellant

v.

Joel Kosinski, M.D.; Jana Hacker, NP; Robert Johnson, Warden, Fort Dodge;
James McKinney, Warden; Greg Ort, Deputy Warden; Michael Willey, M.D.;
Kimberly Leman, M.D.

Defendants - Appellees

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 14, 2021
Filed: June 7, 2021

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

KOBES, Circuit Judge.

Elvin Redmond, an Iowa Department of Corrections inmate, says that the defendants delayed treatment for a sore on his right foot, allowing it to become a major medical crisis resulting in a below-the-knee amputation. Redmond filed a claim under 42 U.S.C. § 1983, alleging that the defendants violated his Eighth

Amendment rights by acting with deliberate indifference to his serious medical needs and safety. The district court¹ granted summary judgment to all defendants and we affirm.

I.

Redmond first reported that the fifth toe of his right foot was painful and swollen on March 27, 2017. Redmond has diabetes and hepatitis, serious medical conditions requiring ongoing management. Jana Hacker, a nurse practitioner at the Fort Dodge Correctional Facility, examined his foot, prescribed pain medication, and scheduled a follow-up visit two days later. When she later saw a blister had formed, Hacker prescribed an antibiotic injection, a daily oral antibiotic, and a twice-a-day topical cream. After Redmond's blister opened and he ran a temperature, Hacker sent him to the University of Iowa Hospitals and Clinics emergency room on March 31. UIHC staff evaluated the infection, x-rayed his foot, and sent him back to the prison that same day with an order for an oral antibiotic, which an IDOC physician substituted with a different antibiotic. Hacker saw Redmond on two follow-up visits and, on April 7, when she saw that the wound was larger and the flesh around the wound was changing color, she sent him back to UIHC's emergency room and he was hospitalized.

UIHC orthopedic surgeon Michael Willey examined Redmond's foot on April 8, ordered tests, recommended a vascular consultation, and noted that "[a]s he is hemodynamically stable there is no need for urgent operative intervention at this point." On April 11, UIHC discharged Redmond to the Iowa Medical and Classification Center, a medical correction facility. Joel Kosinski, a physician at IMCC, saw Redmond multiple times in April and May, evaluated the infection, ordered his wound care and disease management treatments, prescribed medications,

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

and documented that Redmond needed a toe amputation. After Redmond filed an April 29 grievance saying that he had been forced to miss UIHC medical appointments, he was taken to the UIHC Orthopedic Department where staff placed a cast on Redmond's foot. His follow-up appointment with the orthopedic department was also delayed, and Redmond filed another grievance. On May 18, Willey evaluated Redmond's foot and noted that he planned a possible toe amputation after a vascular consult.

Redmond's condition worsened, and he was hospitalized again at UIHC on May 26. The infection had spread to Redmond's fourth toe, and Willey removed the two toes on May 30. During surgery, Willey found that the infection had extended beyond the toes and that the best treatment would be a below-the-knee amputation. The surgery did not take place two days later as scheduled because Redmond developed an acute kidney infection. He remained hospitalized at UIHC until June 15, and then returned to IMCC. Redmond's renal condition improved and UIHC scheduled him for surgery July 13. Against medical advice, Redmond refused the surgery so he could call his family during a family reunion. The hospital rescheduled surgery for August 8 and Willey amputated Redmond's leg below the knee. Redmond's recovery required significant follow-up and an additional surgery.

Redmond filed a *pro se* § 1983 complaint and the district court granted his request for counsel. He then filed an amended and substituted complaint claiming that seven defendants violated his Eighth Amendment rights by showing deliberate indifference to his serious medical needs and safety. He sought damages from doctors Kosinski and Willey, nurse practitioner Jana Hacker, physician's assistant Kimberly Leman, and prison officials Robert Johnson, James McKinney, and Greg Ort.

The district court granted summary judgment to Warden Johnson, Warden McKinney, Deputy Warden Ort, and physician's assistant Leman. Redmond does not

appeal that part of the district court's decision, but rather appeals the grant of summary judgment to UIHC orthopedic surgeon Dr. Willey and nurse practitioner Hacker and Dr. Kosinski, both from IDOC.

II.

We review the district court's summary judgment decision *de novo*, "viewing the evidence most favorably to the nonmoving party." *Johnson v. Leonard*, 929 F.3d 569, 574 (8th Cir. 2019). "[W]e will affirm the grant of summary judgment 'if the record indicates that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Jackson v. Riebold*, 815 F.3d 1114, 1119 (8th Cir. 2016) (citation omitted). "If there is a dispute, and a reasonable jury could return a verdict for either party, then summary judgment is not appropriate." *Jones v. Minn. Dep't of Corr.*, 512 F.3d 478, 482 (8th Cir. 2008).

"[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (cleaned up) (citation omitted). The plaintiff must show (1) "an objectively serious medical need," and (2) "that the defendant knew of and disregarded that need." *Coleman v. Rahija*, 114 F.3d 778, 784 (8th Cir. 1997). "As long as this threshold is not crossed, inmates have no constitutional right to receive a particular or requested course of treatment, and prison doctors remain free to exercise their independent medical judgment." *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997).

Negligence is not enough. *See Estelle*, 429 U.S. at 106. To survive summary judgment, Redmond must show grossly incompetent or inadequate care "so inappropriate as to evidence intentional maltreatment or a refusal to provide essential care." *Dulany*, 132 F.3d at 1242 (citation omitted). But "medical treatment may so deviate from the applicable standard of care as to evidence a physician's deliberate

indifference.” *Moore v. Duffy*, 255 F.3d 543, 545 (8th Cir. 2001). “Often whether such a significant departure from professional standards occurred is a factual question requiring expert opinion to resolve.” *Id.* This inquiry is factually intensive and presents a “substantial evidentiary threshold” to show that medical providers “deliberately disregarded the inmate’s needs by administering an inadequate treatment.” *McRaven v. Sanders*, 577 F.3d 974, 982 (8th Cir. 2009) (citation omitted).

Redmond does not clear this threshold. He presented no medical evidence that Hacker’s actions did not meet a nurse practitioner’s standard of care or that her alleged four-day delay in transferring him back to the hospital caused his wound to deteriorate. *See Crowley v. Hedgepeth*, 109 F.3d 500, 502 (8th Cir. 1997) (affirming summary judgment when inmate failed to submit verifying medical evidence that prison officials’ delay had an adverse effect). And without expert testimony, no jury could conclude that Kosinski or Willey made decisions that do not meet a physician’s standard of care or caused Redmond’s condition to worsen. *Id.*

Instead, Redmond claims that all three medical providers delayed his treatment in some way and that the detrimental effect is as “obvious to the layperson” as it was in *Moore v. Jackson*, 123 F.3d 1082, 1086 (8th Cir. 1997) (citation omitted). In *Jackson*, we said that the effect of an eight-month delay in adequate treatment for a toothache was obvious, even to non-professionals, and showed that “[s]omething appear[ed] wrong with the dental care system.” *Id.* The plaintiff’s claims there survived because the court inferred, as it must on summary judgment, that the dentist and nurse received the inmate’s complaints as alleged and did not take any action to treat his abscess. *Id.* at 1086–87.

Redmond does not allege the defendants delayed all treatment, but that they failed to provide the proper treatment at the proper time to prevent his wound from

becoming infected and his condition from worsening.² When an inmate claims that a delay in medical care violates the Eighth Amendment, “the objective seriousness of the deprivation should also be measured ‘by reference to the *effect* of delay in treatment.’” *Laughlin v. Schriro*, 430 F.3d 927, 929 (8th Cir. 2005) (cleaned up) (citation omitted). “A prisoner alleging a delay in treatment must present verifying medical evidence that the prison officials ignored an acute or escalating situation or that these delays adversely affected his prognosis.” *Holden v. Hirner*, 663 F.3d 336, 342 (8th Cir. 2011) (cleaned up) (citation omitted). And if the treatment is for a sophisticated medical condition, “testimony is required to show proof of causation.” *Alberson v. Norris*, 458 F.3d 762, 765–66 (8th Cir. 2006).

Redmond’s records reflect a complex medical situation with an unfortunate result. Diabetes, hepatitis, and infected wounds are treated with a variety of medications and procedures. Specially trained providers may make different decisions on treatment and patients may have varying outcomes. The sophisticated medical question here is not within the common understanding of the jury or the court—and it is not “so obvious that a layperson would easily recognize” whether the medical provider’s alleged actions or inactions were grossly incompetent or inadequate. *See Jones*, 512 F.3d at 482.

²For the first time on appeal, Redmond claims that Hacker “inexplicably failed to follow” UIHC’s prescription for the antibiotic Cephalexin and instead switched him to the antibiotic Amoxicillin. He also now alleges that Kosinski withheld the antibiotic Ciprofloxacin for over two weeks after it was ordered by the UIHC physician. We ordinarily do not consider arguments raised for the first time on appeal. *Foster v. Mo. Dep’t of Health & Senior Servs.*, 736 F.3d 759, 762 (8th Cir. 2013). And even had Redmond raised the argument below, the record does not support him. The record shows that physician Steven Cook ordered the Amoxicillin on March 31, *see* D. Ct. Dkt. 44 at 33, and Redmond admitted that Ciprofloxacin was administered from April 10 to 17, *see* Response to Defendants’ Undisputed Material Facts, D. Ct. Dkt. 53-1 at 4–5, ¶10.

Redmond's unsupported medical conclusions cannot create a question of fact about whether the defendants' medical decisions were reasonable, negligent, grossly negligent, or so ineffective as to be criminally reckless, rising to the level of deliberate indifference. Without medical evidence, no reasonable jury could conclude that the providers were deliberately indifferent to his serious medical need. *Id.*

III.

Redmond fails to provide evidence from which a trier of fact could draw an inference that Hacker, Kosinski, or Willey provided care that was "grossly inappropriate" or "intentional maltreatment," *Dulany*, 132 F.3d at 1241, and so we affirm the district court's grant of summary judgment to Hacker, Kosinski, and Willey.
