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## **Tip on Filing a Medical Care Lawsuit from Prison (updated March 2025)**

Note: This is meant as general information and not legal advice. We recommend that you do your own research and/or speak to an attorney about your case.

### **General Information on Medical Care Lawsuits**

The state of Illinois has a duty to address your serious medical needs. A person in prison who receives improper medical care may sue IDOC in federal court. You can get all the forms you need to file a lawsuit from the law library.

Before you file a federal lawsuit, you need to **complete the entire grievance process**. If you do not, the court will dismiss your case. Contact our office if you would like a copy of our grievance guide.

Please note that there are time limits that apply to most legal claims. These are called statutes of limitations. Federal constitutional claims usually have to be filed within 2 years of your issue.

In many medical cases, you will need an **expert witness** (a doctor) to testify about your issue. You will probably need an attorney help you with this part. After you file a case, you can ask the court to appoint a lawyer to represent you. The form to ask for a lawyer is called a “motion for appointment of counsel.” If the law library does not have this form, ask the court for a copy.

### **Keeping a Good Record of the Problem**

**Take notes** to track your medical condition. Track all communications with medical or correctional staff. Here are examples of what to keep track of:

- date and time of medical appointments
- names and positions of people that you spoke with or met with (e.g. doctors, nurses, specialists, correctional officers)
- medications that the doctor prescribed and what you received
- symptoms you experienced
- requests you made for medical attention (include what you said and who you spoke with)

For both grievances and court filings, describe the issues you are facing in **detail**. It helps to create a **timeline**. Include the what, where, when, and who of each event. Write down how long the problem has been happening, how it is affecting you, and how you have tried to solve it.

Make sure you **keep copies** of all documents related to the problem. It is especially important to keep a copy of any grievances you file and any responses you get from IDOC. You can handwrite two copies of the grievance form—one to hand in, and one to keep. If possible, send an extra copy of the documents to someone you trust outside of IDOC.

If you or a loved one speaks with someone about your medical issue, make a record in writing of the conversation. Send a letter or an email to the prison official. In that letter or email, summarize what you talked about and write down the date and time of your conversation.

### **Eight Amendment Right to Medical Care**

The Eighth Amendment of the United States Constitution prohibits “cruel and unusual punishments.” This applies to the medical and dental health care you receive in prison. Poor or very delayed care might violate the Constitution.

To win an Eighth Amendment lawsuit about poor medical care, you will have to prove two things. First, you have to prove that you had a **serious medical need**. This could be a condition diagnosed by a doctor. This could also be a medical issue that obviously requires a doctor’s attention. It does not always have to be life threatening. Proving that you faced “needless pain and suffering” is often enough. Read *Gutierrez v. Peters*, 111 F.3d 1367 (7<sup>th</sup> Cir. 1997) for more information.

Second, you have to prove “**deliberate indifference**” by the person you are suing (the defendant). You need to prove that every defendant both:

(1) *knew* of the risk of serious harm to you, AND

(2) *intentionally* failed to take reasonable steps to fix the problem.

To win money damages, you must also show that you had a physical injury, not just a mental or emotional one. For more information on deliberate indifference, read *Estelle v. Gamble*, 429 U.S. 97 (1976), *Farmer v. Brennan*, 511 U.S. 825 (1994), and *Petties v. Carter*, 836 F.3d 722 (7<sup>th</sup> Cir. 2016).