Prisoners’ Rights to Medical Care
In Correctional Facilities

People with epilepsy may face incarceration due to situations unrelated to epilepsy. If you or your family member with epilepsy have been convicted of a crime and sentenced to serve time in a federal or state correctional facility, it is important that you understand your legal right to adequate medical care under federal law.

Inadequate Medical Care: Prisoners with seizures may experience challenges receiving optimal medical care, including medications or reasonable accommodations for their epilepsy. Some prisoners experience abrupt changes to their medications or discontinuation of medications upon entering correctional facilities. Such actions can result in an increase of seizure activity. Additionally, prisoners with epilepsy are sometimes placed in the “hole” (i.e., seclusion or solitary confinement) after seizures.

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In many cases, prisons contract with private medical physicians to provide health care examinations and emergency assistance to prisoners. Even if a correctional facility contracts with a third party to provide health care services, the correctional facility itself may still be held accountable for inadequate medical care.

Hazards of Seclusion: Seclusion has been a method implemented by prison officials to prevent a prisoner from harming himself or others. Prisoners are put on “lock down” for a short-time period. However, placing prisoners with epilepsy in seclusion, isolation or solitary confinement after a seizure can be dangerous to a person with epilepsy, and can appear as a punitive measure for having a seizure. Experiencing a seizure while in seclusion or confinement puts an unobserved prisoner with epilepsy at greater risk of injury and death. A prisoner may experience a fall from a seizure or have a seizure while sleeping and suffocate, especially if the prisoner is not adequately monitored.

Steps to Ensure Adequate Medical Care

1. If a prisoner has epilepsy, it is important that prison officials, including correctional officers, are aware of the condition and are trained to understand the signs and symptoms of a seizure.

2. Careful consideration should be given to abrupt changes of inmate’s anti-seizure medication, as this can cause an increase in seizure activity or psychosis after a prolonged or series of seizures. Weaning from a current medication while gradually introducing a new medication is medically safer and a more effective way of making medication changes.

3. Whenever possible, a safe clutter free environment should exist for the area surrounding the prisoner. If a seizure should occur, one of the first line responses should be to maintain safety from injury. In the event of a seizure, the staff should be trained about how to place a prisoner in side-lying position to prevent injury from aspiration of oral fluids or from suffocation. Training should include NEVER placing objects in the prisoner’s mouth during the seizure event.

4. Medical alert measures should be put into place to identify prisoners who are at risk for seizure activity. Efforts to maintain privacy and confidentiality should be maintained.

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5. A prisoner should be given his medication on a regular basis. There should also be protocols in place that will allow prisoners to receive their medications in an emergency.

6. A prisoner should receive an examination by the medical provider (i.e., prison’s contracted medical doctor, physician assistant, or nurse) when seizures or side-effects occur. During regularly scheduled examinations, the effectiveness and appropriateness of the seizure medication should be evaluated.

7. A normal EEG is common in seizure patients and does not mean that a prisoner does not have epilepsy. Approximately one half of all EEGs done for patients with seizures are normal. Even someone who has seizures every week can have a normal EEG. An EEG only shows normal brain activity during the time of the test. If a prisoner is not having a seizure during the test, then the EEG may not display the abnormal “brain waves” expected for people with epilepsy.²

8. Periodic testing of a prisoner’s blood should be performed to monitor many anti-seizure medications and blood counts. Monitoring blood levels of anti-seizure drugs can help with seizure control, but it can also help identify the build-up of medication in the body, which can cause toxicity and side-effects.

Eighth Amendment: Prisoners have the right to humane treatment compatible with “contemporary standards of decency”. This is a right granted by the 8th amendment of the United States Constitution, which prohibits cruel and unusual punishment by correctional facilities. Federal and state prison officials violate the 8th amendment when the prison staff acts with deliberate indifference to a prisoners’ medical needs that jeopardizes safety, causing a negative outcome to occur.³

Generally, deliberate indifference to a serious medical need may include a prison official who knew or should have known that a prisoner required immediate treatment during a seizure, but failed to call for assistance. The failure of either the prison official or medical doctor to perform a medical examination after a seizure may also be considered deliberate indifference.

In determining whether a violation has occurred, a court may defer to the prison health officials medical judgment. It is also important to know that the action taken or not taken by the prison official(s) must result in a sufficiently serious condition that significantly changes the prisoner’s life.

ADA and Rehabilitation Act: Prisoners are also protected by Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). Title II of the ADA covers activities of state and local government despite the government entity’s size or receipt of federal funding. Title II requires state and local government entities to give individuals with disabilities, including prisoners, equal opportunity to benefit from programs and services. Section 504 applies to federal agencies, including the Bureau of Prisons, and programs that receive federal funding.

² “I Have Seizures, but My EEG is Normal”, Epilepsy Foundation, www.epilepsy.com

³ According to Estelle v. Gamble, 429 US 97, 103, (1976) two conditions must be met to determine whether this right has been violated: (1) proof that the inmate has a serious medical need; and (2) proof that the prison official acted with deliberate indifference to the prisoner’s safety and negligently caused a negative event to occur to the inmate.
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To bring legal action under the ADA or Section 504, prisoners must show that: (1) they meet the definition of being disabled under the law, (2) they are eligible to participate in the program, and (3) they are being excluded from or not allowed to benefit from a program or service because of a disability. Under Section 504, a prisoner must show that the facility or program receives federal funding.

Title II of the ADA requires facilities to place prisoners in the most integrated setting for their needs and prohibits prisoners from being placed in inappropriate security classifications simply because of a disability. Thus, prisoners should not be placed in seclusion because of a seizure. Furthermore, before prisoners are penalized, strong consideration should be given to the eccentric behaviors that accompany seizure activity as well as the inability to respond to commands due to the post-ictal confusion or lack of full consciousness.

If an inmate with epilepsy is placed in seclusion for a reason other than having a seizure, the prisoner must be closely monitored. Furthermore, the prison cell or infirmary room in which seclusion occurs should be free of hazards that could cause injury if a seizure were to occur.

Examples of Cases: Some prisoners or their families have successful litigated cases against federal and state prisons.

- In Lopez, et al. v. Wasko et al. (D. Colo. 2014), a settlement was reached in a lawsuit filed by the family of a mentally ill inmate who died in a Colorado prison. Officers and nurses allegedly laughed and joked while watching him on camera shaking from seizures. He was diagnosed with bipolar schizoaffective disorder. The cause of death was severe hyponatremia (low sodium-blood levels), which is treatable if medical assistance is quickly provided. When Lopez was found lying face down on the floor, officers believed that he was intentionally refusing to respond. They dragged him out, took off his clothes, chained him to a chair, and placed a mask over his head. They watched the seizures, assuming that he was faking. He ultimately died lying on the concrete floor of a cell in his underwear. Some employees were fired and others were disciplined after Lopez’s death.

- In Galindo, et al. v. Reeves County, et al. (W.D. Tex. Dec. 7, 2010), a settlement was reached where the family of Galindo sued because he had a seizure and died in solitary confinement. Galindo’s condition was known to prison officials and his anti-seizure medication was changed to a less effective medication upon his arrival in the facility. Galindo had been in solitary confinement for one month after repeatedly requests to adjust his medication and to be removed from solitary confinement.

Advocacy Tips: If you believe that your rights or the rights of your family member have been violated, it is important that you follow the facility’s procedure for filing a medical grievance. It is important to keep a written record of the actions or inactions of prison officials regarding your health. You should also write down whether or not the requested medical treatments for your condition have been ignored or denied and the reasons given for the denial. It is important to also document the negative effects that the lack of medical care is

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causing to your health and quality of life. Keeping a log of seizure activity, including details about how your seizures have increased or intensified can also be helpful. Family members can be helpful with recordkeeping.

Family members can be the best advocates for their incarcerated loved ones. A family member can request a copy of the prison’s health care standards and emergency protocols, become familiar the doctor’s schedule, and learn the protocols for how the prison handles after-hour emergencies. A family advocate may also get a signed release from an inmate authorizing the medical staff to discuss the inmate’s medical treatment with him or her. Family members may also contact the local Epilepsy Foundation affiliate to learn about epilepsy education for training that might be offered to prison staff.

Filing Grievances and Complaints: Most federal and state prisons and local jails have some type of grievance policies to address a particular policy, procedure or issue of abuse. Under the Prison Litigation Reform Act, lawsuits by inmates cannot be heard unless administrative remedies are exhausted. This means that inmates must follow the prison’s policy for filing grievances and any required internal appeals before attempting to file a lawsuit. For this reason, it is important to learn the procedure and comply with any required filing deadlines. The procedure should detail how long the facility’s Grievance Officer has to resolve the issue and/or respond to your filing. There may also be an appeal process with strict deadlines that must be followed. If an issue remains unresolved in a state or local correctional facility, then it may be necessary to contact the Department of Corrections and the state governor.

For federal correctional facilities, the Bureau of Prisons (BOP) is responsible for ensuring that federal inmates serve their sentences in facilities that are safe and humane. BOP accepts inmate concerns through their website. A complaint can be filed through the BOP regional office that oversees a facility in question. The Department of Justice’s Office of the Inspector General (800-869-4499), which oversees the BOP is another option. You may contact the Jeanne A. Carpenter Epilepsy Legal Defense Fund at 1-800-332-1000 (select #2) or send an email to legalrights@efa.org for a referral to an attorney or legal agency.

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