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### Section 1983 Civil Liability Against Prison Officials and Dentists for Delaying Dental Care

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# Criminal Justice Policy Review

## Section 1983 Civil Liability against Prison Officials and Dentists for Delaying Dental Care

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Keywords:	Prison dental care, Prison Health Care, Correctional health care, Section 1983 litigation, Civil liability
Abstract:	<p>Many prisoners enter correctional facilities in the United States with little history of good dental hygiene and even less history of access to dentists. Thus, the incarceration experience presents opportunities for inmates to receive quality dental care, often for the first time. Dental care delivered by correctional dentists is complicated, however, by the array of serious dental conditions and difficult to treat dental problems in clinical settings. These conditions exist within a legal environment that mandates adequate dental care be provided to prisoners by the state. This article examines prisoners' Section 1983 lawsuits, claiming that delays in the delivery of dental care violate inmates' federally guaranteed rights. The analysis focuses on what the U.S. Circuit Courts of Appeals have required of correctional officials and dentists in the form of dental care, concluding with nine best practices for correctional dental practitioners to follow to avoid Section 1983 liability.</p>

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### Section 1983 Civil Liability against Prison Officials and Dentists for Delaying Dental Care

Inmates present particular problems to correctional dentistry because many enter confinement without a childhood or adult history of overall oral hygiene (Anno, 2001). Racial and ethnic minority groups are over-represented among the inmate population (Nowotny, 2017; Simon, Sue, Williams, Beckmann, Tobey, & Cohen, 2017) most of whom lack knowledge of oral health care measures, oral hygiene practices, and preventative dental care (Makrides & Shulman, 2017; Treadwell & Formicola, 2008). Prisoners frequently come from the poorest segments of society without dental insurance or regular dental health providers (Treadwell, Blanks, Mahaffey, & Graves, 2016) and where dental care is either not a priority or is not affordable (Nelson, Armogan, Abel, Broadbent, & Hans, 2004; Porter, 2019). The longer inmates stay incarcerated, the greater the possibility that they receive dental treatment (Dias & Vaughn, 2008; Mixson, Eplee, Fell, Jones, & Rico, 1990). Boyer, Nielsen-Thompson, and Hill (2002, p. 146), for instance, found that newly admitted inmates to the Iowa State prison had “more untreated decay but fewer missing teeth than most of the male inmate comparison groups.” Indeed, 99% of inmates require dental care (Barnes, Heid, Parker, Cole, Fultz, & Tollefsbol, 1988) because inmates have more caries (Ormes, Carolyn, Thompson, & Brim, 1997), periodontal disease (Costa, 2014), and urgent dental care needs (Clare, 1998) than the general population (Walsh, Tickle, Milsom, Buchanan, & Zoitopoulos, 2008). Most inmates have fewer teeth, and the teeth they possess are more likely to be in need of corrective treatment (Badner & Margolin, 1994). One study reports that only 4.9% of inmates admitted to prison had “completely healthy periodontal tissues” (Priwe & Carlsson, 2018, p. 392).

Despite historical efforts to aggressively implement dental care to preserve natural teeth, in resource starved environments—poor rural areas, inner-cities, correctional facilities—extraction remains the predominant treatment in prison and jails (Frencken, Pilot, Songpaisan, & Phantumvanit, 1996; Ramos-

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3 Rodriguez, Schwartz, Rogers, & Alos, 2004; Shulman, 2016). Prison dental care is unnecessarily delayed  
4 when facilities provide little oral health maintenance, few regular teeth cleanings, rarely fill cavities, and  
5 delay diagnosis and treatment of dental problems (Shulman, 2016).  
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10 Since “an inmate’s right to treatment for serious and painful dental conditions has been clearly-  
11 established for more than three decades” (*Williams v. York*, 2018, p. 707), this article explores Section  
12 1983 correctional dental care lawsuits filed by inmates, focusing on dental care that is unnecessarily  
13 delayed to inmates and the harm they suffer because of that delay. After discussing the methodology  
14 employed to find the court cases, the article describes the legal standard of deliberate indifference to  
15 serious medical needs established by the U.S. Supreme Court in *Estelle v. Gamble* (1976), which courts  
16 have applied to correctional dental care litigation. The article then analyzes 126 cases from the U.S. Circuit  
17 Courts of Appeals to determine how courts interpret the deliberate indifference standard in dental care  
18 situations.  
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30 To avoid Section 1983 liability, the article identifies best practices for correctional dentistry. As  
31 mentioned, the article analyzes decisions of the U.S. Circuit Courts of Appeals, which are “mandatory on  
32 district courts and other lower courts within the circuit” and “persuasive authority in the other circuits, both  
33 for other courts of appeals and for lower courts” (Bintliff, 2001, p. 84). Although legal doctrines expressed in  
34 individual cases are not binding on the entire country, the aim of the article is to provide general guidelines  
35 of best practices that can assist correctional dentists and practitioners in providing adequate dental care  
36 that would pass muster under Section 1983 across different circuits. The article also recommends that jail  
37 and prison administrators should adopt national standards of care, such as those proposed by the National  
38 Commission on Correctional Health Care (“NCCHC”) (2018) and best practices articulated by the American  
39 Dental Association (“ADA”) (2004, 2013) that have the goal of the elimination of dental disease among  
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3 correctional populations. If implemented, such policies would greatly improve prisoners' overall health,  
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5 reduce Section 1983 civil liability, and raise the quality of public health dentistry (Douds & Ahlin, 2016).  
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### 8 **Methods**

9  
10 The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment. Inmates  
11 may seek remedies for violations of federal law pursuant to Title 42 U.S. Code Section 1983 ("Section  
12 1983"). Cases in this article were found by searching the Westlaw online computerized database. Cases  
13  
14 from the U.S. Circuit Courts of Appeals from 1976 through January 31, 2019 were identified using the  
15  
16 following search terms in various combinations and permutations: "dental," "dentist," "prison," and "jail,"  
17  
18 resulting in the identification of 629 cases of which 173 were relevant. Federal Circuit Courts of Appeals  
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20 cases were also identified by using the "dental conditions and treatment" keyword in the Westlaw database,  
21  
22 producing 201 cases. After eliminating duplicates from the two search strategies, 126 cases on delay of  
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24 dental care form the basis of this article. The authors created a framework on the basis of an inductive  
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26 doctrinal analysis (Nolasco, Vaughn, & del Carmen, 2010) to synthesize circuit court decisions on the  
27  
28 liability of corrections officials and dentists for delaying dental treatment to inmates (Nolasco, del Carmen,  
29  
30 Steinmetz, Vaughn, & Spaic, 2015). The authors focused on Section 1983 liability for delay in dental care  
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32 and did not specifically examine cases that involved court orders requiring compliance with any of the  
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34 dental care treatment standards set by professional bodies such as the ADA or the NCCHC.  
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### 42 **U.S. Supreme Court Precedent Pertaining to Medical/Dental Care**

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44 In *Estelle v. Gamble* (1976), Gamble, an inmate in the Texas Department of Corrections (today  
45 known as the Texas Department of Criminal Justice—Institutional Division), filed a Section 1983 action  
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47 against prison officials, alleging that his Eighth Amendment rights were violated because defendants failed  
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49 to provide adequate medical care. Gamble was injured while unloading cotton from a prison truck. He  
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3 received repeated medical treatment, including medication, work restrictions, and was allowed to eat in his  
4 cell. The U.S. District Court dismissed the lawsuit but the U.S. Court of Appeals for the Fifth Circuit  
5  
6 reversed. On appeal, the U.S. Supreme Court reversed, holding that the district court properly dismissed  
7  
8 the suit because Gamble's complaint did not show that prison officials acted with deliberate indifference to  
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10 his serious medical needs. According to the Court, only inadequate medical care that rises to deliberate  
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12 indifference violates the cruel and unusual punishment clause of the Eighth Amendment. Medical  
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14 malpractice is not deliberate indifference (*Banuelos v. McFarland*, 1995; *Gobert v. Caldwell*, 2006; *Hall v.*  
15  
16 *Thomas*, 1999; *Stewart v. Murphy*, 1999; *Torraco v. Maloney*, 1991; *Varnado v. Lynaugh*, 1991). Medical  
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18 negligence or the lack of adherence to national standards of care is not a constitutional violation (*Duque v.*  
19  
20 *U.S.*, 2007). Only prison officials' acts or omissions that indicate deliberate indifference to serious medical  
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22 needs violate evolving standards of decency, triggering an Eighth Amendment violation under Section  
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24 1983.  
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31 While the Court adopted the deliberate indifference standard in *Gamble*, it took 18 years before the  
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33 Court defined the concept in *Farmer v. Brennan* (1994). In *Farmer*, the Court clarified the level of culpability  
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35 needed to hold officials liable pursuant to deliberate indifference. Deliberate indifference occurs when  
36  
37 prison officials know of a substantial risk of harm and recklessly disregard that risk. To prove officials acted  
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39 with deliberate indifference, inmates must show that prison officials had knowledge of a substantial risk of  
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41 harm and recklessly disregarded that risk, which causes the inmate to be harmed.  
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45 Since inmate lawsuits are of great legal and policy significance, to avoid Section 1983 liability, the  
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47 rest of the article identifies best practices based on case law that should be implemented by prison  
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49 administrators and officials practicing correctional dentistry. The first part of the article examines best  
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3 practices in cases where the inmates prevail; the second part examines best practices in cases where  
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5 prison officials and dentists prevail.  
6

## 7 8 **Best Practices for Avoiding Section 1983 Civil Liability in Correctional Dentistry**

### 9 10 **Cases Where Inmates Prevail**

11  
12 Since dental care is “one of the most important medical needs of inmates” (*Hunt v. Dental*  
13 *Department*, 1989, p. 200), prison officials and health care providers are liable under Section 1983 when  
14  
15 they do not timely respond or unnecessarily delay treatment of inmates’ serious dental needs. Prison  
16  
17 officials are similarly liable for delaying treatment as retaliation against an inmate who files dental care  
18  
19 claims (*Conley v. McCune*, 2013) or who legally pursues enforcement of their rights (*Hughes v. Scott*,  
20  
21 2016; *Kinney v. Kalfus*, 1994; *Talbert v. Correctional Dental Associates*, 2018, p. 149) or if delays for  
22  
23 necessary dental treatment are “based on a non-medical reason” (*Green v. Department of Corrections*,  
24  
25 2012, p. 547). Delay in serious dental care that “resulted in substantial harm” such as “lifelong handicap,  
26  
27 permanent loss, or considerable pain” (*Garrett v. Stratman*, 2001, p. 950) violates the Eighth Amendment  
28  
29 (*Mata v. Saiz*, 2005, p. 751).  
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### 35 **Best Practice No. 1: Respond reasonably and adequately to legitimate requests for serious dental** 36 37 **conditions**

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40 Prison officials need to determine whether the inmates’ dental needs are serious and respond  
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42 reasonably and adequately to their legitimate requests for treatment. Failure to alleviate an inmate’s serious  
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44 dental health needs violate the Eighth Amendment (*DeNoyer v. Rogers*, 2002). Serious dental conditions  
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46 are those that: *first*, sustain a prisoner’s overall oral health—they must be more than trivial or *de minimis*  
47  
48 but not necessarily “life-threatening” (*Gutierrez v. Peters*, 1997, p. 1370); or, *second*, meet “the minimal  
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50 civilized measure of life’s necessities” (*Farmer v. Brennan*, 1994, p. 834, quoting *Rhodes v. Chapman*,  
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3 1981, p. 347) as determined by “evolving standards of decency that mark the progress of a maturing  
4 society” (*Trop v. Dulles*, 1958, p. 101; see also generally, Matusiak, Vaughn, & del Carmen, 2014). The  
5 Fifth Circuit, for example, held that a toothless inmate without dentures who is denied a doctor-prescribed  
6 soft food diet lacks “the minimal civilized measure of life’s necessities” (*Marquez v. Woody*, 2011, p. 324).  
7 The Third Circuit also stated that an inmate’s “serious psychiatric need” is actionable under Section 1983  
8 because an inmate’s “crippling fear of needles in his mouth” may “well constitute a serious [dental] need”  
9 (*Richmond v. Huq*, 2018, p. 942; *Talbert v. Correctional Dental Associates*, 2018, p. 150)

19 Failure to respond reasonably and adequately to legitimate requests for serious dental conditions  
20 can result in Section 1983 liability, depending upon the circumstances and length of the delay (*Fresquez v.*  
21 *Minks*, 2014; *Hinson v. Edmond*, 1999). Various courts have ruled that the following dental conditions are  
22 serious: (1) cracked and decayed teeth leading to “severe toothaches” (*Cooper v. Schriro*, 1999, p. 783);  
23 (2) teeth that are “overlapped, bucked, crowded, and crooked” so that the inmate chewed “holes on the  
24 insides of his cheeks, causing pain and bleeding” (*Conley v. McKune*, 2013, p. 920); (3) tooth decay where  
25 the inmate’s tooth pulp was “clearly necrotic,” requiring an “immediate root canal” (*Barry v. Peterman*, 2010,  
26 p. 440); (4) “tooth decay and related pain” (*Bentz v. Ghosh*, 2017, p. 417); (5) dentures resulting in facial  
27 muscle sag, bleeding gums, and weight loss due to difficulty to masticate (*Hunt v. Dental Department*,  
28 1989); (6) a dental condition that “would result in further significant injury or unnecessary and wanton  
29 infliction of pain” if not timely treated (*Formica v. Aylor*, 2018, p. 755); and (7) an “abscessed tooth” due to a  
30 “bacterial infection of the root of the tooth” causing “swelling” that closed off the airway and could “travel to  
31 the brain and cause death” (*Formica v. Aylor*, 2018, p. 756).

49 Prisons are not required to provide routine teeth cleanings as long as they address serious inmate  
50 oral needs when they arise. The Eleventh Circuit has held that inmates do not have “an objectively serious  
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3 medical need” in “routine preventive dental care” that “would prevent future dental problems” (*Bumpus v.*  
4 *Watts*, 2011, pp. 4-5). The *Bumpus* case shows that sometimes the law is at odds with “best practice”  
5  
6 recommendations from the ADA (2013); that is, tooth cleanings should occur at least yearly and perhaps  
7  
8 more frequently based on the treating dentist’s recommendation. *Bumpus* also highlights threshold issues  
9  
10 surrounding Section 1983 lawsuits, including the difference between what the courts mandate from prison  
11  
12 dentists and what clinical experts recommend (Douds & Ahlin, 2016). Preventive measures to improve  
13  
14 dental health, including basic hygiene items, such as toothpaste and dental health education are “essential”  
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16 under the accreditation standards of the NCCHC (2018, p. 96), and these items are necessary to ensure  
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18 optimum oral health among inmates (Redemske, 2018).  
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24 **Summary of delays to serious dental needs.** Prison personnel who are not aware of serious  
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26 dental needs cannot be sued (*Hill v. Vannatta*, 2005). Courts use numerous ways to determine whether  
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28 dental needs are “serious” to establish Section 1983 liability: (1) it must be obvious that dental treatment is  
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30 required (*Hartsfield v. Colburn*, 2007); (2) a layperson would believe that professional dental care was  
31  
32 needed (*Conley v. McCune*, 2013); and/or (3) dental professionals have diagnosed that treatment is  
33  
34 required to alleviate the dental condition and/or to avoid long-term oral health problems (*Haynes v. Moore*,  
35  
36 2011).  
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## 40 **Best Practice No. 2: Prevent lengthy and unjustified delays in providing dental care**

41  
42 Prison officials need to prevent lengthy and unjustified delays in providing dental care to inmates.  
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44 Most facilities have a system for inmates to submit written requests for correctional medical and dental  
45  
46 services. While most inmates receive timely care (*Dugan v. Warden*, 2016), research shows that some  
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48 inmates’ sick call requests are sometimes lost, misplaced, or ignored (Vaughn & Smith, 1999). When not  
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50 timely treated, oral infections ranging from gingivitis to periodontitis disease may lead to tooth loss, pain,  
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3 and bleeding gums (Davarpanah, Martinez, Tecucianu, Fromentin, & Celletti, 2000). Tooth loss  
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5 compromises overall health, leading to deficits in masticatory function, balanced nutrition, and day-to-day  
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7 activities (Copeland, Krall, Brown, Garcia, & Streckfus, 2004). When faced with oral health problems, dental  
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9 intervention and treatment should occur as quickly as possible (Brunswick, 2005; Livingston, Parsell, &  
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11 Pollack, 2002). In prison, the high number of edentulous inmates is caused by numerous dental caries and  
12  
13 periodontal diseases due to little preventative care and the high rate of drug use among inmates  
14  
15 (Brunswick, 2005; Mumola & Karberg, 2006; Salive, Carolla, & Brewer, 1989). Courts usually find that  
16  
17 excessive and unjustified delays in treating a painful dental condition form the basis of a successful Section  
18  
19 1983 lawsuit (Vaughn, 1995). In one case, the court characterized as deliberate indifference a four-month  
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21 delay in an inmate's prescription for over-the-counter medication for chronic pain (Cohen, 2019, p. 32).  
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27 Courts have ruled in the following cases that delays for dental treatment were actionable under  
28  
29 Section 1983: (1) an unspecified unreasonable delay (hours) for emergency dental care because of the  
30  
31 failure or inability of the prison to process emergency situations (*Maddox v. Davis*, 2005); (2) a three-week  
32  
33 delay for an infected tooth until the inmate paid for two prior dental procedures performed by the prison  
34  
35 (*Fields v. Gander*, 1984); (3) a 24-to-115 day delay in providing toothpaste to an inmate (*Board v. Farnham*,  
36  
37 2005); (4) a four-month delay for an extraction after the prison dentist diagnosed a "painful abscessed  
38  
39 molar" (*Gevas v. Mitchell*, 2012, p. 655); (5) a seven-month delay in dental care during which time the  
40  
41 inmate suffered from an infected tooth, swelling in his face and neck, high fever, and pus discharging from  
42  
43 his eyes and nose (*Moore v. Jackson*, 1997); (6) a seven-and-a half month delay in seeing a dentist where  
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45 the dental technician taunted the inmate, saying "that's why God made women to have babies because you  
46  
47 men can't handle pain" (*Finley v. Parker*, 2007, p. 635); (7) an 11-month delay for an inmate to get the  
48  
49 proper diagnosis and surgery for a "sinus perforation" causing "foul-tasting discharge" that prevented him  
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3 from eating, caused him to lose weight, and suffer “unnecessary pain” (*McGowan v. Hulick*, 2010, p. 638);  
4  
5 (8) a two-year delay in dental treatment because of the length of the prison’s administrative grievance  
6  
7 process (*Baughman v. Harless*, 2005); (9) a two-year or a 26-month delay in providing the inmate  
8  
9 unspecified dental care (*Lopez v. Patterson*, 2009); (10) a three-year delay in providing treatment for an  
10  
11 inmate’s pain when the doctor knows the inmate has tooth pain, possible infection, “swelling,” and  
12  
13 “problems eating” (*Bentz v. Ghosh*, 2017, pp. 417-418); and (11) excessive delay by prison staff in  
14  
15 implementing a dentist’s recommended course of treatment (*Thompson v. Williams*, 1995; *Carlucci v.*  
16  
17 *Chapa*, 2018).

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21 **Summary of lengthy delays in providing dental care.** Excessive and unjustified delays in  
22  
23 providing dental care for oral pain, dentures, examinations for infected teeth, or treatment for severe  
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25 periodontal disease are actionable under Section 1983 if these delays are wanton and unnecessary.  
26  
27 According to the U.S. Circuit Courts of Appeals, the extent of delay to trigger Section 1983 liability ranges  
28  
29 from several hours for emergency dental needs to delays of over three-years for treatment ordered by  
30  
31 physicians for “some unspecified future time” (*Bentz v. Ghosh*, 2017, p. 418). Many inmates entering  
32  
33 correctional facilities have multiple problems with their teeth and gums, and delaying dental care for delay’s  
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35 sake is unconstitutional. Correctional officials and correctional dentists should not let the bureaucratic  
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37 structure of their managed care systems slow down efficient and timely delivery of dental care to prisoners.  
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### 40 41 42 **Best Practice No. 3: Provide timely intervening treatment to prevent permanent dental damage**

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Prison officials and dentists should timely provide appropriate intervening treatment to prevent permanent dental problems that require more substantial treatments such as root canal or extraction (*Kidd & Joyston-Bechal*, 1987). Dental caries that are left untreated, for example, can cause great discomfort, severe infection, debilitation, and even death (*Kretzschmar & Kretzschmar*, 1996). While some prisons

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3 explicitly mandate or have a *de facto* policy of extraction as the only form of dental treatment, extraction  
4 only policies are frowned upon by most federal courts. Unreasonable delays in dental care that result in  
5 deterioration of the inmate's teeth, gum disease, and necessitating tooth extraction also violate the  
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Constitution, especially when earlier treatment could have saved the tooth (*Kajfasz v. Haviland*, 2003).

Prison officials and dentists are liable for permanent dental problems that could have been prevented through appropriate intervening treatment. In *Stack v. McCotter* (2003, p. 386), inmate Stack sued prison officials in the Utah Department of Correction ("UDC") under Section 1983. At the UDC, Dove Development Corporation ("DOVE") provided health care to prisoners and implemented a dental policy that explicitly provided coverage only for extractions but required advance payments from inmates for any other dental services. During a seven-month period wherein he repeatedly requested for dental care, the inmate's gums progressed into serious periodontal disease due to lack of dental treatment. The Tenth Circuit struck down the extraction-only policy and ruled for Stack, stating that treatment was delayed although officials knew he suffered extreme pain because of his infected and swollen gums.

In another case, *Formica v. Aylor* (2018, p. 757), the facts showed that a degenerating tooth could have been salvaged with timely treatment. Here, contrary to the prison's *Inmate Handbook*, which prohibited denying medical services due to an inmate's inability to pay, the jail nurse refused to schedule treatment for an inmate's infected molar unless the inmate paid in advance. The molar broke off "at its infected and abscessed root" ultimately requiring an extraction (*Formica v. Aylor*, 2018, p. 757). The Fourth Circuit held the jail nurse liable under Section 1983 because she delayed treatment, resulting in "substantial harm" to the inmate (*Formica v. Aylor*, 2018, p. 755).

In some cases, written prison policies mandate routine preventive dental care, but, in practice, prison dentists failed to implement these policies (*Simmat v. Bureau of Prisons*, 2005). In *Parsons v. Ryan*

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3 (2014), the failure of the Arizona Department of Corrections (“ADC”) to implement its own policies partially  
4 caused the breakdown of its dental program. In practice, the ADC had a *de facto* policy of routinely  
5 delaying restorative dental care to inmates, causing permanent damage to prisoners’ oral health. The Ninth  
6 Circuit stated that ADC’s practice of failing to provide medically necessary dental care caused irreparable  
7 harm to the inmates who had to wait long periods for basic dental services. The ADC’s primary service  
8 was tooth extraction, although less invasive procedures were at times more “medically appropriate and  
9 necessary” (*Parsons v. Ryan*, 2014, p. 666).

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11  
12 The ADC’s own records showed the dental care system was “extremely poor,” “dysfunctional,”  
13 “sub-standard,” and “rife with deficiencies” (p. 668). The ADC, for example, took from 85 to 292 days to fill  
14 a cavity, with an average wait time of 225 days. These lengthy delays in filling cavities substantially  
15 increased the risk of infections, pain, and permanent tooth loss. Dr. Jay D. Shulman a practicing dentist  
16 with “extensive military, educational, and correctional” dental experience conducted a full review of ADC’s  
17 dental system, concluding that the unconstitutional care was “attributable to systemic [statewide] problems  
18 caused by inadequate and poorly monitored policies and procedures in ADC’s Dental Department,”  
19 including its: (1) *de facto* extraction only policy; (2) failure to “employ sufficient dental staffing;” (2) failure to  
20 “ensure appropriate classification and treatment of patients reporting dental issues;” and, (3) absence of  
21 “timelines for routine treatment” (*Parsons v. Ryan*, 2014, p. 670).

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23  
24 **Summary of delays resulting in permanent dental damage.** Courts rule that delay in dental  
25 care is deliberate indifference if the delay results in permanent damage. While prison transfers lead to  
26 delays in dental care, officials need to be aware of inmates’ dental needs and meet them accordingly  
27 before irreparable damage occurs. Correctional systems that delay treating salvable but problematic teeth  
28 until the only option is extraction are operating under a *de facto* extraction only policy, running afoul of the

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3 Constitution. These extraction only policies are frowned upon by federal courts (*Parsons v. Ryan*, 2014),  
4 and such policies violate recognized standards of care accepted by correctional experts (Shulman, 2016),  
5 professional organizations (ADA, 2013), and accrediting agencies (NCCHC, 2018). Prison dentists may  
6 also be liable for delaying routine and preventive dental treatment, which can prevent problems or alleviate  
7 their severity and the accompanying oral pain, contrary to the express written terms of the correctional  
8 institution's policies.  
9

#### 17 **Best Practice No. 4: Eliminate delays in dental care resulting in unnecessary pain and suffering**

19 Prison officials should implement preventive, routine, and remedial dental treatment to alleviate  
20 inmates' pain and suffering from serious dental problems (*Hartsfield v. Colburn*, 2007; *Ramos v. Lamm*,  
21 1980). Basic dentistry involves alleviating pain, controlling infections, and appropriately treating and/or  
22 extracting decayed and infected teeth (Kretzschmar & Kretzschmar, 1996). Delaying treatment for painful  
23 dental conditions can lead to a host of health problems, including difficulty eating and speaking, poor  
24 nutritional status, diminished self-esteem, severe pain and suffering, disfigurement, and sometimes death  
25 (National Center for Health Statistics, 2001). To alleviate pain and treat infections in a timely manner,  
26 prison dentists need to prescribe antibiotics to manage and prevent oral bacterial infections (Epstein,  
27 Chong, & Lee, 2000). Courts have ruled actionable under Section 1983 delays in dental care that are  
28 avoidable and result in unnecessary pain (*Dobby v. Mitchell-Lawshea*, 2015; *Jones v. Greer*, 2002).  
29 According to the Seventh Circuit, "turning a blind eye to a prisoner's complaints of readily treatable pain can  
30 constitute an Eighth Amendment violation, even if the condition is not life-threatening and the failure to  
31 treat does not exacerbate the condition" (*Diaz v. Godinez*, 2017, p. 343).  
32

33 To violate the Eighth Amendment, prison officials must possess a culpable state of mind (*Wilson v.*  
34 *Seiter*, 1991). Courts have ruled that prison officials are liable under the deliberate indifference standard for  
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3 the following delays to alleviate pain: (1) delaying prescribed pain medication after dental surgery (*Dadd v.*  
4 *Anoka County*, 2016); (2) delaying extraction of an impacted and infected wisdom tooth, leading to pain in  
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6 the inmate's jaw (*Boyd v. Knox*, 1995); (3) delay in providing dentures to an inmate who, as a result,  
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8 suffered from difficulty eating, severe pain, and disfigurement (*Green v. Hendrick Medical Center*, 2001;  
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10 *Huffman v. Linthicum*, 2008; *Vasquez v. Dretke*, 2007; *Williams v. Mason*, 2006); (4) delaying for 15-  
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12 months the delivery of dentures, which caused an inmate to suffer constant pain, bleeding gums, an eating  
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14 disorder, and weight loss of 20 pounds (*Farrow v. West*, 2003); (5) delaying dentures to an inmate with  
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16 serious dental needs when he was transferred from general population to administrative segregation, which  
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18 caused the inmate to suffer from pain, "bleeding, headaches, inability to chew food, humiliation, shame,  
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20 and disfigurement" (*Wynn v. Southward*, 2001, p. 591); and (6) delaying for two-months the treatment of an  
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22 inmate's toothache that grew progressively more painful, where he had the "worst headache...ever," and  
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24 where he described the pain as so intense, he could not "drink water" or even "brush [his] teeth" (*Berry v.*  
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26 *Peterman*, 2010, p. 438).

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33 One of the most basic dental treatments is proper diagnosis and filling of cavities (Kidd & Joyston-  
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35 Bechal, 1987). A prison dentist is liable for delaying to treat an inmate's cavity because of their incorrect  
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37 conclusion that a cavity was not a serious dental condition (*Harrison v. Barkley*, 2000). According to the  
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39 Second Circuit, a serious dental condition exists if "the failure to treat a prisoner's condition could result in  
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41 further significant injury or the unnecessary and wanton infliction of pain" (*Chance v. Armstrong*, 1998, p.  
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43 702). Dental caries is a progressive disease, so if treated early, cavities are rather innocuous. If not  
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45 effectively remedied, however, cavities can deteriorate into degenerative tooth loss, and pain, acute  
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47 infection, and "costly treatment to restore the tooth or have it removed" (Oral Health Coordinating  
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3 Committee, 1993, p. 658). Unreasonable delays in treating infection and diseases can lead to sepsis and  
4 ultimately to death (Brody, 2002).  
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8 Inmates who have dental procedures require follow-up care and careful monitoring to prevent pain  
9 resulting from complications (Gutkowski & Burnett, 2004). In *Patterson v. Pearson* (1994), an inmate  
10 suffered complications after an initial tooth filling, resulting in severe pain, headaches, swollen jaw, and pus  
11 oozing from his eyes. Despite repeated requests for an extraction appointment with the prison dentist, the  
12 inmate's requests went unanswered. The prisoner's oral health continued to deteriorate but the prison  
13 dentist refused to alleviate the inmate's excruciating pain. An additional three months passed before the  
14 prison dentist examined the inmate and extracted the tooth. The Eighth Circuit rejected the prison dentist's  
15 summary judgment motion, ruling the six-month delay in treatment caused the prisoner substantial pain.  
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27 Prison administrators are not immune from Section 1983 liability despite contracting out dental  
28 services to private corporations if the officials knew that an inmate suffered significant oral pain and the  
29 contractor unnecessarily delays in providing proper dental treatment (Hunter, 2016). In *Williams v. York*  
30 (2018, p. 707), Corizon held the private contract to provide dental care for inmates. An inmate informed  
31 administrators of his serious dental condition but his dental appointment was delayed for three months  
32 despite his mouth being "filled with boil type sores," pus "seeping from his gums," and his face becoming  
33 "disfigured" (pp. 703-704). The Eighth Circuit ruled that the prison administrators may be personally liable  
34 despite the contract with Corizon, stating that "the mere contracting of services with an independent  
35 contractor does not immunize the State from liability" (*Williams v. York*, 2018, p. 707).  
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47 **Summary of delays resulting in unnecessary pain and suffering.** Clinical guidelines require  
48 that inmates be examined by "mid-level" correctional health care providers within 24-hours after reporting  
49 dental pain (Shulman & Sauter, 2012, p. 67). When inmates suffer from pain, courts rule that long delays in  
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3 treating cavities, excessive delays in pulling teeth, and undue delays in getting dentures constitutes  
4 deliberate indifference to serious dental needs. Officials also need to be diligent with follow-up care after  
5 oral surgery to ameliorate any pain associated with complications. Moreover, contracting dental services to  
6 private-for-profit corporations will not immunize prison officials from Section 1983 liability if the officials are  
7 aware that inmates are in pain and take no action and/or delay their efforts to alleviate their symptoms.  
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### 14 **Cases Where the Prison Officials and Dentists Prevail**

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17 Not all delays in dental treatment result in actionable Section 1983 lawsuits. To prevail, inmates  
18 must show that prison officials delayed or interfered with the “level of dental care” to which they were  
19 entitled (*Nesbit v. HFC Dental Department*, 2008, p. 545). Prison officials and dental care providers are not  
20 liable when the delay is: (1) justifiable due to legitimate security concerns preventing timely dental  
21 examinations or procedures; (2) for trivial or non-serious dental conditions; (3) for dental care that do not  
22 pose long-term deleterious effects to the inmates’ oral health; and, (4) short but ultimately results in the  
23 inmate getting proper treatment (*Johnson v. Mullin*, 2005).  
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33 The Eighth Amendment also does not require prison dentists to provide elite services to inmates.  
34 The Constitution requires that inmates receive adequate dental care that satisfies “medical necessity and  
35 not one simply of desirability” (*Reaves v. Voglegesang*, 2010, p. 4). When prisoners are missing teeth,  
36 prisons are not obliged to replace those teeth with dental implants that are considered “high-end dental  
37 treatment by organized dentistry standards” (*Reaves v. Voglegesang*, 2010, p. 3). Dental implants fall into  
38 the category of cosmetic dentistry, and “[t]he Constitution does not require prisons to provide inmates with  
39 the kind of [dental] attention that judges would wish for themselves” (*Reaves v. Voglegesang*, 2010, p. 4).  
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3 **Best Practice No. 5: Prioritize dental care needs by triaging those that do not pose long-term**  
4 **deleterious effects**  
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8 Prison officials should assess the inmates' dental care needs, prioritizing first those that are serious  
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10 and prioritizing last those that do not result in any significant longstanding deleterious consequences, pain,  
11  
12 or suffering to the inmate. To establish deliberate indifference, inmates must show that the delay caused  
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14 wanton and unnecessary pain (Wade, Schwartz, Kelly, & Partlett, 1994). In the following cases, the courts  
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16 ruled that the delay in treatment did not cause long term deleterious effects: (1) three-week delay for a  
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18 hygienist and a six-week delay for a dentist as long as emergencies are timely treated (*Hallett v. Morgan*,  
19  
20 2002); (2) two-day delay in receiving dental treatment for a painful broken tooth, especially when the inmate  
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22 does not complete the prison's official sick call form or inform prison officials that he has a dental  
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24 "emergency" (*Olson v. Morgan*, 2014, p. 714); (3) delay in implementing a prison policy of one dental  
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26 cleaning per year due to the "lack of a hygienist at the facility" (*Bumpus v. Watts*, 2011, p. 5); (4) delay in  
27  
28 providing prescription mouthwash, due to a prison transfer, to an inmate who suffered from bleeding gums,  
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30 but meanwhile was allowed to gargle with salt water (*Henri v. Gamble*, 2005); (5) indefinite delay in  
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32 providing dental therapy at a new prison where an inmate was transferred (*Allen v. Hemingway*, 2001); (6)  
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34 delay of three-to-four months in repairing an inmate's partially broken denture plate because the dental  
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36 need was not an emergency and the delay was necessary to allocate scarce dental resources to other  
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38 urgent complaints (*Emeterio v. Kliensasser*, 1991); (7) delays in dental treatment caused by the inmates  
39  
40 themselves (*Yoon v. Hickman*, 2006), such as refusing to pay the \$2.00 dental co-pay although not indigent  
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42 (*Poole v. Isaacs*, 2012); and (8) a delay of three-months for a root canal to fix an extremely painful tooth as  
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44 long as pain treatment started three days after the initial complaint and consistently continued until the  
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46 dental procedure was performed (*Afdahl v. Cancellieri*, 2012).  
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3                   **Summary of delays that pose no long-term deleterious effects.** Case law indicates that delays  
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5 resulting from extraneous conditions, including transfers to a new facility, that do not result in significant  
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7 harm to the inmate are not actionable under Section 1983. Delays in routine oral care, such as dental  
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9 cleanings or examinations due to emergencies handled in accordance with prison policy are similarly not  
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11 actionable. Generally, “delays are typical in a dental setting” and immediate dental treatment “unlike other  
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13 medical conditions” does not “result in death” (*Afdahl v. Cancellieri*, 2012, p. 108).

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17                   **Best Practice No. 6: Allocate resources for dental care by assessing trivial or non-serious dental**  
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19 **conditions**

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21                   Prison officials should allocate resources for dental care by assessing whether the inmate’s dental  
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23 needs are trivial or non-serious. Inmates are notorious for filing frivolous lawsuits, and fictitious civil rights  
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25 claims for dental care are no different. One frivolous case dismissed by the Ninth Circuit involved an  
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27 inmate’s claim that a “prison dentist injected a ‘micro system’ into his jaw that grew into a ‘baby blue oblong’  
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29 object and intermittently spewed acid onto his gums” (*Prescott v. Arizona Department of Corrections*, 2005,  
30  
31 p. 378). Aside from frivolous lawsuits, courts rule in favor of defendant prison officials for delay in treatment  
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33 of non-serious dental conditions that do not result in harm (*Dukes v. Fish*, 2001; *Grandberry v. Pickett*,  
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35 2000; *Phillips v. Sheriff of Cook County*, 2016). The Eleventh Circuit ruled, for example, that an inmate  
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37 possessed no serious dental need when he agreed to have five decayed teeth extracted, so he could get  
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39 partial dentures, and the prison dentist testified that the inmate’s “loss of teeth did not compromise his  
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41 health or his ability to chew and eat” (*Malloy v. Peters*, 2018, p. 739).

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44                   The following cases involved delays to non-urgent or trivial dental problems that were not entitled  
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46 to immediate treatment: (1) delay to treat “mouth infections” resulting from an implant that did not fit  
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48 (*Giraldes v. California Dept. of Corr.*, 2017); (2) delay to treat a cavity that results in an abscess as long as  
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3 it was later treated once the abscess was detected (*Beauchamp v. Love*, 1987; *Mathison v. Swenson*,  
4 2005); and, (3) delay to treat a constant aching tooth due to “sensitivity to hot and cold temperature,” which  
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6 “fall short of a condition such as tooth decay or gum infection” (*Greene v. Pollard*, 2009, p. 614).  
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10 **Summary for delays for trivial or non-serious dental conditions.** Prison officials are not liable  
11  
12 for delays in treating inmates’ trivial or non-serious dental needs. Examples of non-serious dental needs  
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14 include minor tooth aches, sensitivity to cold and hot food and drinks, temporary cold sores or insignificant  
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16 mouth infections, residue on teeth enamel, and other petty dental problems. Deliberate indifference only  
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18 arises when dentists unreasonably delay treatment of an inmate’s serious dental needs. To constitute a  
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20 serious dental need, the dental condition must be one that obviously should be treated by a health care  
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22 professional and/or a condition that poses a long-term threat to the inmate’s oral health.  
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26 **Best Practice No. 7: Create and implement policies under budget constraints that prioritize**  
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28 **treatment based on the seriousness and urgency of dental needs**  
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31 Prison officials should create and implement health care policies that prioritize treatment of, and  
32  
33 allocate institutional resources for, urgent and emergency dental needs of inmates. Establishing treatment  
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35 priorities are necessary in prisons due to limited resources and staff. Courts have ruled that prison officials  
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37 or dental care providers have not engaged in deliberate indifference when they classify dental treatment as  
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39 non-urgent because the inmate’s oral health condition does not cause any serious harm (*Berryman v. Epp*,  
40  
41 1995; *Collins v. Bates*, 2018). In the case of *Peralta v. Dillard* (2014), an *en banc* Ninth Circuit ruled for the  
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43 prison officials, noting that the prison’s resources and budgetary constraints affected the state prisoner’s  
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45 dental treatment: (1) staffing shortages beyond the prison’s control; (2) less than half the number of legally  
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47 required dentists and no dental hygienists; and (3) prison dentists frequently had to work without dental  
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49 assistants. Staff shortages limited the amount of time spent with any inmate, and the most pressing  
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3 complaints were prioritized because of lack of time. The Ninth Circuit concluded that the delay in dental  
4 care due to lack of resources is not the legal fault of individual prison dentists (*Peralta v. Dillard*, 2014).

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8 Reasonable efforts to remedy staff shortages and to allocate scarce prison resources shield prison  
9 officials and dentists from Section 1983 liability. In *Cullor v. Baldwin* (2016), the Eighth Circuit stated that  
10 the prison officials are not liable under Section 1983 for deliberate indifference based on allegations of  
11 failure to address a shortage of prison dentists. Defendants established their continuing efforts to recruit  
12 dental professionals, including loan forgiveness programs, targeting retired dentists, and offering  
13 prospective hires the maximum salary permitted.

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21 **Summary of delays that result from budget constraints that prioritize treatment based on**  
22 **the seriousness and urgency of dental needs.** Prison officials are not liable for delays that occur due to  
23 allocation of scarce institutional resources, including budget, time, and dental staff, as long as they continue  
24 to search to fill empty positions and attempt to hire needed dental employees. Reasonable efforts to  
25 allocate scarce prison resources, resulting in delay of treatment of non-urgent dental needs, prevent  
26 Section 1983 claims of deliberate indifference against prison officials and dentists.

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34 **Best Practice No. 8: Rely on the professional judgement of the dental provider regarding the**  
35 **appropriate treatment even when the inmate disagrees**

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Prison officials should defer to prison dentists' professional judgement on the appropriate medical  
treatment even when the inmate disagrees with the prescribed course of therapy (*Austin v. Busby*, 2001;  
*Beauclair v. Graves*, 2007; *Ebert v. Prime Care Medical*, 2015; *Harris v. Thigpen*, 1991; *Norton v.*  
*Dimazana*, 1997; *Scott v. Gibson*, 2002). When a prison dentist follows their professional judgment and  
provides multiple dental procedures, including nine examinations over a 20-month period (*Wilson v.*  
*Wilkinson*, 2003), or nine dental treatments over a 13-month span (*Amarir v. Hill*, 2007), delays in treatment

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3 due to disagreements with the inmate over the timing and type of dental treatment (*Riley v. Knox*, 2000) are  
4 not actionable under Section 1983.  
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8 Being a primary method of dental care in many prisons, extractions can pose severe complications,  
9 especially when dental procedures are performed by prison dentists with inadequate training, education,  
10 and experience (Shulman, 2016). In *Finnegan v. Dr. Maire* (2005), the prison dentist who was not qualified  
11 as an oral surgeon, punctured the inmate's sinus artery during a tooth extraction. Upon transfer to two free-  
12 world hospitals, a CT scan diagnosed the problem and the inmate was given a blood transfusion. The  
13 Eighth Circuit held that the delay in the required dental treatment was not deliberate indifference under  
14 Section 1983 because the dentist relied on his professional judgment, providing remedial care by suturing  
15 and covering the area where he had extracted the teeth.  
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26 In another botched surgery case, *Gillespie v. Hogan* (2006), the jail dentist extracted the inmate's  
27 tooth but failed to remove "a fragment of decayed tooth" causing infection, pain, swollen gums, and  
28 bleeding (p. 104). The tooth fragment was discovered and removed over a year later when the inmate was  
29 transferred to another institution where he requested dental care for "major pain" (p. 104). While the Third  
30 Circuit recognized that the inmate had suffered "significant hardship" (p. 105) and pain due to the delay in  
31 finding the tooth fragment, the court held that the dental negligence leading to the malpractice was not  
32 actionable under Section 1983.  
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42 Sometimes inmates will delay their dental treatment because they want the best dental care  
43 recognized by free-world dentistry. As long as the prison dentist provides adequate dental therapy based  
44 on their professional training and experience, inmates do not have a constitutional right to preferred  
45 treatment or the best dental treatment available (*Davis v. Suttley*, 2011; *Mayweather v. Foti*, 1992;  
46 *McMahon v. Beard*, 1978; *Moneyham v. Ebbert*, 2018). In *Coker v. Corizon Medical Services* (2016), for  
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3 example, an inmate lost a filling and sought to get it filled. He experienced delay in receiving dental care  
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5 because he disagreed with the prison dentist who would only pull and not fill the decayed, non-salvageable  
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7 tooth. Granting summary judgment for the dentist, the Eleventh Circuit said the inmate cannot self-diagnose  
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9 and demand a remedy contrary to the prison dentist's recommended course of treatment. An inmate cannot  
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11 request his/her preferred "most restorative treatment," if a competent prison dentist recommends another  
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13 less expensive adequate procedure (*McQueen v. Karr*, 2002, p. 406) such as offering extraction instead of  
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15 a root canal, as long as the extraction is "medically appropriate and will resolve the issue" (*McQueen v.*  
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17 *Karr*, 2002, p. 406; *James v. Penn. Dep't. of Corr.*, 2007; *Mathews v. Raemisch*, 2013). Extracting teeth  
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19 are permissible as long as dentists attempt to save teeth that are salvageable (*Baptiste v. Hopson*, 2016).  
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24 Delays in prison dental treatment do occur, however, because there are limited surgeons  
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26 performing specialized dental procedures with limited resources. Prison dentists are not subject to Section  
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28 1983 liability even when they engage in complex dental work without first ordering x-rays or conducting  
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30 adequate pre-procedure examinations. In *Brady v. Aldridge* (2012), a prison dentist started a crown  
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32 removal procedure on an inmate's tooth without conducting a thorough pre-procedure examination. Once  
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34 the crown was removed, the dentist discovered that the tooth's root was "fused" to the jawbone and "could  
35  
36 be removed only with surgery" which "would be performed at a later date" (p. 791). While waiting for  
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38 surgery, the inmate experienced tooth pain and difficulty eating. The inmate sued, claiming that the dentist  
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40 tried to extract the tooth without the proper diagnostic tools so as to reduce costs. Rejecting the inmate's  
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42 claim, the Seventh Circuit held that deliberate indifference requires the inmate to establish that the prison  
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44 dentist "recklessly or intentionally disregarded a substantial risk of serious harm" (p. 791). The facts,  
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46 however, reflect "merely a disagreement" between the inmate's view of what should have been done and  
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48 the dentist's "professional judgment" (p. 792).  
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3           Good faith mistakes committed by prison dentists are not actionable under Section 1983. Thinking  
4 he was treating a cavity, a dentist at a federal prison mistakenly filled a perfectly healthy tooth of an inmate  
5 named Jason King. Another inmate at the facility also named King was actually scheduled that day to get  
6 the filling, not Jason King. Jason King experienced immediate pain in his damaged tooth. While Jason King  
7 was treated for pain for the damaged tooth, prison officials refused to perform the root canal he requested.  
8 Jason King eventually got a root canal after he was transferred to a different federal prison. In ruling for the  
9 dentist, the Fourth Circuit said that they were “troubled by the dental staff’s failure to take common-sense  
10 steps before performing the [inaccurate] procedure” on the wrong inmate (*King v. U.S.*, 2013, p. 361).  
11 Since the dentist did not perform the procedure in bad faith, he did not possess the culpable mental state  
12 required for a Section 1983 cause of action under deliberate indifference.  
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26           ***Summary of delays resulting from inmate disagreement with a dentist’s professional***  
27 ***judgment.*** Prison dentists are not liable for mistakes, delays, or complications in treatment based on their  
28 professional judgment even when the inmate disagrees with the therapeutic decision (*Daugherty v. Luong*,  
29 2012; *Hay v. Thaler*, 2012). Prison dental personnel are entitled to deference for their professional opinion  
30 “unless no minimally competent professional would have so responded under those circumstances” (*Dent*  
31 *v. McBride*, 2018, p. 918). Prison dentists are also not liable under Section 1983 if they provide remedial  
32 treatment based on their medical opinion after discovering complications or if delay in treatment is caused  
33 by an inmate’s disagreement with the type of pain medication that should be prescribed after an extraction  
34 (*Sifford v. Ford*, 2017, p. 796).  
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3 **Best Practice No. 9: Act in good faith following treatment procedures and protocols in existing jail**  
4 **and prison policies**  
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8 Prison officials should comply in good faith with treatment procedures in existing policy, provided  
9  
10 that these policies adhere to acceptable national standards of care. Section 1983 liability cannot attach if  
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12 delays in treatment occur because prison dental officials follow legitimate prison policies, as long as  
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14 adequate dental care was timely delivered under the circumstances (*Lynch v. Jackson*, 2012). If the prison  
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16 has acceptable standards of care compared to free-world dental care, there is also no constitutional  
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18 violation even if the quality of the prison dental care is below what is available in the free-community  
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20 (Vaughn & Carroll, 1998). Prison officials, for example, cannot be liable for a policy providing inmates the  
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22 option of root canals on salvageable teeth (*Hallett v. Morgan*, 2002). They cannot also be held liable for  
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24 complying with a policy that allowed free dental plates for inmates only once every five-years by refusing to  
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26 provide free dentures to an inmate who ran over his dental plate with a wheelchair before the five-year time  
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28 period had elapsed (*Beem v. Davis*, 2008).  
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33 Another policy issue involves elective and/or cosmetic care. Since there is no serious dental need  
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35 to be remedied, the general rule is that prisons are not required to provide elective and/or cosmetic dental  
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37 care. In *Conley v. Pryor* (2015, p. 699), the Tenth Circuit agreed with prison officials that the request of an  
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39 inmate with “overlapped, bucked, crowded, and crooked teeth” was based on “cosmetic issues that did not  
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41 warrant treatment on health grounds.” As long as prison dentists follow policy protocol, prisoners can wait  
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43 up to eight-months before they get a comprehensive dental exam, even when they suffer from periodontitis  
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45 (*Sands v. Cheesman*, 2009).  
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49 Most prisons’ policies state that as long as the prison can provide the required dental care, inmates  
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51 are not entitled to free-world dental specialists. In *Lake v. Wexford Health Services* (2017), an inmate  
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3 refused treatment by Wexford (the prison's dental care provider) and repeatedly demanded free-world  
4 dental services. Previously, the prison dentist attempted to extract but instead shattered one of the inmate's  
5 teeth, necessitating the services of a free-world dentist to complete the procedure. A few years later, his  
6 request for another free-world dentist to perform a tooth extraction was denied but eventually, another  
7 prison dentist at Wexford extracted the tooth. There was a significant delay between the time when the  
8 tooth was diagnosed for extraction and when it was actually pulled. In ruling for the defendants, the  
9 Seventh Circuit held that there was "no evidence" that the prison's dentists were "incapable of competently  
10 removing a decayed tooth—usually not a highly complex procedure" (p. 797). There was no constitutional  
11 need for free-world dental specialists, and any delay in getting the tooth pulled was the fault of the inmate.

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24 ***Summary of delays due to good faith compliance with treatment decisions and protocols in***  
25 ***existing jail and prison policies.*** Prison officials are not liable for complying in good faith with treatment  
26 decisions, protocols, and procedures in existing policies. Prison policies that restrict access to free-world  
27 dental specialists are constitutional, as long as the prison dentists can adequately provide the treatment.  
28 Prison officials cannot be liable for delays in treatment due to policies that provide minimum confinement  
29 times before dental treatment is offered or lengthy time intervals for preventive or remedial dental  
30 treatment. Also, prison policies that exclude elective or cosmetic care do not lead to Section 1983 liability  
31 because these procedures do not remedy serious dental needs.

## 32 33 34 35 36 37 38 39 40 41 42 **Conclusion**

43  
44 Oral health is important for overall health (McGrath, Broder, & Wilson-Genderson, 2004).  
45 Research, for example, links periodontal disease to heart disease, "adverse pregnancy outcomes,...head-  
46 and-neck cancer" (Han, Houcken, Loos, Schenkein & Tezal, 2014, p. 47), kidney disease (H. Akar, G.C.  
47 Akar, Carrero, Stenvinkel, & Lindholm, 2011), and diabetes (Lamster, Lalla, Borgnakke, & Taylor, 2008). To

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3 be sure, the incarceration experience presents an opportunity for prisoners to receive quality dental care,  
4 which is lacking for many inmates when they lived in the free world (Redemske, 2018).  
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8 The right of inmates to health care, including dental care, is a constitutionally established right.  
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10 They are not necessarily guaranteed the best available dental care; rather, they have only the right to  
11 receive care that is free from deliberate indifference to serious medical needs (*Estelle v. Gamble*, 1976).  
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13 This right is independent of the institutional goals or shifts in penal philosophy from rehabilitation to  
14 retribution in the era of mass incarceration. Liability under Section 1983 for failure to provide adequate  
15 dental treatment attaches if the inmate establishes that the prison official was deliberately indifferent to his  
16 serious dental or medical needs (*Wishneski v. Dona Ana County*, 2012). Under current case law, prison  
17 officials are required to provide inmates with adequate dental care that satisfies “medical necessity and not  
18 one simply of desirability” (*Reaves v. Voglegesang*, 2010, p. 4). Correctional facilities are not obligated to  
19 provide “high-end dental treatment” (*Reaves v. Voglegesang*, 2010, p. 3) such as cosmetic dentistry. Since  
20 research indicates the link between oral health and overall health, however, more than mere basic dental  
21 care may be necessary for a successful transition of the inmate upon release from incarceration—the  
22 inmate’s overall health may affect whether or not he or she adapts to the stresses and complications of the  
23 free world.  
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40 In the past, there was “little standardization of dental care” within U.S. prison systems (Makrides &  
41 Shulman, 2002, p. 304). The National Commission on Correctional Health Care has “for decades” been  
42 developing, revising, and promoting standards of dental care for jails, prisons, and juvenile facilities (Douds  
43 & Ahlin, 2016, p. 182). Even so, levels of dental care in some facilities are based on a piecemeal system  
44 devised primarily by court decisions (Douds & Ahlin, 2016). To move beyond the basic dental needs of  
45 prisoners, some have called for correctional systems to establish a national standard of care that is similar  
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3 to the NCCHC's (2018) diagnostic and therapeutic guidelines. Such a national standard centers on the  
4 principle of "elimination of dental disease," which would serve the public health needs of all of society  
5  
6 (Makrides & Shulman, 2002, p. 304). It is important to note, however, as indicated above, a national  
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8 standard of care to eradicate "dental disease" is not legally required with respect to finding prison officials  
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10 and correctional dental providers liable under Section 1983. Such standardization would provide more  
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12 comprehensive dental care for inmates than what the U.S. Constitution requires, which paradoxically raises  
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14 ethical questions since the U.S. Supreme Court has held repeatedly that "[t]he [Eighth] Amendment must  
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16 draw its meaning from the evolving standards of decency that mark the progress of a maturing society"  
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18 (*Trop v. Dulles*, 1958, p. 101; Matusiak et al., 2014, p. 256).  
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24 In terms of policy, this article recommends nine best practices for correctional dental practitioners  
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26 on the basis of an extensive analysis of case law from the U.S. Circuit Courts of Appeals: (1) respond  
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28 reasonably and adequately to legitimate requests for serious dental conditions; (2) prevent lengthy and  
29  
30 unjustified delays in providing dental care; (3) provide timely intervening treatment to prevent permanent  
31  
32 dental damage; (4) eliminate delays in dental care resulting in unnecessary pain and suffering; (5) prioritize  
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34 dental care needs by triaging those that do not pose long-term deleterious effects; (6) allocate resources for  
35  
36 dental care by assessing trivial or non-serious dental conditions; (7) create and implement policies under  
37  
38 budget constraints that prioritize treatment based on the seriousness and urgency of dental needs; (8) rely  
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40 on the professional judgment of the dental provider regarding the appropriate treatment even when the  
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42 inmate disagrees; and (9) act in good faith following treatment procedures and protocols in existing jail and  
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44 prison policies.  
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49 Future research should look at how state tort law imposes liability on prison dental care providers.  
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51 More needs to be known about correctional facilities that have accredited dental programs and whether  
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3 accreditation reduces civil liability. Studies need to uncover the stage of the incarceration experience that  
4 places dentists and correctional authorities most at risk of civil liability, during initial intake and assessment,  
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6 prison transfers and court dates, diagnostic and treatment decision-making, and/or segregation and lock  
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8 downs. Additionally, continuity of correctional dental care needs further study in the nation's jails, lockup  
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10 facilities, and prisons, regarding treatment plans and scheduling, follow-up care, specialty care,  
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12 maintenance of oral health care records, wellness education, oral literacy, and dental restoration (Neville,  
13  
14 2015). Also, comparative examinations of state correctional policies on dental care would enable  
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16 determination of compliance with federal mandates and national standards of oral health needs.  
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21 Future research could benefit from surveys of recognized experts in correctional health, and/or a  
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23 sample of correctional dentists regarding dental practices in jails and prisons. Correctional dentists,  
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25 however, are bound by laws addressing health care communication and privacy, such as the Health  
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27 Insurance Portability and Accountability Act ("HIPAA") of 1996 (Goldstein, 2014). Without a patient's  
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29 consent, correctional dentists "may only share medical information to a third party for treatment, payment,  
30  
31 or health care operations" and "disclosure to legal counsel is not included in these criteria" (Beckman,  
32  
33 2017, p. 879). Informed consent required by the Nuremberg Code of 1947, the 1979 Belmont Report, and  
34  
35 U.S. Department of Health and Human Services ("HHS") must be obtained from the incarcerated clinical or  
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37 survey participants (Ahalt, Sudore, Bolano, Metzger, Darby, & Williams, 2017). Modifications to informed  
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39 consent forms may be necessary to increase inmate comprehension such as "lowering the reading level of  
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41 forms," "extended discussion interventions" (e.g., semistructured interviews with study staff and an  
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43 additional meeting with a third-party expert), "multimedia interventions" (e.g., interactive computer programs  
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45 that replace informed consent forms and follow-up informational videos), and "test/feedback interventions"  
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47 (e.g., teach-to-goal) (Ahalt et al., 2017, p. 865)  
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