Legal Eye

July 1, 2005 By Catherine Hanssens

I’m in jail and keep having trouble getting my HIV meds. What can I do? Do prisoners have any legal rights?
—Inmate 911

Dear Inmate,
The U.S. constitution’s ban on cruel and unusual punishment prohibits denying necessary medical care to inmates. Jails and prisons must meet your health needs—physical, dental or mental. You can’t make a court case of every delay in care, but unreasonable HIV-med gaps that risk serious health consequences are grounds for legal action.

Court isn’t the place to start, however. First, try to get an outside medical professional (e.g., your former HIV doc) to call jail honchos and explain your danger (“If he misses too many doses, resistance, sickness and liability set in…”), with a follow-up letter copied to the jail’s warden and lawyer. If you had a regimen before lock up, get someone to deliver sealed prescriptions to appropriate prison officials; try to get an outside advocate to send another letter if necessary. Submit jail grievance forms (keep copies and a journal) whenever meds are delayed or denied, appealing all ignored or denied requests. The federal Prison Litigation Reform Act (PLRA) requires these preliminaries. (Search “PLRA” at www.aclu.org, or write to ACLU National Prison Project, 915 15th St. NW, 7th Floor, Washington, DC 20005 for PLRA requirements; never even consider a lawsuit before knowing them.)

When all else fails, sue. In addition to civil- rights protections, federal disability laws—the American Disabilities Act and the Rehabilitation Act of 1973—prohibit inferior treatment of people with HIV, including prisoners. Prison lawsuits are tough—winning them without medical and law experts is unlikely—and you’ll need local legal advice to ensure you file before deadline. For advocates, try www.criminal.findlaw.com/crimes/
criminal_help/prisoners.html. Good luck.

Catherine Hanssens, JD, founded the Center for HIV Law and Policy. Her column offers general guidance and shouldn’t substitute for a lawyer’s counsel. Send your own legal queries to law@poz.com.

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