How the Courts View ACA Accreditation

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The American Correctional Association (ACA), a private non-profit organization composed mostly of current and former corrections officials, provides accreditation to prisons, jails and other detention facilities.

According to the ACA, "Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings."

To achieve accreditation a facility must comply with 100% of applicable mandatory standards and at least 90% of applicable non-mandatory standards. Under some circumstances, the ACA may waive certain accreditation standards. There are different standards for different types of facilities, such as adult correctional institutions, jails, juvenile detention facilities and boot camp programs.

The standards are established by the ACA with no oversight by government agencies, and the organization basically sells accreditation by charging fees ranging from $8,100 to $19,500, depending on the number of days and auditors involved and the number of facilities being accredited. [See, e.g.: PLN, Aug. 2014, p.24].

The ACA relies heavily on such fees; it reported receiving more than $4.5 million in accreditation fees in 2011 – almost half its total revenue that year. The organization thus has a financial incentive to provide as many accreditations as possible.

Notably, the accreditation process is basically a paper review. The ACA does not provide oversight or ongoing monitoring of correctional facilities, but only verifies whether a facility has policies that comply with the ACA's self-promulgated standards at the time of accreditation. Following initial accreditation, facilities are re-accredited at three-year intervals.

As a result, some prisons have experienced significant problems despite being accredited. For example, the Otter Creek Correctional Center in Kentucky, operated by Corrections Corporation of America (CCA), was accredited by the ACA in 2009 when at least five prison employees were prosecuted for raping or sexually abusing prisoners. [See: PLN, Oct. 2009, p.40]. Kentucky and Hawaii withdrew their female prisoners from Otter Creek following the sex scandal, but the facility did not lose its ACA accreditation. The prison has since closed.

The privately-operated Walnut Grove Youth Correctional Facility in Mississippi was accredited by the ACA even though the U.S. Department of Justice found "systemic, egregious practices" at the facility, including "brazen" sexual activity between staff and offenders that was "among the worst that we've seen in any facility anywhere in the nation." When approving a settlement in a class-action lawsuit against Walnut Grove in 2012, a U.S. District Court wrote that the facility had "allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk." [See: PLN, Nov. 2013, p.30].

More recently, the ACA-accredited Idaho Correctional Center, operated by CCA, has been cited for extremely high levels of violence, understaffing and fraudulent reporting of staffing hours. A video of CCA guards failing to intervene while one prisoner was brutally beaten by another has been widely circulated. CCA was held in contempt by a federal court in September 2013 for violating a settlement in a class-action lawsuit against the facility, and a separate suit alleges that CCA employees collaborated with gang members to maintain control at the prison. The state took control of the Idaho Correctional Center on July 1, 2014 and the FBI is currently conducting an investigation into CCA's staffing fraud. [See: PLN, Oct. 2013, p.28; May 2013, p.22; Feb. 2012, p.30]. Regardless, the facility remains accredited by the ACA.

Prisoners who litigate prison and jail conditions cases sometimes try to raise claims related to violations of ACA standards, even though the standards alone do not create enforceable rights. On the other side of such lawsuits, the ACA says the benefits of accreditation for corrections officials include "a stronger defense against litigation through documentation and the demonstration of a 'good faith' effort to improve conditions of confinement."

But how do the courts view ACA accreditation – and comparable accreditation of prison and jail medical services by the National Commission on Correctional Health Care (NCCHC) – both in terms of claims alleging violations of accreditation standards and as a defense by prison officials?

The U.S. Supreme Court noted in Bell v. Wolfish, 441 U.S. 520, 543 n.27 (1979) that accreditation does not determine constitutionality. With respect to standards established by organizations such as the American Correctional Association, the Court wrote: "[W]hile the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question."

In Grenning v. Miller-Stout, 739 F.3d 1235, 1241 (9th Cir. 2014), the defendants contended that the level of lighting in a prisoner's cell "passed the national accreditation standards of the ACA...." However, the Ninth Circuit said it was "unable to determine ... the significance of the 'accreditation' by the ACA. We are not informed of the standards of the ACA, nor are we informed about the thoroughness of the testing performed" at the prison. The mere fact of ACA accreditation did not entitle the defendants to summary judgment on the prisoner's Eighth Amendment claim. [See article on p.40].

The Fifth Circuit stated in Gates v. Cook, 376 F.3d 323, 337 (5th Cir. 2004) that it was "absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the ACA whenever it has relevant standards. Additionally, the ACA's limited inspections are not be [sic] binding as factual findings on the magistrate or on this court. While compliance with ACA's standards may be a relevant consideration, it is not per se evidence of constitutionality."

Further, in a lawsuit challenging inadequate medical care in the jail system in Maricopa County, Arizona, a federal district court wrote: "The Board Defendants argue that because the parties stipulated to incorporate in the Amended Judgment the 'essential' standards for health services in jails of the National Commission on Correctional Health Care ('NCCHC'), Correctional Health Services adopted policies conforming to NCCHC standards, and Correctional Health Services substantially complies with all of the 'essential' NCCHC standards, they have met their burden in proving there are no current and ongoing violations of pretrial detainees' federal rights."

However, "The Court decides independently whether there are current and ongoing violations of pretrial detainees' constitutional rights and does not rely on any determinations made by an accrediting organization such as the NCCHC. The NCCHC 'essential' standards do not specifically focus on all of pretrial detainees' constitutional rights."

Additionally, the district court noted that "Some of the NCCHC 'essential' standards address administrative functions and are not narrowly tailored to meet constitutional requirements," and "[a]lthough the NCCHC standards may be helpful for a jail, the Court makes its findings based on the Eighth and Fourteenth Amendments of the United States Constitution."

The court found that healthcare services provided by the defendants remained unconstitutional despite NCCHC accreditation. See: Graves v. Arpaio, 2008 U.S. Dist. LEXIS 85935 (D. Ariz. Oct. 22, 2008) [PLN, Jan. 2010, p.43; May 2009, p.28].

In Texas, a federal district court commented on accreditation of Texas Department of Criminal Justice (TDCJ) facilities by both the ACA and NCCHC.

"While TDCJ's participation in the ACA accreditation process is to be commended, accreditation, in itself, is not a clear indication that TDCJ is properly following its policies and procedures. Experts from both parties recognized the limitations of ACA accreditation," the court wrote, noting "that ACA accreditation is a tool, but not a constitutional standard."

The district court also remarked that one expert had "testified to a number of examples where a prison system was accredited by the ACA, but was, nevertheless, held by a court to be operating in an unconstitutional fashion, including prisons in Florida and the San Quentin prison in California."

With respect to accreditation by the NCCHC, the district court stated: "Rather than analyze the actual quality of the medical care received by inmates, the NCCHC's evaluation focuses on the written standards, policies, protocols, bureaucracy, and infrastructure that makes up the medical

care system [cite omitted]. Further undermining defendants' attempt to use NCCHC accreditation as a proxy for a certification of the constitutionality of its medical care is the fact that at least two of the plaintiffs' experts who testified about profound shortcomings in the quality of care in TDCJ-ID also work as NCCHC accreditors.... While NCCHC accreditation does bolster defendants' claims that its medical care system is functioning constitutionally, the accreditation simply cannot be dispositive of such a conclusion." See: Ruiz v. Johnson, 37 F.Supp.2d 855, 902, 924-25 (S.D. Tex. 1999), rev'd on other grounds, 243 F.3d 941 (5th Cir. 2001).

A U.S. District Court in Puerto Rico also found that prison medical care was unconstitutional despite accreditation by the NCCHC, with the court noting "the National Commission on Correctional Health Care in 1992 had accredited the medical care programs at four prisons and provisionally accredited four more, with several additional prisons under consideration for accreditation. However, one of the monitor's consultants, Dr. Ronald Shansky, found noncompliance with at least one essential standard at every institution the Commission had accredited." The court further observed that "During this investigation, Department of Health personnel provided the monitor's staff with credible evidence that other employees had falsified documents in support of accreditation." See: Feliciano v. Gonzalez, 13 F.Supp.2d 151, 158 n.3 (D.P.R. 1998).

A Florida district court addressed ACA accreditation in LaMarca v. Turner, 662 F.Supp. 647, 655 (S.D. Fla. 1987), appeal dismissed, 861 F.2d 724 (11th Cir. 1988), stating: "Defendants make much of the relevance to this litigation of the accreditation of prisons and [Glades Correctional Institution] in particular by the American Correctional Association. The Magistrate found that the GCI accreditation had 'virtually no significance' to this lawsuit because accredited prisons have been found unconstitutional by courts. Having considered the GCI accreditation along with the remainder of the evidence, the undersigned district court finds it of marginal relevance in this case."

And in a challenge to the adequacy of the law library at the Buena Vista Correctional Facility in Colorado, a district court stated it was "simply ludicrous" for the defendants to argue they were entitled to summary judgment because "the American Correctional Association formally accredited" the facility and ACA standards address prison law libraries. See: Boulies v. Ricketts, 518 F.Supp. 687, 689 (D. Colo. 1981).

However, other courts have taken ACA accreditation into consideration when determining the constitutionality of policies or practices at correctional facilities, such as in Yellow Horse v. Pennington County, 225 F.3d 923, 928 (8th Cir. 2000) (suicide prevention procedures) and Grayson v. Peed, 195 F.3d 692, 697 (4th Cir. 1999) (death of restrained prisoner).

Therefore, incarcerated litigants should use caution when basing arguments on violations of accreditation standards rather than violations of constitutional or statutory rights, and should note the above case law when corrections officials raise accreditation as a defense in lawsuits related to conditions of confinement in prisons and jails.