

Diabetes Forecast September 2003

What if you were arrested and not given access to your insulin? It happened in Philadelphia—again and again. But it won't happen anymore.

by Marie McCarren

A Philadelphia club owner walks into a lawyer's office and tells his tale: He was arrested for a liquor code violation. He uses an insulin pump. He told the arresting officer and later his jailors that he had diabetes and that he needed his medical supplies and some food in his cell.

He didn't get them.

First, his blood sugar dropped too low. A man in another cell called for help for him. According to the man, the police officer's reaction was, "He doesn't look so bad. Call me if he passes out." Steve Rosen was finally given something sweet to drink. Two hours later, his pump ran out of insulin. He told the cell room officer. Nothing was done. Finally, after 23 hours in custody and nearly 12 hours after his pump had run dry, Rosen was able to convince the police he was in serious medical distress. He was transferred to the ER. His blood sugar level was 446, his blood pressure was 200/120, and he had ketoacidosis.

Someone familiar with type 1 diabetes might have been shocked and outraged at the treatment Rosen got. And the lawyer, Alan Yatvin, was familiar with diabetes. But he wasn't shocked. Because this wasn't the first such case Yatvin had worked on.

In 1982, after a lawsuit over a person falsely imprisoned while experiencing a severe low blood sugar reaction, the City of Philadelphia agreed to implement "policies and practices with respect to the identification and handling of...diabetic emergencies...in the Philadelphia Police Department."

Yet in 1987, Betty Jean Davis, who had type 1 diabetes and was wearing a medical-alert bracelet, was arrested and held for 24 hours without access to insulin. She made bail and was released. On her walk home she collapsed. Within a day, she was dead.

Yatvin, known for his work on police misconduct cases, filed suit on behalf of Davis' estate. During the process, it was discovered that the Police Detention Unit personnel had not received training about diabetes.

In 1997, Yatvin got another case. Zbigniew Czaja, who has type 1 diabetes, had been arrested on a misdemeanor. He was held in police custody for nearly 48 hours without access to insulin. Czaja developed ketoacidosis and was hospitalized for 24 hours. Czaja sued the City. As part of the settlement, the City agreed to examine the Police Department's policies for handling people with diabetes in police custody.

Obviously, the discovery in the Davis case that the detention unit matrons were not being trained did not prompt the City to then train all personnel. And their agreement to examine policies after Czaja's lawsuit didn't translate into change. Because here was Rosen, telling Yatvin a story that was by now all too familiar.

"At this point, I knew there was a systemic problem," says Yatvin. "The Davis case should have corrected the problem at the main detention unit. Czaja was supposed to fix the problem in the districts.

"I thought, 'Enough is enough.' This incremental approach is not working, and this is the case to get this straightened out once and for all."

So Yatvin wasn't thinking of a simple damages lawsuit, like in the Davis and Czaja cases. Yatvin was thinking: class action.

Yatvin filed Rosen's case as a federal civil rights claim. Although he had only Rosen, he filed it as a class action, because he knew there had to be other people who had similar stories.

The Philadelphia Inquirer ran an article on the case. "We get calls," Yatvin says. "We hear some more horror stories." Six more people, essentially the same story: All had told the police they had diabetes. All were denied access to insulin, medications, or food. All of them ended up in the hospital.

Yatvin filed an amended complaint to a class action brought on behalf of "the seven named plaintiffs and all

other people with diabetes who have or who will in the future be deprived of their Constitutional rights to be free from deliberate indifference to their serious medical needs while in the custody of the Philadelphia Police Department."

Yatvin felt fairly confident that he could get compensation for the people who had been harmed in the past. But to get a court order that the City must change its policies and must educate police personnel about diabetes, and prove that they have done and will continue to do so, Yatvin needed an injunctive class: a group that is in danger of being harmed in the future.

He couldn't very well have the plaintiffs in the damages class appear before the judge and say that they planned to be arrested again in the future and therefore needed to be protected.

So Yatvin put out a feeler. He asked the American Diabetes Association to consider being a plaintiff in the lawsuit. Because the Association has over 400,000 members nationwide and provides services and advocacy on behalf of more than 135,000 people with diabetes in the Philadelphia area alone, the Association would have legal "standing" to represent people with diabetes who would be arrested in Philadelphia in the future.

The Association had rarely been involved as an actual party in a lawsuit. Traditionally, its volunteers have acted as either behind-the-scenes advisors or as an *amicus curiae* (friend of the court) by writing support briefs. If they agreed, it would be the first time the Association would be a named party in a class action suit.

Yatvin sweetened the deal by bringing in a "name": David Rudovsky, Yatvin's mentor and frequent co-counsel. "Dave Rudovsky is the godfather of police misconduct litigation," says Yatvin. "He literally wrote the book."

The Association agreed to join the case for two reasons. One, the Association had confidence in the legal team of Yatvin and Rudovsky. "They are top-notch civil rights lawyers," says Michael Greene, a former chair of the Association's Legal Advocacy Subcommittee, a former chair of the board of the Association, and the lead volunteer for the Association on this case.

And the other, essential reason: the case itself. "The facts were outrageous," says Greene.

The complaint was amended to add the Association as a party, and a claim for discrimination under the Americans with Disabilities Act was added to the case.

Judge Petrese Tucker determined that the case could go forward as a class action, with two classes: a damages class for the people who had been harmed in the past; and an injunctive class to prevent future injuries. Because of the statute of limitations, the damages class was defined as people with diabetes in the custody of the Philadelphia Police Department between Feb. 11, 1998 and March 31, 2001 who claim they were denied "timely and appropriate medical care or diet."

To find these people, Yatvin was given access to the police database. Under its own regulations, the police department is supposed to obtain a completed medical questionnaire for each person arrested, which includes a question on diabetes.

"That's good," says Yatvin. "But also on some level, troubling. They're actually identifying people with diabetes but still not doing anything."

Through a mailing to over 4,000 people who were arrested in that three-year period who identified themselves as having diabetes, Yatvin got 275 people who could join the damages class. One was a 68-year-old woman with no prior record who was accused by her drug-dealing neighbors of pointing a gun at them. By the time the prosecutor declined the charges, Mary Ellen Jones, who has type 2 diabetes, had spent 30 hours in custody without access to her medication.

Yatvin and Rudovsky represented both the damages class as well as the ADA and the injunctive class.

Approximately two years into litigation, Rudovsky asked Morgan Lewis LLP, a large law firm with extensive class-action experience, to join them in pursuing the case, and to represent only ADA. The prestigious firm agreed to represent ADA pro bono (at no cost) and assigned three lawyers to the case: Joseph Fay, Kenneth Kulak, and Joseph Dever. All told, the firm devoted over 300 hours to the case—efforts that proved invaluable in

moving the case toward a successful conclusion.

Finally this past March, after a series of conferences with the judge, the parties reached agreements.

One requires the City to pay \$200 to \$5,000 in compensatory damages to those who were harmed in the past.

The injunctive agreement, in which the American Diabetes Association was a plaintiff, includes extensive provisions to make sure people with diabetes have access to needed medication, food, and medical personnel, and that police officers receive training so that they are able to respond to the medical needs of people with diabetes. (For more details, see diabetes.org/settlement.) The agreement also enables the Association to monitor the City's compliance.

The police training should mean that Yatvin won't get any more of these cases. He always felt it was ignorance and poor supervision, not malice, that had caused the problems in the past.

"People don't understand the ramifications of the disease," he says.

Perhaps now, at long last, the City of Philadelphia does.

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Marie McCarren is the author of three books in ADA's Fast Facts series: *Insulin For Type 2 Diabetes: Fears, Myths, And Truths*; *Carb Counting Made Easy*; and *Heart Healthy Despite Diabetes*. She is also editor of *A Field Guide to Type 1 Diabetes*. She lives in Arnold, Md.