**5.4 Civil Rights – 42 U.S.C. § 1983 Claims – Eighth or**

**Fourteenth Amendment Claim – Convicted Prisoner or Pretrial**

**Detainee Alleging Indifference to Serious Medical Need**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, intentionally violated [his/her] rights under the United States Constitution.

Specifically, [name of plaintiff] claims that [name of defendant], while working as an employee of [name of corrections facility], deliberately ignored [his/her] serious medical need and caused injury to [him/her].

The United States Constitution provides that anyone who is imprisoned is entitled to necessary medical care, and a corrections officer violates that right by being deliberately indifferent to a prisoner’s serious medical need known to the officer.

A person may sue in this court for an award of money damages against anyone who, under color of law, intentionally violates that person’s rights under the United States Constitution.

To succeed on this claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That [name of plaintiff] had a serious medical need;

Second: That [name of defendant] knew that [name of plaintiff] had a serious medical need that posed a risk of serious harm;

Third: That [name of defendant] failed to [provide/get] necessary medical care for [name of plaintiff]’s serious medical need in disregard or indifference to the risk of serious harm;

Fourth: That [name of defendant] was acting under color of law when [he/she] failed to [provide/get] necessary medical care for [name of plaintiff]’s serious medical need; and

Fifth: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries.

For the first element, [name of plaintiff] must prove a serious medical need. A “serious medical need” is a medical condition that a physician has diagnosed as requiring treatment or a medical condition that is so obvious that even a lay person would easily recognize the need for medical care. In either case, the medical condition must have posed a substantial risk of serious harm to [name of plaintiff] if left unattended.

For the second element, you must determine whether [name of defendant] actually knew [name of plaintiff] had a serious medical need and required immediate attention. Put another way, it is not enough to show that [name of defendant] was careless or neglected [his/her] job duties and should have known about [name of plaintiff]’s need. And it is not enough to show that a reasonable person would have known of the serious medical need.

For the third element, to decide whether [name of defendant] was deliberately indifferent to [name of plaintiff]’s serious medical need, you may consider all the relevant circumstances including the seriousness of [name of plaintiff]’s injury, the length of any delay in providing [name of plaintiff] medical care, and the reasons for any delay. But the law does not require that [name of plaintiff] receive the most advanced medical response to [his/her] serious medical need.

[For the fourth element, the parties have agreed that [name of defendant] acted under color of law. So you should accept that as a proven fact.]

[For the fourth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when acting within the limits of lawful authority. [He/She] also acts under color of law when [he/she] claims to be performing an official duty but [his/her] acts are outside the limits of lawful authority and abusive in manner, or [he/she] acts in a way that misuses [his/her] power and is able to do so only because [he/she] is an official.]

For the fifth element, you must determine whether [name of defendant]’s conduct caused [name of plaintiff]’s injuries. [Name of defendant]’s conduct caused [name of plaintiff]’s injuries if [name of plaintiff] would not have been injured without [name of defendant]’s conduct, and the injuries were a reasonably foreseeable consequence of [name of defendant]’s conduct.

If you find in [name of plaintiff]’s favor with respect to each of the facts that [he/she] must prove, you must then decide the issue of [name of plaintiff]’s compensatory damages. To recover compensatory damages, [name of plaintiff] must prove by a preponderance of the evidence that [he/she] wouldn’t have been damaged without [name of defendant]’s conduct, and the damages were a reasonably foreseeable consequence of [name of defendant]’s conduct.

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for all of [name of plaintiff]’s damages – no more, no less. You must not impose or increase these compensatory damages to punish or penalize [name of defendant]. And you must not base these compensatory damages on speculation or guesswork.

But compensatory damages are not restricted to actual loss of money – they also cover the physical aspects of the injury. [Name of plaintiff] does not have to introduce evidence of a monetary value for intangible things like physical pain. You must determine what amount will fairly compensate [him/her] for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

You should consider the following elements of damage, to the extent you find that [name of Plaintiff] has proved them by a preponderance of the evidence, and no others: [List recoverable damages, *e.g.*:

 The reasonable value of medical care and supplies incurred by [name of plaintiff] which were reasonably needed and actually obtained, and the present value of medical care and supplies that [name of plaintiff] is reasonably certain to need in the future

 [Name of plaintiff]’s physical injuries that are more than minimal, including ill health, physical pain and suffering, disability, disfigurement, discomfort, and any such physical harm that [name of plaintiff] is reasonably certain to experience in the future. You may not award compensatory damages for minor physical injuries such as cuts, scrapes, and bruises;

 Emotional injury if accompanied by more than minimal physical injury to [name of plaintiff];

 Wages, salary, profits, and the reasonable value of working time that [name of plaintiff] has lost because of [his/her] inability or diminished ability to work, and the present value of such compensation that [name of plaintiff] is reasonably certain to lose in the future because of [his/her] inability or diminished ability to work; and

The reasonable value of [name of plaintiff]’s property lost or destroyed as a result of [name of defendant]’s conduct.]

If you award [name of plaintiff] compensatory damages for physical injuries, you may also award [name of plaintiff] damages for mental and emotional distress, impairment of reputation, and personal humiliation to the extent that [he/she] proves these damages by a preponderance of the evidence.

[**Nominal Damages:** You may award $1.00 in nominal damages and no compensatory damages if you find that: [name of plaintiff] has submitted no credible evidence of injury; or [name of plaintiff]’s injuries have no monetary value or are not quantifiable with any reasonable certainty.]

[**Mitigation of Damages:** Anyone who claims loss or damages as a result of an alleged wrongful act by another has a duty under the law to “mitigate” those damages – to take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage.

So, if you find that [name of defendant] has proved by a preponderance of the evidence that [name of plaintiff] did not seek out or take advantage of a reasonable opportunity to reduce or minimize the loss or damage under all the circumstances, you should reduce the amount of [name of plaintiff]’s damages by the amount that [he/she] could have reasonably received if [he/she] had taken advantage of such an opportunity.]

[**Punitive Damages:** To be used only for claims against individual defendants if plaintiff offers evidence of physical injury: [Name of plaintiff] also claims that [name of individual defendant]’s acts were done with malice or reckless indifference to [name of plaintiff]’s federally protected rights, which would entitle [name of plaintiff] to an award of punitive damages in addition to compensatory damages. [Name of plaintiff] must prove by a preponderance of the evidence that [he/she] is entitled to punitive damages.

If you find for [name of plaintiff] and find that [name of defendant] acted with malice or reckless indifference to [name of plaintiff]’s federally protected rights, the law allows you, in your discretion, to award [name of plaintiff] punitive damages as a punishment for [name of defendant] and as a deterrent to others.

[Name of defendant] acts with malice if [his/her] conduct is motivated by evil intent or motive. [Name of defendant] acts with reckless indifference to the protected federal rights of [name of plaintiff] when [name of defendant] engages in conduct with a callous disregard for whether the conduct violates [name of plaintiff]’s protected federal rights.

If you find that punitive damages should be assessed, you may consider the evidence regarding [name of defendant]’s financial resources in fixing the amount of punitive damages to be awarded. [You may also assess punitive damages against one or more of the individual Defendants, and not others, or against one or more of the individual Defendants in different amounts.]]

**NOTE:** Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Number 5.8) for use in actions brought under 42 U.S.C. §1983. Three types of Model Jury Interrogatory Forms are provided: (A) a simplified Interrogatory Form for use in most civil right actions; (B) an Interrogatory Form for use in actions that do not require application of the Prison Litigation Reform Act, and (C) an Interrogatory Form for use in actions that do require application of the Prison Litigation Reform Act.