**5.8**

**Civil Rights – 42 U.S.C. § 1983 Claims – Eighth or** **Fourteenth Amendment Claim – Convicted Prisoner or Pretrial Detainee Alleging Deliberate Indifference to Serious Medical Need**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, was deliberately indifferent to [his/her] serious medical need and caused injury to [him/her] in violation of [his/her] [Eighth/Fourteenth] Amendment rights.

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/pretrial detainee’s] known serious medical need.

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 deliberate indifference to the risk of serious harm;

Fourth: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries; and

Fifth: That [name of defendant] acted under color of law. [The parties have agreed that [name of defendant] acted under color of law, so you should accept that as a proven fact.]

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. However, you may find from circumstantial evidence that [name of defendant] knew about the risk of serious harm. Further, if the risk of serious harm was obvious, you may, based on that, find that [name of defendant] knew about that risk.

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, 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 or if [name of plaintiff]’s injuries were worsened by [name of defendant]’s conduct, and the injuries were a reasonably foreseeable consequence of [name of defendant]’s conduct.

[For the fifth 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.]

**NOTE**: Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Pattern Instruction 5.13) 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.