**ANNOTATIONS AND COMMENTS**

1. **Eighth and/ Fourteenth Amendment**

Claims involving the mistreatment of pretrial detainees while in custody are governed by the Fourteenth Amendment’s Due Process Clause, and similar claims by convicted prisoners are governed by the Eighth Amendment’s Cruel and Unusual Punishment Clause. *See, e.g.*, *Lumley v. City of Dade City, Fla.*, 327 F.3d 1186, 1196 (11th Cir. 2003). Regardless, with respect “to providing pretrial detainees with such basic necessities as food, living space, and medical care the minimum standard allowed by the due process clause is the same as that allowed by the eighth amendment for convicted persons.” *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1574 (11th Cir. 1985); *see also Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996) (“[D]ecisional law involving prison inmates applies equally to cases involving arrestees or pretrial detainees.”). Accordingly, this instruction applies to claims of deliberate indifference to serious medical need by both pretrial detainees and convicted prisoners.

1. **Elements of Claim of Deliberate Indifference to Medical Need**

The elements of this claim are derived from *Youmans v. Gagnon*, 626 F.3d 557, 563-64 (11th Cir. 2010), and *Mann v. Taser Int’l, Inc.*, 588 F.3d 1291, 1306-07 (11th Cir. 2009). Specifically, a plaintiff must satisfy an objective component by showing that she had a serious medical need and a subjective component by showing that the prison official acted with deliberate indifference to that need. *See, e.g.*, *Goebert v. Lee Cty.*, 510 F.3d 1312, 1326 (11th Cir. 2007). To establish the subjective component, the plaintiff must prove (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than either mere or gross negligence. *Compare Youmans*, 626 F.3d at 564 (gross negligence), *with Mann*, 588 F.3d at 1307 (mere negligence); *see also Granda v. Schulman*, 372 F. App’x 79, 82 n.1 (11th Cir. 2010) (noting the intra-circuit split regarding the degree of negligence); *Townsend v. Jefferson Cty.*, 601 F.3d 1152, 1158 (11th Cir. 2010) (noting the split but concluding that *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996), first stated the more-than-gross-negligence standard and, as the earliest case, controls). The second and third elements of the instruction address the subjective component. To avoid the issue of whether more than mere or more than gross negligence is required, the instruction suggests factors the jury can consider in determining whether a defendant was deliberately indifferent. *See Goebert*, 510 F.3d at 1327. The second element in the instruction acknowledges that subjective knowledge can be demonstrated in “the usual ways,” such as “inference from circumstantial evidence,” and that a factfinder may infer subjective knowledge from “the very fact that the risk was obvious.” *Farmer v. Brennan*, 511 U.S. 825, 842 (1994); *Goebert*, 510 F.3d at 1327.

1. **Different Types of Claims for Deliberate Indifference to Medical Needs**

The paragraph explaining the third element is well-suited for a claim based on a delay in providing medical care. *See Goebert*, 510 F.3d at 1326-27; *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). However, there are other ways in which defendants may fail to provide adequate medical care. *McElligott*, 182 F.3d at 1255. For example, a defendant may simply deny medical care altogether, *Lancaster v. Monroe Cty.*, 116 F.3d 1419, 1425 (11th Cir. 1997), *overruled on other grounds* *by LeFrere v. Quezada*, 588 F.3d 1317, 1318 (11th Cir. 2009), or provide treatment “so cursory as to amount to no treatment at all,” *Mandel v. Doe*, 888 F.2d 783, 789 (11th Cir. 1989). Thus, a court may wish to adjust the paragraph explaining the third element depending on the type of deliberate indifference claim at issue.

1. **Causation**

For additional information regarding the instruction on causation, see the annotation following Pattern Instruction 5.3.

1. **Damages**

For the damages instruction, see Pattern Instruction 5.13.