**9.30 Particular Rights—Fourteenth Amendment—Pretrial Detainee’s**

**Claim Re Conditions of Confinement/Medical Care**

 The plaintiff has brought a claim under the Fourteenth Amendment to the United States Constitution against the defendant. The plaintiff asserts the defendant failed to provide [safe conditions of confinement] [needed medical care].

 To prevail on this claim, the plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

 1. The defendant made an intentional decision regarding [the conditions under which the plaintiff was confined] [the denial of needed medical care];

 2. The [conditions of confinement] [denial of needed medical care] put the plaintiff at substantial risk of suffering serious harm;

 3. The defendant did not take reasonable available measures to abate or reduce the risk of serious harm, even though a reasonable officer under the circumstances would have understood the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and

 4. By not taking such measures the defendant caused the plaintiff’s injuries.

 With respect to the third element, the defendant’s conduct must be objectively unreasonable.

**Comment**

 In *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc), the Ninth Circuit overruled *Clouthier v. County. of Contra Costa*, 591 F.3d 1232, 1253-54 (9th Cir. 2010), “to the extent that it identified a single deliberate indifference standard for all § 1983 claims . . . .” *Castro* at 1070. The Ninth Circuit in *Castro* also approved a jury instruction for a pretrial detainee’s claim of failure to protect. *See* Instruction 9.31 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Failure to Protect).

 *See also Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018) (“we hold that claims for violations of the right to adequate medical care ‘brought by pretrial detainees against individual defendants under the Fourteenth Amendment’ must be evaluated under an objective deliberate indifference standard”) (extending *Castro*); *Sandoval v. Cnty. of San Diego*, 985 F.3d 657 (9th Cir. 2021) (applying *Gordon* to nurses’ alleged failure to provide proper care to pretrial detainee); *Gordon v. Cnty. of Orange*, 6 F.4th 961 (9th Cir. 2021) (reiterating objective standard). The Ninth Circuit has now held “pre-trial detainees do have a right to direct-view safety checks sufficient to determine whether their presentation indicates the need for medical treatment.” *Gordon*, 6 F.4th at 973. While there is “no § 1983 liability for simply acting contrary to prison policy,” the standardized medical procedures of a prison can “help to underscore” that prison officials “had access to facts from which a reasonable person would infer” that a particular patient “was at serious medical risk.” *Russell v. Lumitap*, 31 F.4th 729, 742 (9th Cir. 2022).

In *Alexander v. Nguyen*, 78 F.4th 1140, 1144 (9th Cir. 2023), the Ninth Circuit noted that “the law governing pretrial detainees’ claims of inadequate medical care and other dangerous conditions of confinement is still developing in the wake of the Supreme Court’s decision in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015).” The court added that under the third element discussed in the 2018 decision in *Gordon*, “[t]he plaintiff must ‘prove more than negligence but less than subjective intent—something akin to reckless disregard.’” *Alexander*, 78 F.4th at 1145 (quoting *Gordon*, 888 F.3d at 1125).

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