

## 7.12 EIGHTH AND FOURTEENTH AMENDMENTS: FAILURE TO PROVIDE MEDICAL ATTENTION - ELEMENTS

To succeed on his claim of failure to provide medical attention, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Plaintiff had a serious medical need;
2. Defendant was deliberately indifferent to Plaintiff's serious medical need;
3. Defendant's conduct caused harm to Plaintiff;
- [4. Defendant acted under color of law].

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff has failed to prove any one of these things by a preponderance of the evidence, then you should find for Defendant, and you will not consider the question of damages.

### Committee Comments

a. **Authority:** *Farmer v. Brennan*, 511 U.S. 825 (1994). Though *Farmer* is an Eighth Amendment case involving a convicted prisoner, the Seventh Circuit has held that the same standard applies in Fourteenth Amendment cases involving pretrial detainees. *See, e.g., Board v. Farnham*, 394 F.3d 469, 477-478 (7th Cir. 2005); *Jackson v. Illinois Medi-Car, Inc.*, 300 F.3d 760, 764 (7th Cir. 2002); *Higgins v. Correctional Medical Services of Illinois, Inc.*, 178 F.3d 508, 511 (7th Cir. 1999); *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1040 (7th Cir. 1998).

b. **Under Color of Law:** The fourth element should be eliminated if the "color of law" issue is not in dispute.

c. **Deliberate Indifference:** This instruction must be used in conjunction with the definition of "deliberately indifferent" in Instruction No. 7.14.

d. **Serious Medical Need:** This instruction must be used in conjunction with the definition of "serious medical need" in Instruction No. 7.13, unless this element is not in issue.