Feature Article
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Inadequate Medical Care Under the Eighth and Fourteenth Amendments: A Distinction Without a Difference?

“We cannot reason ourselves out of our basic irrationality. All we can do is to learn the art of being irrational in a reasonable way.”
—Aldous Huxley

Individuals detained by the government are guaranteed certain, minimal protections by the U.S. Constitution. Those protections vary, however, depending on the nature of their detention. Pretrial detainees, for instance, are guaranteed adequate medical care under the Fourteenth Amendment’s Due Process Clause. Collins v. Al-Shami, 851 F.3d 727, 731 (7th Cir. 2017). If convicted, however, prisoners are ensured adequate medical care by the Eighth Amendment’s prohibition against the “unnecessary and wanton infliction of pain.” Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)). Formerly, a claim that a state actor had violated either guarantee to adequate medical care was adjudicated under the same deliberate indifference standard. See, e.g., Collins, 851 F.3d at 731. Regardless of the applicable amendment, the standard was identical.

The U.S. Supreme Court’s holding in Kingsley v. Hendrickson, however, suggested that a change of course was necessary. Kingsley v. Hendrickson, 576 U.S. 389 (2015). The Kingsley Court distinguished a convicted prisoner’s Eighth Amendment excessive force claim from that of pretrial detainee’s Fourteenth Amendment excessive force claim. Kingsley, 576 U.S. 389, 135 S. Ct at 2473. Without directly addressing medical care, the Court noted that “[t]he language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less ‘maliciously and sadistically.’” Kingsley, 135 S. Ct. at 2475 (quoting Ingraham v. Wright, 430 U.S. 651, 671-72, n.40 (1977)). Consequently, the standards appropriate for adjudicating claims under those distinct amendments are similarly distinct. Id.

The Circuit Courts of Appeals have responded to the changing headwinds in different ways. The Fifth, Eighth, and Eleventh Circuit Courts of Appeals have held that the Kingsley ruling was limited to excessive force claims, and therefore, did not impact the deliberate indifference standard for inadequate medical care and other constitutional claims. See Alderson v. Concordia Parish Corr. Facility, 848 F.3d 415, 419 n.4 (5th Cir. 2017) (failure to protect claim); Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018) (deliberate indifference claim); Nam Dang v. Sheriff, Seminole Cty. Fla., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (deliberate indifference claim). Conversely, the Second and Ninth Circuits read Kingsley to apply more broadly than merely excessive force claims. See Darnell v. Pineiro, 849 F.3d 17, 34-35 (2d Cir. 2017) (medical care condition of confinement claim); Castro v. County of L.A., 833 F.3d 1060, 1070-71 (9th Cir. 2016) (failure to protect claim); Gordon v. County of Orange, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018) (inadequate medical care claim).
The Seventh Circuit recently confronted the issue, and held that *Kingsley* necessitated a new standard for Fourteenth Amendment inadequate medical care claims. *Miranda v. County of Lake*, 900 F.3d 335, 350-52 (7th Cir. 2018). Instead of deliberate indifference, courts of the Seventh Circuit must now apply the *Kingsley* standard, a two-part test, involving subjective mental state and objective reasonableness. *Miranda*, 900 F.3d at 353-54. The question remains— how does the new standard differ from the old?

**Background**

As a precursory matter, it is important to acknowledge why detainees are protected by the Fourteenth Amendment’s Due Process Clause and not the Eighth Amendment’s prohibition against cruel and unusual punishment. “The Fourteenth Amendment prohibits any state deprivation of life, liberty, or property without due process of law.” *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). A detainee is “lawfully committed to pretrial detention [and] has not been adjudged guilty of any crime.” *Bell v. Wolfish*, 441 U.S. 520, 536 (1979). “[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Bell*, 441 U.S. at 535 (citing *Ingraham*, 430 U.S. at 671-72 n.40, 674; *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 165-67, 186 (1963); and *Wong Wing v. United States*, 163 U.S. 228, 237 (1896)). During an individual’s detention, the government may “detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution.” *Bell*, 441 U.S. at 536-37. As any punishment prior to an adjudication of guilt would deprive an individual of Due Process, the Eighth Amendment is inapplicable to detainees. *Kingsley*, 135 S. Ct. at 2475. Under the Fourteenth Amendment, pretrial detainees retain the right to adequate medical care during their detention. *Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010).

The process of criminal conviction, however, supplies an individual with sufficient process to satisfy the Fourteenth Amendment. Once convicted, the state may classify him as a “criminal” and administer punishment without running afoul of the Due Process Clause. *Ingraham*, 430 U.S. at 669 (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). While the state may punish convicted offenders, they are still precluded from inflicting “cruel and unusual punishments.” U.S. Const. amend. VIII. The Supreme Court has held that “deliberate indifference to serious medical needs of prisoners” constitutes cruel and unusual punishment and is prohibited by the Eighth Amendment. *Estelle*, 429 U.S. at 104. “The Eighth Amendment’s ban on ‘cruel and unusual punishments’ requires prison officials to take reasonable measures to guarantee the safety of inmates, including the provision of adequate medical care.” *Minix*, 597 F.3d at 830 (citing *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

Both pretrial detainees and convicted prisoners are guaranteed adequate medical care under the U.S. Constitution. A breach of a standard of care, however, does not automatically result in liability against the state actor who breached it. See *Estelle*, 429 U.S. at 106 (noting that “a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment”); *accord Daniels v. Williams*, 474 U.S. 327, 330 (1986) (holding that under the Fourteenth Amendment’s Due Process Clause, “mere negligence could not [work] a deprivation in the constitutional sense.”) (quoting *Parratt v. Taylor*, 451 U.S. 527, 548 (1981) (overruled on holding that negligence could constitute a due process violation—by *Daniels*)). Rather, liability largely turns on the mental state of the defendant. Namely, “[a] prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. at 828. Under the Fourteenth Amendment, however, a state actor is liable when he acted with “purposeful, knowing, or reckless disregard
of the consequences,” and that decision to act or not to act was “objectively” unreasonable. *Miranda*, 900 F.3d at 351, 353-54. Mere negligence will not sustain a constitutional claim under either the Eighth or Fourteenth Amendment. As a further complication, the professional judgment standard, which began life in the context of Fourteenth Amendment Due Process claims, has apparently fled to Eighth Amendment deliberate indifference claims, without so much as a goodbye card to the former. *Compare Youngberg v. Romeo*, 457 U.S. 307, 322-23 (1982) (creating and applying the professional judgment standard in a Fourteenth Amendment claim brought by a civil detainee) *with Kingsley*, 135 S. Ct. at 2475 (making no mention of the professional judgment standard in a Fourteenth Amendment claim brought by a pretrial detainee) and *Collignon v. Milwaukee County*, 163 F.3d 982, 989 (7th Cir. 1998) (applying the professional judgment standard in an Eighth Amendment deliberate indifference case).

### The Eighth Amendment’s Deliberate Indifference Standard

The Eighth Amendment’s deliberate indifference standard has been well-shaped by years of case law. The Supreme Court identified the standard in the 1976 case, *Estelle v. Gamble*, and clarified its meaning in the 1994 case, *Farmer v. Brennan*, 429 U.S. at 104. The standard has two elements, one objective and one subjective. First, the plaintiff must have suffered from an objectively serious medical need. *Farmer*, 429 U.S. at 104. Next, the defendant must have acted with “deliberate indifference” in regards to that serious medical need. *Id.* This requires that defendant had actual knowledge of the serious risk to the plaintiff’s health, and consciously disregarded it. *Estelle*, 511 U.S. at 837.

This is more than mere negligence, which can be proven through constructive knowledge. *Matos v. O’Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003). That is an important distinction, as a lower standard would essentially constitutionalize malpractice claims but the Court has warned that “[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner.” *Estelle*, 429 U.S. at 106. Further, the Eighth Amendment does not guarantee perfect safety and health. *Farmer*, 511 U.S. at 834 (“It is not, however, every injury suffered . . . that translates into constitutional liability for prison officials responsible for the victim’s safety.”). The Eighth Amendment requires that prison officials respond “reasonably” to known dangers and risks to inmate health. *Id.* at 844. If an official reasonably responds to known risk, then he or she cannot be liable under the Eighth Amendment, “even if the harm ultimately was not averted.” *Id.*

By way of example, consider a prison doctor who fails to prescribe insulin to a diabetic prisoner. If the doctor knew that the prisoner had diabetes and without insulin would likely come to serious harm, but chose to ignore that risk, the doctor would be liable under the Eighth Amendment. However, if the doctor did not know the prisoner had diabetes, or knew but unintentionally forgot to prescribe him insulin, then the doctor did not consciously disregard the risk. As such, the doctor would not be liable under the Eighth Amendment. Was it medical malpractice? Maybe, but the Court has taken care to separate Eighth Amendment claims from malpractice claims. *See Estelle*, 429 U.S. at 106.

When the defendant is a healthcare provider, a court must also consider the professional judgment standard, as articulated in *Youngberg*, 457 U.S. at 322-23; *Collignon*, 163 F.3d at 989. Notwithstanding any harm the plaintiff suffered, a court will defer to the professional’s judgment and consider the medical treatment reasonable, unless “no minimally competent professional would have so responded under those circumstances.” *Collignon*, 163 F.3d at 989. A discretionary judgment, made by a medical professional, “is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment.”
Youngberg, 457 U.S. at 322-23. Overcoming the professional judgment deference does not, however, automatically entitle the plaintiff to a favorable verdict. Plaintiff still must show that the professional had actual knowledge of a serious risk to a prisoner’s health, and consciously disregarded it. Farmer, 511 U.S. at 837.

The Fourteenth Amendment’s Kingsley Standard

In Kingsley, the Supreme Court held that the Eighth Amendment did not supply the standard to a pretrial detainee’s excessive force claim. 135 S. Ct. at 2473-76. A detainee is protected by the Fourteenth Amendment’s Due Process Clause, not the Eighth Amendment. Id. A claim brought under the Due Process Clause, the Court reasoned, was to be adjudicated based on an objective standard, rather than the Eighth Amendment’s subjective standard. Id. Namely, a pretrial detainee must show that (1) the defendant acted “purposely or knowingly” and (2) that action was “objectively unreasonable.” Id. at 2468, 2473. The mental state requirement accords with Fourteenth Amendment jurisprudence, specifically the word ‘deprive’ in the Due Process Clause connot[e]s more than a negligent act” and “this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property.” Daniels, 474 U.S. at 330-31 (emphasis in original).

Subjective Mental State Under Kingsley

As previously addressed, not every Circuit read Kingsley to apply beyond pretrial detainees’ excessive force claims. The Seventh Circuit, however, found that it did. In Miranda, the Seventh Circuit held that the Kingsley standard also applied to Due Process claims brought for inadequate medical care. Miranda, 900 F.3d at 352. Under the Kingsley standard, a pretrial detainee alleging inadequate medical care must first show that “the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [the pretrial detainee’s] case.” Id. at 353 (citing Kingsley, 135 S. Ct. at 2472, 2474). This showing is necessary to prove the defendant acted “deliberately,” and not merely negligently. Id. at 353-54. After all, “negligent acts by state officials . . . are not actionable under the Due Process Clause.” Daniels, 474 U.S. at 330. As in Eighth Amendment claims, a plaintiff must also show that he suffered from an “objectively serious medical condition.” Williams v. Ortiz, 937 F.3d 936, 942 (7th Cir. 2019).

Under the Kingsley standard, however, it is important to distinguish a defendant’s knowledge from a defendant’s beliefs. While a defendant’s lack of actual awareness of the plaintiff’s serious medical need will always preclude liability under the Kingsley standard, the same cannot be said of actual awareness coupled with an erroneous belief. McCann v. Ogle Cty., 909 F.3d 881, 886 (7th Cir. 2018). Consequently, a defendant who knew of a patient’s allergy, but mistakenly believed the allergy to be harmless, will not necessarily escape liability. A mistaken belief that the allergy was harmless might preclude purposeful or knowing conduct, but not recklessness. This might potentially work mischief on the Supreme Court’s insistence that the deprivation be “deliberate” for liability to attach under the Fourteenth Amendment, but for now it is the law in the Seventh Circuit. Cf. Daniels, 474 U.S. at 331, with McCann, 909 F.3d at 886. Additionally, a mistaken belief has no bearing on the objective reasonableness analysis. If a medical provider had actual awareness of a serious medical need, but disregarded it, that is potentially enough to find recklessness. Miranda, 900 F.3d at 353 (quoting Gordon, 888 F.3d at 1125). The ultimate treatment will be evaluated objectively by considering the totality of facts and circumstances, under the next element of the Kingsley standard. McCann, 909 F.3d at 886.
Objectively Reasonable Conduct under *Kingsley*

A detainee must also show that the defendant’s conduct was objectively unreasonable. *Miranda*, 900 F.3d at 354. “This standard requires courts to focus on the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care and to gauge objectively—without regard to any subjective belief held by the individual—whether the response was reasonable.” *McCann*, 909 F.3d at 886. While the first element examines the defendant’s subjective state of mind, this second element gauges the objective reasonableness of the defendant’s ultimate action, or failure to act. *Id.* It is important to note that while a defendant’s “beliefs” and awareness are not strictly relevant to the objective reasonableness inquiry, the facts from which a defendant could or could not reasonably infer the existence of a plaintiff’s serious medical need are part of the “totality of facts and circumstances.” *Id.* This means that, although technically actual awareness is to be considered only under the purely subjective element, it also likely impacts the objective reasonableness element. Or rather, the “facts and circumstances faced by the [defendant]” that made the inference of a serious medical need obvious or likely impacts the objective element’s analysis. *Id.* So, as discussed more fully below, while *McCann* states that the objective standard is to be considered without regard for subjective belief, subjective knowledge of a condition or need is likely a foundational requirement to any objective reasonableness inquiry.

In practice, the defendant’s knowledge will usually impact both elements because, first, a medical provider cannot purposely, knowingly, or recklessly administer treatment if he does not have actual awareness of a serious medical need. Secondly, when analyzing the alleged misconduct under the lens of objective reasonableness, an absence of facts or circumstances from which a medical provider could infer the existence of a serious medical need makes a decision not to treat that need objectively reasonable. Ultimately, to satisfy the second element of the *Kingsley* standard, a plaintiff must show that, based on facts and circumstances available to the defendant at the time, the defendant’s actions were “objectively unreasonable.” *Id.* at 887.

The objective element of the *Kingsley* standard has not been well-defined in case law. That may have something to do with the conundrum intrinsic in the standard, as it relates to medical care. Namely, when is a decision to act, or failure to act, ever objectively reasonable, if that decision is predicated on recklessly disregarded knowledge of a serious medical condition? Despite being composed of one subjective and one objective element, the standard seems to prop itself up by leaning one prong against its fellow. If a plaintiff can show a reckless disregard to his serious medical condition, the defendant’s objective unreasonableness seems to logically follow. Once the plaintiff has shown that the defendant was aware of a serious medical need, as is required under *Kingsley*, it is difficult to imagine a scenario where the subjective element is satisfied, but not the objective element.

For example, consider a doctor who diagnosed a pretrial detainee with a very mild peanut allergy, but intentionally failed to supply him with an emergency epinephrine injector, and the detainee later had an adverse allergic reaction. If the doctor’s decision not to supply the injector was objectively reasonable, given the mild nature of the detainee’s allergy and minimal chance of exposure, then the defendant’s disregard of that risk cannot be characterized as reckless. Conversely, if, under the totality of the circumstances, the decision not to supply an emergency injector was objectively *unreasonable* due to a high risk of exposure or severe allergy, then the doctor’s decision would have almost necessarily been at least reckless, if not purposeful or knowing.

On the other hand, a defendant’s decision would likely be objectively reasonable, under “the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care,” if the decision was based on a
lack of facts from which to infer the existence of plaintiff’s serious medical condition. McCann, 909 F.3d at 886. For instance, if the plaintiff in the previous example did not inform his doctor of the peanut allergy, then the doctor’s failure to supply an epinephrine injector would be objectively reasonable. It is objectively reasonable, after all, for a doctor not to supply an epinephrine injector to someone who seemingly does not suffer from a dangerous allergy. Technically the two elements require different showings, one requires proof of defendant’s actual knowledge of a serious medical need and the other requires proof of facts and circumstances which makes the inference of plaintiff’s serious medical need likely, and the response objectively reasonable. This will usually amount to the same thing, though. By changing only one fact—a patient’s reporting a serious medical need—both elements of the Kingsley standard are determinatively affected. This is true even though objective reasonableness is to be determined “without regard to any subjective belief held by the [defendant].” Id. In light of the practical reality of proving recklessness, objective reasonableness is in danger of becoming a redundant element.

Without a clearly distinguished objective element, the Kingsley standard merely becomes recklessness. This is more than mere negligence, which cannot sustain a constitutional violation, but less than subjective intent. Parratt, 451 U.S. at 548. Still, it seems unlikely that this was the intent of the Kingsley court.

**Distinguishing the Standards**

So what makes the Kingsley standard different from deliberate indifference? The mental state requisite for liability under the two standards is arguably indistinguishable. Under both claims, denying medical care in order to cause harm, or knowing harm will result, is more than enough to prove liability. Compare Farmer, 511 U.S. at 835-36 (noting that “a knowing willingness that [harm] occur,” is enough for Eighth Amendment liability) with Kingsley, 135 S. Ct. at 2472 (“if the use of force is deliberate—i.e., purposeful or knowing—the pretrial detainee’s [Fourteenth Amendment] claim may proceed.”). The threshold, however, is recklessness for both claims.

Under the Eighth Amendment, a plaintiff must show that the defendant had actual knowledge of a risk to the plaintiff’s health, and consciously disregarded it. Farmer, 511 U.S. at 837. This standard mirrors the legal definition of recklessness. See, e.g., BLACK’S LAW DICTIONARY 1462 (10th ed. 2014) (defining “reckless” as “[c]haracterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk”) (emphasis added). The Farmer Court stated that “acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.” Farmer, 511 U.S. at 836 (emphasis added). In fact, the Court looked to the Model Penal Code’s definition of criminal recklessness when articulating the Eighth Amendment standard:

To be sure, the reasons for focusing on what a defendant’s mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must “consciously disregard” a substantial risk of serious harm. Model Penal Code § 2.02(2)(c).

**Farmer**, 511 U.S. at 839.
Compare that to the *Kingsley* standard, as articulated in *Miranda*, where recklessness is the threshold mental state. *Miranda*, 900 F.3d at 353. Under the *Kingsley* standard, a defendant is only liable if he had actual awareness of a serious risk of potential harm, but recklessly disregarded that risk. *Id.* This standard requires, at a minimum, some degree of deliberate action because “negligent conduct does not offend the Due Process Clause.” *Id.* (citing *Daniels*, 474 U.S. at 330-31).

Claims of inadequate medical care brought under the Eighth and Fourteenth Amendments both require the plaintiff to show, at a minimum, that a defendant was actually aware of plaintiff’s serious medical condition but consciously disregarded that knowledge. Accord *Farmer*, 511 U.S. at 837, with *Miranda*, 900 F.3d at 353, and *Williams*, 937 F.3d at 942. Although the courts have described the requisite mental states differently, the minimal required showing amounts to the same standard—a reckless disregard of actual knowledge of a serious medical risk or condition.

Further, a “reasonable” response will preclude liability in both cases, even if the harm is not ultimately prevented. *Farmer*, 511 U.S. at 844. For Eighth Amendment cases, a prison official is liable for the conscious disregard of the risk to inmate safety, but not for a reasonable, unsuccessful response. *Id.* As to the Fourteenth Amendment standard, the second element requires a plaintiff to prove that the defendant did not respond “reasonably.” *Miranda*, 900 F.3d at 354. If the defendant did respond objectively reasonably, then a plaintiff will not be able to carry his burden and the defendant cannot be held liable.

The two standards differ, however, in one very significant and bizarre regard—the apparent applicability of the professional judgment standard. In Eighth Amendment claims, a medical provider’s decision will receive deference and be considered a reasonable response unless “no minimally competent professional would have so responded under those circumstances.” *Collignon*, 163 F.3d at 989. The *Kingsley* standard of the Fourteenth Amendment seemingly affords no such deference to a medical provider’s judgment. *Miranda*, 900 F.3d at 354. Under the Fourteenth Amendment, a plaintiff only has to show that the medical provider’s decision was objectively unreasonable. *Id.* If a Fourteenth Amendment plaintiff had to overcome the professional judgment standard to prove that a defendant medical provider’s care was objectively unreasonable, then the two standards would largely be identical.

This lack of deference is especially paradoxical, however, given that the professional judgment standard originated in a Fourteenth Amendment Due Process case brought a civil detainee. *Youngberg*, 457 U.S. at 309, 322. Six years later, the Seventh Circuit imported the professional judgment standard to Eighth Amendment cases. *Collignon*, 163 F.3d at 989. By 2016, the professional judgment standard had seemingly fallen out of Fourteenth Amendment Due Process jurisprudence, as the Supreme Court made no mention of it in *Kingsley*. 135 S. Ct. 2466. The Circuit Courts have, likewise, ignored the professional judgment standard in subsequent Fourteenth Amendment inadequate medical care cases. See, e.g., *Miranda*, 900 F.3d 335 (Seventh Circuit failing to analyze defendant medical providers’ decision under a deferential standard); *Gordon*, 888 F.3d 1118 (Ninth Circuit making no mention of deference for the defendant nurses’ professional judgment).

An Eighth Amendment plaintiff must show that the defendant’s decision was so deficient that “no minimally competent professional would have so responded under those circumstances” but a Fourteenth Amendment claim will almost certainly turn on a finding of recklessness. *Miranda*, 900 F.3d at 353 (citing *Gordon*, 888 F.3d at 1125), *Collignon*, 163 F.3d at 989. As a practical matter, this means that pretrial detainees face a much less arduous burden when alleging a constitutional violation for inadequate medical care. That is only true, however, unless and until the Seventh Circuit or the U.S. Supreme Court addresses the curious migration of the professional judgment standard from Fourteenth Amendment Due Process claims to Eighth Amendment deliberate indifference claims.
Conclusion

The Supreme Court has taken care to distinguish Eighth and Fourteenth Amendment excessive force claims, and some Circuits have applied that holding to inadequate medical care claims under the distinct amendments. In the Seventh Circuit, Fourteenth Amendment claims are now adjudicated under the \textit{Kingsley} standard of objective reasonableness, rather than the deliberate indifference standard of the Eighth Amendment. The standards are articulated distinctly, but bear numerous similarities. In both, recklessness is the threshold mental state necessary to attach liability. Further, both require a plaintiff to show that he suffered from a serious medical risk or condition. Similarly, a reasonable response by state actors precludes liability under both standards. Eighth Amendment plaintiffs, however, do face a stiffer burden in overcoming the professional judgment standard as “liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment.” \textit{Youngberg}, 457 U.S. at 323. Fourteenth Amendment plaintiffs merely have to show that the defendant’s actions were objectively unreasonable under the “totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care.” \textit{McCann}, 909 F.3d at 886.

Lower courts, to say nothing of litigants themselves, applying the \textit{Kingsley} standard may have difficulty in genuinely analyzing \textit{Kingsley}’s two elements separately, as a purposeful, knowing, or reckless mental state will generally not be found in conjunction with “objectively reasonable” conduct. Conversely, a response can only be objectively unreasonable in light of, at the very least, facts from which actual knowledge and conscious disregard of a detainee’s serious medical condition can be reasonably inferred. The two elements are tangled so thoroughly that satisfaction of one will often tempt decision-makers to accept it as sufficient proof of the other. Just as Alexander expeditiously and effectively “untangled” the Gordian knot, so too will attorneys seek to satisfy this new standard with one fell swing of the sword. Or, rather, with a pen (which is rumored to be mightier). As a further complication, the objective reasonableness element risks further obsolescence should a court determine that the professional judgment standard \textit{still does} apply, or perhaps, applies again, to Fourteenth Amendment claims under the \textit{Kingsley} standard.

That being said, the standard is still relatively young in the detainee medical care context. Courts have time and opportunity to shape its nuances through thoughtful and sensible rulings, taking into consideration the reasoning behind the distinction between objective reasonableness and deliberate indifference. Litigators can assist in the development of this curious, new standard by carefully structuring their arguments around sound reasoning, not blunt assertions of unreasonableness or broad allegations of recklessness. Further, defendants might be rightfully tempted to ask where the professional judgment standard disappeared to, between \textit{Youngberg} and \textit{Kingsley}, and whether it never should have left at all. Ultimately, the standard exists to satisfy an axiom—objectively unreasonable decisions made in reckless disregard of actual knowledge warrant liability. It merely remains to be seen how attorneys are to navigate this new path, dividing the objectively reasonable from unreasonable, without short-cutting through well-traveled arguments of recklessness.

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