Constitutional Law—Eleventh Circuit’s Misdiagnosis: Inmates Benevolently Allowed to File Claims Under the Eighth Amendment Lacking Deliberate Indifference—Magwood v. Sec'y, Fla. Dep’t of Corr., 652 F. App’x. 841 (11th Cir. 2016)

Nicholas M. Bosworth*

Under the Eighth Amendment, state correctional facilities are expressly prohibited from engaging in conduct that displays deliberate indifference to the medical needs of inmates.1 To bring forth a valid claim of deliberate indifference under the Eighth Amendment, inmates must prove a prison official’s virulent conduct embodied an “unnecessary and wanton infliction of pain.”2 In Magwood v. Sec’y, Fla. Dep’t of Corr.,3 the United States Court of Appeals for the Eleventh Circuit considered whether the Florida Northern District Court erred in dismissing an inmate’s complaint that alleged

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*J.D. Candidate, Suffolk University Law School, 2018; University of Massachusetts, Dartmouth, 2013. Mr. Bosworth may be contacted at nbosworth@suffolk.edu.

1 See U.S. CONST. amend. XIII (addressing cruel and unusual punishment); see also Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991) (discussing which medical treatment violates the Eighth Amendment). In Thigpen, the court ruled that “[t]he medical treatment provided to an inmate violates the Eighth Amendment when it is ‘so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.’” Id.

2 See Brown v. Johnson, 387 F.3d 1344, 1351 (11th Cir. 2004) (discussing requirements for bringing a claim under the Eighth Amendment in the Eleventh Circuit). Conduct on behalf of prison officials which constitutes deliberate indifference must be analyzed through objective and subjective probes. See Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003). Objectively, “[a] serious medical need is considered one that has been diagnosed by a physician mandating treatment of one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” Id. The “medical need must be one that, if left unattended, poses a substantial risk of serious harm.” Id. Furthermore, Brown establishes that an inmate must prove three facts to show a prison official acted deliberately indifferent to a serious medical need: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; and (3) by conduct that is more than mere negligence. Brown, 387 F.3d at 1351.

3 Magwood, 652 F. App’x 841.
prison official conduct displaying a deliberate indifference to his serious medical condition. The Eleventh Circuit reversed the district court’s holding and held that the complainant’s allegations were sufficient to meet both objective and subjective probes for deliberate indifference.

In May of 2011, Bobby Magwood (‘Magwood’) was incarcerated at Santa Rosa Correctional Institution in the state of Florida. Prior to incarceration, Magwood was prescribed blood pressure and asthma medication, both of which he had been taking for approximately ten years. Magwood’s nurse, Marsha Nichols (‘Nichols’), took Magwood off of the blood pressure medication on May 11, 2011. Within six months of incarceration, Nichols also terminated Magwood’s asthma medication and advised him to go to sick call or additional medical treatment. Although Magwood claimed that his

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4 See Id. at 845.
5 See Id.
7 See Id. at *2-3.
8 See Id. at *2. Magwood alleged that Nichols’s decision to terminate his blood pressure medication was “without medical reasons.” Id.
9 Id. Magwood was advised that a co-payment would be required in order to receive medical treatment for his blood pressure and asthma medication. Furthermore, Magwood was examined by “an unidentified nurse on September 25, 2012” and advised once again that if he wanted to be prescribed his blood pressure and asthma medication then he was going to have to go to sick call. See Crews, 2015 U.S. Dist. LEXIS 11445 at *2 (clarifying that the plaintiff would require a co-payment to receive medication). See also Health Care Facts, Florida Department of Corrections (last visited Apr. 16, 2017), http://www.dc.state.fl.us/oth/hlthfact.html (describing services offered by contractors employed by Florida Department of Corrections (“DOC”)). Focusing on efficiency, the DOC outsourced its health care services in 2013 to contractors who “employ a managed care model to coordinate the provision of care.” Id. Core staff provide a variety of services that include health education, sick call, periodic screenings, chronic illness clinics, and infirmary care. Id. See generally Screening, Sick Call and Triage, National Commission on Correctional Health Care (2010), available at http://www.ncchc.org/filebin/images/Website_PDFs/24-4.pdf (defining sick call as a “request for health care attention at any time”). Face-to-face evaluations are conducted within twenty-four hours by health care professionals if a sick call request describes a clinical symptom. Id.
unattended medical needs put him at “risk of serious harm,” he did not seek medical attention between May 6, 2011 and September 20, 2013. The court held that Magwood’s complaint was insufficient to state a claim for denial of medical care in violation of the Eighth Amendment.12 On appeal, Magwood argued that Nichols violated the Eighth Amendment when she acted with deliberate indifference towards his serious medical needs.13 The court cited a three-prong test required to prevail on a claim of deliberate indifference in violation of the Eighth Amendment.14 Under this test, Magwood must prove: (1) a serious medical need; (2) deliberate indifference to that need on the part of the defendant; and (3) causation between the

11 Id. at *1, *7. Magwood alleged that his life was “put in grave danger,” although he did not request additional medical treatment or report to sick call. Id.
12 Id. at *12 (per curiam). The court acknowledged that although the cancellation of blood pressure and asthma medication “may be serious,” Magwood failed to provide any facts on his complaint that evidenced his theory. Id. at *10 (per curiam). Moreover, Magwood did not provide or explain how his breathing or medical conditions worsened after Nichols’s decision to terminate his medication. Id. Crews, 2015 U.S. Dist. LEXIS 11445 at *10. Therefore, the court was convinced that Magwood’s complaint against Nichols was nothing more than “a classic example of a prisoner’s disagreement with the decisions of medical staff.” Id. (emphasis added).
13 See Magwood, 652 F. App’x. at 844 (per curiam). Simple negligence or medical malpractice does not constitute “deliberate indifference” towards the medical care of inmates. See Harrison v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991) (adding that deliberate indifference involves wanton and unnecessary infliction of pain). Additionally, medical treatment of correctional staff only violates the Eighth Amendment when it is “so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” Id. See also Rogers v. Evans, 792 F.2d 1052, 1059 (11th Cir. 1986) (noting incidents closely related in time may disclose a pattern of conduct showing deliberate indifference). In Evans, where the defendant died in segregation after several attempts from medical staff to provide proper psychiatric medication, the court held that no pattern of conduct from administration showing deliberate indifference was evidenced. Id. Further, a mere disagreement amongst an inmate and medical staff as to proper treatment for a medical condition does not constitute cruel and unusual punishment. See Waldrop v. Evans, 871 F.2d 1030, 1033 (11th Cir. 1989) (discussing violations of the Eighth Amendment in prisons).
defendant's indifference and the plaintiff's injury.\textsuperscript{15} Since the second element of this test is subjective in nature, the court further declared that Magwood must prove that Nichols acted with an "attitude of deliberate indifference", noting that medical disagreement would not satisfy this element.\textsuperscript{16} Ultimately, the court held that Magwood had sufficiently stated a complaint for which relief could be granted by proving that Nicholas acted with deliberate indifference towards his medical conditions.\textsuperscript{17}

Physicians rely upon proper medical treatment to alleviate the potential risk of harm from an inmate's medical condition.\textsuperscript{18} Medical conditions that worsen due to a

\textsuperscript{15} See Magwood, 652 F. App'x. at 844. The court defined a "serious medical need" as one in which the medical treatment has been diagnosed by a physician mandating treatment. \textit{Id.} (citing Mann. v. Taser Int'l, Inc., 588 F.3d at 1306-07). Furthermore, the court mandated that the medical condition be so obvious that even a person of ordinary sensibilities could "easily recognize the necessity" if gone untreated. \textit{Id.} (citing Mann. v. Taser Int'l, Inc., 588 F.3d at 1307). Necessity of the medical condition is one that "poses a substantial risk of serious harm." \textit{Id.} (citing Farrow v. West, 320 F.3d 1235, 1243 (11th Cir.2003)). Asthma was determined to be a serious medical condition but only for inmates who show "clear" symptoms of it. \textit{Id.} Contrarily, the court decided that high blood pressure may not be a serious medical condition. \textit{Id.}

\textsuperscript{16} See Magwood, 652 F. App'x. at 844. See also Brown v. Johnson, 387 F.3d 1344, 1351 (11th Cir. 2004) (discussing the three factors needed to show an attitude of deliberate indifference). The court noted several examples of conduct that is above mere negligence, and stated that

\begin{enumerate}
    \item knowledge of a serious medical need and a failure or refusal to provide care;
    \item delaying treatment for non-medical reasons;
    \item grossly inadequate care;
    \item a decision to take an easier but less efficacious course of treatment; or
    \item medical care that is so cursory as to amount to no treatment at all.
\end{enumerate}

\textsuperscript{17} See Magwood, 652 F. App'x. at 845. The court was satisfied that Nichols's affirmative removal of Magwood off his medication could have shown a deliberate indifference. \textit{Id.} Lastly, the court agreed that Magwood did not show any resulting injury from Nichols's conduct. \textit{Id.} Nevertheless, the court held that the district court erred in dismissing Magwood's complaint. \textit{Id.}

\textsuperscript{18} See generally Hill v. Dekalb Reg'l Youth Det. Ctr., 40 F.3d 1176 (11th Cir. 1994) (adopting a new standard for addressing a prisoner's "serious medical needs"). Seventeen years prior to \textit{Hill}, the United States District Court for the District of New Hampshire recognized that government officials have a duty to provide "reasonable medical care" to inmates. See Laaman v. Helgemoe, 437 F. Supp. 269, 311 (D.N.H. 1977). In \textit{Helgemoe}, the plaintiffs complained that the institutional facility provided inadequate medical treatment to its inmates and was a "time bomb in terms of endangering the inmates' health and well-being." \textit{Id.} at 312. In order to determine the duty owed by prison facilities to provide reasonable medical care for inmates, the court weighed several factors, such as an inmate's dependency on a prison's medical system, staff shortages, and even reasonable dental care. \textit{Id.} at 312-13. Upon recognition of this affirmative duty, the court


delay in available medical treatment may constitute a violation of the inmate's Eighth Amendment rights.\textsuperscript{19} Ultimately, life-threatening medical needs that pose a potential for extraordinary risk of harm, if left unattended, are deemed serious.\textsuperscript{20} Some courts, ruled that a serious medical need is one that is diagnosed by a physician as requiring treatment, or a medical condition “so obvious” that even people with ordinary sensibilities know that it requires immediate attention from a doctor. \textit{Id.} at 311. Adopting the Helgemoe standard of affirmative medical duties owed to inmates, the court in \textit{Hill} reasoned that this standard is the applicable and proper guideline required to assess the serious medical needs of inmates. \textit{See Hill, 40 F.3d} at 1187. \textit{See also Know Your Rights: Medical, Dental, and Mental Health Care, ACLU, https://www.aclu.org/sites/default/files/images/asset_upload_file690_25743.pdf} (last updated Nov. 2005) (discussing factors courts consider for addressing a serious medical need).

\textsuperscript{19} \textit{See Hill, 40 F.3d} at 1187-89 (discussing delays in treatment). Seven years prior to \textit{Hill}, the United States Court of Appeals for the Third Circuit ruled that a medical need is deemed serious if a delay “causes an inmate to suffer a life-long handicap or permanent loss.” \textit{See Monmouth Cty. Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987)}. The court in \textit{Lanzaro} ruled that correctional facilities that deny women the option to safely terminate their pregnancies may effectuate life-long health hazards for the woman, as well as the child. \textit{Id.} at 349. \textit{See also Mann, 588 F.3d} at 1307 (finding that the decedent’s “excited delirium” constituted a serious medical need). In \textit{Mann}, the decedent became agitated and delusional from smoking methamphetamine. \textit{Id.} at 1298-99. The decedent was then arrested and placed in a patrol car, but resisted by kicking and yelling while in the patrol car. \textit{Id.} at 1299-1300. In order to calm the decedent down, the officer discharged his Taser three times, but the decedent resisted, remaining in a state of agitation. \textit{Id.} at 1300. Once EMS personnel arrived, they could not medically examine the decedent because she remained combative, but nonetheless concluded that she was not in any “immediate medical distress.” \textit{Id.} The arresting officer believed the decedent was medically cleared and then drove her straight to jail, where she was shortly pronounced dead due to malignant hyperthermia, with a body temperature that exceeded one hundred and seven degrees Fahrenheit. \textit{Id.} at 1300-01. The court applied the standard adopted in \textit{Hill} and held that a medical need, such as “excited delirium,” is sufficiently serious if a delay in treatment worsens the condition. \textit{Mann, 588 F.3d} at 1307. \textit{See, e.g., Ramos v. Lamm, 639 F.2d 559, 576 (10th Cir. 1980)} (ruling that a delay in oral surgery resulted in loss of teeth). The court in \textit{Hill} concluded that the defendant did not have a serious medical need after having found blood in his underwear because he did not evidence that a four-hour delay to the hospital worsened his condition. \textit{Hill, 40 F.3d} at 1189; \textit{Excited Delirium: What is Excited Delirium Syndrome (ExDS)?, EXCITED DELIRIUM, http://exciteddelirium.org/what-is-excited-delirium-syndrome-exds/} (last visited Apr. 16, 2017) (describing ExDS as an abnormal brain activity which may lead to psychosis and sudden death); \textit{What is MH?, MALIGNANT HYPERETHERMIA ASSOCIATION OF THE UNITED STATES, http://www.mhaus.org/about-mhaus} (last visited Apr. 16, 2017) (stating that MH is due to acceleration of metabolism in skeletal muscle). Common signs of MH include rapid heart rate and high body temperature. \textit{Id.} However, immediate treatment with the drug “dantrolene” often reverses the signs of MH. \textit{Id.}

\textsuperscript{20} \textit{See Farrow v. West, 320 F.3d 1235,1243} (defining what qualifies as a “serious medical need”). In \textit{West}, the defendant complained to his doctor of his drastic weight loss due to his dental condition. \textit{Id.} at 1244. While waiting fifteen months to be provided with dentures, the defendant underwent extreme pain and weight loss and even adjusted his own diet to eat liquid-only foods. \textit{Id.} The defendant also endured continual bleeding and swollen gums due to his two remaining teeth continually slicing into them. \textit{Id.} at 1244-45. Therefore, the Court was satisfied with
however, have established that non-life-threatening but significant injuries may also constitute a serious medical need.\(^{21}\) Courts have held that asthma perilously detrimental to the overall health and well-being of an inmate could be a serious medical need.\(^{22}\) Unlike asthma, symptoms of high blood pressure are not deemed a serious medical need if they do not seriously injure one's health.\(^{23}\) 

finding the defendant as having a “serious medical need.” \(^{24}\) See also Reed v. McBride, 178 F.3d 849, 853 (7th Cir. 1999) (noting that a denial of medicine led to extreme pain and internal bleeding). \(^{25}\) But see Hill, 40 F.3d at 1189 (finding a four-hour delay in non-life-threatening medical treatment not a “serious medical need”).

\(^{21}\) See Estate of Rosenberg by Rosenberg v. Crandell, 56 F.3d 35, 36-7 (8th Cir. 1995) (determining defendant’s inability to eat food without vomiting to be serious medical need); Massey v. Hurto, 545 F.2d 45, 46-47 (8th Cir. 1976) (describing patient’s ulcers which require special care and medication); Blankenship v. Obaisi, 443 F. App. 205, 208 (7th Cir. 2011) (describing immobilization of arm caused by severe pain post-surgery). In Obaisi, the court noted that “chronic pain is itself a serious medical condition that must be addressed.” \(^{26}\) See also Henderson v. Sheahan, 196 F.3d 839, 846 (7th Cir. 1999) (exposure to second-hand smoke not a serious medical need). In Sheahan, the court stated that a “serious medical need is one that has been diagnosed by a physician as needing treatment or one for which even a layperson would recognize the need for a doctor’s care.” \(^{27}\) Id. (viewing defendant’s allegations as “objective” serious medical need). See also Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997) (applying objective standard for what constitutes a serious medical need). Moreover, the court in Obaisi noted that even an objectively reasonable physician would be able to tell that the defendant suffered from cyanosis, although only minor symptoms were visible. Obaisi, 443 F. App. at 208. See Cyanosis, MEDLINE PLUS, https://medlineplus.gov/ency/article/003215.htm (last visited Apr. 16, 2017); Dr. Ananya Mandal, Symptoms of cyanosis, NEWS MEDICAL LIFE SCIENCES, http://www.news-medical.net/health/Symptoms-of-cyanosis.aspx (last visited Apr. 16, 2017).

\(^{22}\) See Adams v. Poag, 61 F.3d 1537, 1543 (11th Cir. 1995) (ruling that defendant’s asthma constituted a serious medical need). In Poag, the defendant, a life-long sufferer from asthma, was taken off of Marax and prescribed nebulizer treatments and Theophylline Elixir as a replacement. \(^{28}\) Id. at 1540. Over the span of a week, the defendant repeatedly complained to the medical staff that his inability to breathe was worsening and the treatments he had been prescribed were ineffective. \(^{29}\) Id. at 1543. The defendant was eventually pronounced dead due to acute respiratory failure. \(^{30}\) See Dennis McGraw, MD, Asthma Medication (Marax), NET WELLNESS, http://www.netwellness.org/question.cfm/25360.htm (last visited Apr. 16, 2017) (describing uses for Marax in treating asthma); How to Treat an Asthma Attack, AMERICAN FAMILY PHYSICIAN, http://www.aafp.org/afp/2011/0701/p49.html (last visited Apr. 16, 2017) (describing alternative treatments for asthma attacks). In Poag, the defendant complained that the nebulizer treatments were ineffective and that he was still having frequent asthma attacks. Poag, 61 F.3d at 1540. Further, the defendant showed mild symptoms of asthma, wheezing in both lungs, and a sore throat upon medical examination from institutional staff. \(^{31}\) Id. One day after nebulizer treatment, the defendant passed away from “acute respiratory failure.” \(^{32}\) Id. at 1541. 

\(^{23}\) See Brown v. Hughes, 894 F.2d 1533, 1538 n.4 (11th Cir. 1990) (noting high blood pressure is not considered serious medical threat). Twelve years prior to Hughes, the United States Court of
In order to prevail in an action for an Eighth Amendment violation, inmates must demonstrate that prison officials acted with an “attitude of deliberate indifference” on behalf of a serious medical need. This attitude can be delineated by proving several factors cohered to prison officials’ conduct. Courts often rely upon exemplary cases that provide situations of conduct above mere negligence.

Appeals for the Fifth Circuit declined to consider “high blood pressure” as a serious medical need absent any evidence offered that showed a causal nexus between the elevated levels in blood pressure and a “serious threat” to one’s health. See Dickson v. Colman, 569 F.2d 1310, 1311-12 (5th Cir. 1978). Additionally, the court in Colman noted that the plaintiff’s complaints of dizziness and headaches “were made to his guards,” admitting that he did not seek assistance from a doctor or nurse until later. Colman, 569 F.2d at 1312. But see Health Threat from High Blood Pressure, AM. HEART ASS’N, HEART.ORG, (Dec. 16, 2016), http://www.heart.org/HEARTORG/Conditions/HighBloodPressure/WhyBloodPressureMatters/Why-Blood-Pressure-Matters_UCM_002051_Article.jsp#.V_qJlkDKZPUo, (last visited Apr. 16, 2017) (identifying risks associated with high blood pressure putting “health and quality of life in danger”).


See Skillern v. Ga. Dept. of Corr. 191 F. App. 847, 852 (11th Cir. 2006) (reviewing prison official conduct). In Skillern, the plaintiff’s doctors diagnosed him with a heart condition but refused to administer drug therapy on request by the plaintiff. Id. However, liberally construing the plaintiff’s pro se pleading on appeal, the court only noted that the doctor’s actions “may” have shown a deliberate indifference. Id. (citing Tennenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)); Brennan v. Comm’t, Ala. Dept’ of Corr., 626 F. App. 939, 945 (11th Cir. 2015) (holding that the defendants had an attitude of deliberate indifference). In Brennan, the plaintiff suffered from herniated disks in his neck and lower back after slipping and falling on a waxed concrete floor. 626 F. App. at 941-42. After learning of the plaintiff’s injuries, the defendant simply referred him to a neurologist and indicated that two surgeries were required to fix the damage. Id. at 942. Over the course of the next four months, the defendant prescribed Vicodin to the plaintiff several times a day, but eventually cut his dose in half. Id. at 944. After
Traditionally, a complainant must have "an actual injury redressable by the court" to have standing.27 Under modern tort law, private plaintiffs seeking to bring an

the plaintiff's medication ceased, he complained of "severe pain every day" and notably began to use a wheelchair to get to the bathroom or eat. Id. The plaintiff eventually underwent spinal fusion surgery several months after his Vicodin medication ceased. Id. The court ruled that since the defendant was aware of the plaintiff's medical condition but inadequately remedied it prior to surgery, his actions or lack thereof constituted a showing of deliberate indifference. Id. at 946; Hydrocodone and Acetaminophen, MAYOCLINIC.ORG, http://www.mayoclinic.org/drugs-supplements/hydrocodone-and-acetaminophen-oral-route/description/drg-20074089, (last updated Jan. 2016) (acknowledging that hydrocodone and acetaminophen are used to relieve moderate to severe pain); Spinal Fusion, MEDLINEPLUS.GOV, https://medlineplus.gov/ency/article/002968.htm, (last updated Oct. 2016) (discussing spinal fusion procedure and risks associated with it).

26 See McElligot v. Foley, 182 F.3d 1248, 1257 (11th Cir. 1999) (finding the failure of defendants to diagnose inmate with colon cancer as deliberate indifference). In Foley, the plaintiff experienced "severe abdominal pain, vomiting, and nausea" for approximately five months. Id. at 1251-52. A month after the plaintiff's incarceration began, the defendant prescribed him Tylenol for pain and Pepto-Bismol for nausea, vomiting, and diarrhea. Id. Further, the defendant also prescribed Bentyl, an anti-gas medication, to relieve the plaintiff's diarrhea. Id. Over the course of the next several months, the plaintiff complained that doses of Bentyl twice a day were severely inadequate in relaxing his stomach, resulting in muscle spasms, continual vomiting, and weight loss. Id. Although the defendant acknowledged these symptoms existed and the medication might not be effective, he nonetheless decided to keep the plaintiff prescribed to Bentyl. Id. at 1253. Lastly, in a last-ditch effort to help the plaintiff with his symptoms, the defendant discontinued Bentyl and prescribed Prilosec, believing the source of the pain to be ulcers. 182 F.3d at 1253. Ultimately, the defendant was diagnosed with "terminal colon cancer" after being admitted into a separate hospital. Id. at 1254. Moreover, the court ruled that the defendant was deliberately indifferent in prescribing inadequate pain medication, especially after failing to provide proper treatment after listening to the plaintiff's repeated complaints. Id. at 1257. Most notably, the court concluded that the defendant "basically did nothing to alleviate [the] pain." Id. See also Mary DiLonardo, Taking Acetaminophen Safely, ARTHRITIS.ORG, http://www.arthritis.org/living-with-arthritis/treatments/medication/drug-types/analgescics/acetaminophen-safety.php, (last visited Apr. 16 2017) (discussing benefits of acetaminophen, commonly branded as “Tylenol”); Bismuth Subsalicylate, MEDLINEPLUS.GOV, https://medlineplus.gov/druginfo/meds/a607040.html, (last updated Sept. 2016) (discussing benefits of bismuth subsalicylate, commonly branded as “Pepto-Bismol”); Dicyclomine, MEDLINEPLUS.GOV, https://medlineplus.gov/druginfo/meds/a684007.html, (last updated Sept. 2016) (discussing the benefits of dicyclomine, branded as “Bentyl”).

27 See U.S. CONST. art III, § 2, cl. 1. See also Valley Forge Christian Coll. v. Americans United for Separation of Church & State, 454 U.S. 464, 474 (1982) (establishing standing requirements for redressability); American Civil Liberties Union of Fla, Inc. v. Dixie Cty, Fla., 690 F.3d 1244 (11th Cir. 2012) (discussing standing requirements); DiMaio v. Democratic Nat. Comm., 520 F.3d 1299 (11th Cir. 2008) (discussing redressability); CAMP Legal Def. Fund, Inc. v. City of Atl., 451 F.3d 1257 (11th Cir. 2006) (requiring defendant to prove "actual injury" for redressability); Granite State Outdoor Adver., Inc. v. City of Clearwater, Fla., 351 F.3d 1112 (11th Cir. 2003) (ruling that a plaintiff must show "actual or threatened injury" to have standing); Pittman v. Cole, 267 F.3d 1269 (11th Cir. 2001) (discussing constitutional requirements under Article III to have standing). See generally Eric Surette, J.D., Liability of Businesses to Governments and Consumers for Breach of Data
action in federal court must demonstrate three elements: (1) an injury-in-fact; (2) that is both fairly traceable to the defendant; and (3) that a favorable decision will redress. First, without demonstrating an actual or concrete injury has occurred, a plaintiff will not have standing. Second, the defendant's alleged action must be causally connected to the plaintiff's injury. Third, an injury-in-fact need only be possible to be redressed.

28 See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (discussing elements required to have standing in federal court). In Lujan, the court ruled that to have constitutional standing, a complainant must demonstrate three elements: (1) an injury-in-fact; (2) that is both fairly traceable to the defendant; and (3) that a favorable decision will redress. Id. at 560-61. See also Blue Martini Kendall, LLC v. Miami Dade County Fla., 816 F.3d 1343, 1348 (11th Cir. 2016) (finding indemnification payment to be an actual and concrete injury); Cook v. Bennett, 792 F.3d 1294, 1299 (11th Cir. 2015) (finding teachers evaluation scores affecting their future employment outcome as a redressable injury). But see Jones v. Comm'r, Ga. Dept. of Corr., 812 F.3d 923, 931 (11th Cir. 2016) (finding a Georgia statute “likely” to have caused an injury-in-fact); United States v. Sparks, 806 F.3d 1323, 1340 (11th Cir. 2015) (noting that no injury occurred once defendant lost his possessory rights in his cell phone). But see Warth v. Seldin, 422 U.S. 490, 507-08 (1975) (declining to find “economic injury” for plaintiffs when town declined construction of moderate-cost housing); Porter v. Ogden, 241 F.3d 1334, 1339 (11th Cir. 2001) (holding that trustees suffered concrete injury as to expenses they incurred to remedy alleged malpractice); Bischoff v. Osceola Cr., Fla., 222 F.3d 874, 884 (11th Cir. 2000) (finding the threat of arrest for engaging in free speech activities as a concrete injury); Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1352 (11th Cir. 2005) (discussing plaintiff's inability to vote in new home precinct as an actual injury). Further, the court in Cox noted that when an injury is a statutory right, “standing exists 'even where the plaintiff would have suffered no judicially cognizable injury in the absence of the statute.'” Id. at 1352.

29 See Bennett v. Spear, 520 U.S. 154, 155-56 (1997) (finding reduced water for irrigation casually connected to plaintiff's injury); see Palm Beach Golf Center-Boca, Inc. v. Sarris, 781 F.3d 1245, 1251 (11th Cir. 2015) (finding unsolicited fax advertisement sent to plaintiff to be traceable to the injury the plaintiff incurred). But see Ford v. Strange, 580 F. App. 701, 710 (11th Cir. 2014) (rejecting to find a traceable action for plaintiff's voting rights on statute enacted years after).
by a favorable court ruling. Moreover, an inmate may be granted relief by filing a federal civil action for mental or emotional injury suffered while in custody.

In *Magwood v. Sec'y, Fla. Dep't of Corr.*, the United States Court of Appeals for the Eleventh Circuit reviewed whether the United States District Court for the Northern District of Florida erred when it dismissed Magwood's complaint against Nichols for failure to state a claim upon which relief could be granted. The court reviewed the *Mann* court's elements needed to prevail on a claim of deliberate indifference. Magwood's asthma and high blood pressure were considered to be serious medical needs. Furthermore, the court noted that Nichols acted with an attitude of deliberate indifference by affirmatively taking Magwood off of his asthma and blood pressure medication.

32 See *Prison Litigation Reform Act of 1995* ("PLRA"), 42 U.S.C.S. § 1997e (2016). See *Brooks v. Warden*, 800 F.3d 1295, 1307-08 (11th Cir. 2015) (holding that defendant may recover nominal damages under PLRA without showing physical injury). In *Brooks*, the court distinguished recovery under punitive and compensatory damages in contrast of nominal damages. 800 F.3d at 1307-08. During a hospital trip resulting from a riot, the plaintiff in *Brooks*, wearing waist shackles, was forced to defecate in his pants while prison guards stood idly by, refusing the plaintiff proper sanitation treatment and even mocked him in his soiled pants. 800 F.3d at 1299. The court noted that Congress' intent upon passing the PLRA was to reduce the number of frivolous suits filed from imprisoned plaintiffs with nothing to lose. 800 F.3d at 1307. Furthermore, the court stated that the imprisoned plaintiff's claim for nominal damages served to "vindicate the deprivation of his constitutional rights." 800 F.3d at 1308. Nominal damages served as a "symbolic function" in substitute for compensatory damages, whereby a violation of basic and important rights recognized in society were to be upheld. 800 F.3d at 1308 (quoting *Carey v. Piphus*, 435 U.S. 247, 266 (1978)). Moreover, the court reasoned that a bare minimal of some showing of physical injury is still required to recover punitive and compensatory damages. *Id.* See also *Al-Amin v. Smith*, 637 F.3d 1192, 1198 (11th Cir. 2011) (finding for punitive damages). See also *Harris v. Garner*, 190 F.3d 1279, 1286 (11th Cir. 1999) (finding for compensatory damages).

33 See *Magwood v. Sec'y, Fla. Dep't of Corr.*, 652 F. App'x. 841, 845 (11th Cir. 2016) (holding that the district court erred in dismissing Magwood's complaint).

34 *Id.* at 844 (discussing the elements for deliberate indifference).

35 *Id.* at 845. The Court relied upon the facts from *Adams*, where the defendant's asthma was held to be a serious medical condition, and reasoned that they were prevalent in the case at hand. *Id.*
Recognizing that Magwood suffered no physical injury, the court declared that he could still recover nominal damages.\(^{37}\)

The Eleventh Circuit erroneously held that Magwood’s complaint was sufficient to prevail on a claim of deliberate indifference for which relief could be granted.\(^{38}\) Although Magwood’s asthma and blood pressure may have been paramount for his health and well-being, the court should not have deemed them as serious medical conditions.\(^{39}\) Furthermore, it is a baseless charade to classify Magwood’s medical

\(^{36}\) Id. Comparing the facts from Brown, where the defendants continually disregarded necessary treatment to treat Brown’s HIV and hepatitis, the court here concluded that Nichols may have acted deliberately indifferent in treating Magwood’s medical conditions. Id. Since Nichols was aware of Magwood’s medical condition but withdrew his prescribed medical treatment nonetheless, the court considered this to be conduct that rose above mere negligence that had been demonstrated similarly in McElhigott. See Magwood, 652 F. App’x at 845.


\(^{38}\) See Brooks, 800 F.3d at 1307-08 (allowing recovery for nominal damages).

\(^{39}\) See Laaman v. Helgemoe, 437 F. Supp. 269, 311 (D.N.H. 1977) (ruling “serious medical need” is mandated by a physician). The majority in Helgemoe emphasized that “immediate attention” from a doctor was a decisive factor in determining the seriousness of a medical condition. Id. at 311. Underlying this principle of immediateness, the court further exemplified its understanding and reasoned that the condition be in need of such attention that even a person of “ordinary sensibilities” would know that a physician should examine it. Id. A prison facility’s affirmative duty to provide for reasonable medical care may be breached if the inadequacy of medical care presents a “grave and immediate health danger to the physical well-being” of an inmate. Id. at 311-12. In contrast to the plaintiffs in Helgemoe, Magwood was never in any immediate danger to his health and physical well-being. See Magwood v. Crews, 2015 U.S. Dist. LEXIS 11445, at *3 (N.D. Fla. Jan. 13, 2015) (alleging a change in medical diagnosis that left plaintiff with no treatment). Medical staff clearly adhered to this duty from conducting routine check-ups with Magwood and consistently allowed for him to voice his medical concerns. See Crews, 2015 U.S. Dist. LEXIS 11445, at *2 (identifying plaintiff’s interactions with medical staff). Further, Magwood never alleged in his original complaint that he actively “reported to sick call, requested medical attention, or in any way sought medical care.” Id. at *11. Had his medical needs been so immediate, then surely he would have suffered some kind of impending injury. See id. at *11 (noting that the plaintiff merely disagreed with prison staff). Therefore, Nichols sustained her affirmative duty to provide reasonable medical care for Magwood. See id. at *11 (explaining that Magwood never reported to sick call or requested medication). Alternatively, to West, where the defendant lost “extreme weight” and suffered from sliced gums due to his medical condition, which the court deemed as serious, Magwood merely suffered from headaches and dizziness from the denial of his medication. Id. at *11. See also Farrow v. West, 320 F.3d 1235, 1240 (11th Cir. 2003) (demonstrating deliberate indifference to medical needs). To presume Magwood’s symptoms as a “serious medical need” is a complete departure from true medical symptoms that pose a real and imminent threat to one’s health. See Crews, 2015 U.S. Dist. LEXIS 11445, at *11 (concluding no violation of the Eighth Amendment occurred).
conditions as serious if they never worsened due to a delay in treatment. Absent any evidence demonstrating “clear” symptoms of asthma, the court contradicted its earlier rulings by holding Magwood’s asthma to be a serious medical condition. Lastly, the court was wrong to conclude that Magwood’s complaint of resulting injury from the loss of his blood pressure medication presented a real danger or threat to his health.

Nichols’s act of removing Magwood’s prescription to his medications did not display an attitude of deliberate indifference. Assuming that the risk of serious harm

40 See Crews, 2015 U.S. Dist. LEXIS 11445, at *11-12 (finding Magwood’s complaint as a mere disagreement with medical staff). In contrast to Mann, where the decedent died from a delay in treatment within a couple of hours, Magwood never alleged any serious harm came to him from his delay in medical treatment, that lasted for over a couple years. Id. at *11. See also Mann v. Taser Int’l, Inc., 588 F.3d 1291, 1307 (11th Cir. 2009) (determining that plaintiff’s “excited delirium” constituted a serious medical need). As the court has consistently emphasized, like in Hill or Lanzer, where the risks associated with a delay in treatment in correlation to the potential for substantial harm were high, Magwood never risked serious harm to have befallen him from any delay of treatment. See Crews, 2015 U.S. Dist. LEXIS 11445, at *11 (explaining plaintiff sever sought medical attention or treatment). Rather, the Court should have actually considered the resulting medical conditions that Magwood suffered from due to this delay, which were at most “headaches or dizziness.” See id. at *11 (concluding symptoms were not caused by lack of medical treatment). Neither of these conditions were grave enough to have qualified as serious since the risk for “life-long handicap or permanent loss” was not prevalent. See id. at *11 (finding plaintiff’s claim insufficient).

41 See Magwood, 652 Fed. Appx. at 845. The court has adopted its most liberally construed definition as to what constitutes a showing of clear symptoms in regards to asthma yet. Id. Unlike in Poag, where the defendant’s repetitive complaints of shortness of breath were directly related to his acute respiratory failure, Magwood’s asthma complaints are not similar. Id. See also Adams v. Poag, 61 F.3d 1537, 1540 (11th Cir. 1995) (describing Adams’ symptoms and lack of treatment). Specifically speaking, Magwood had never alleged in his complaint that he suffered from “medical problems, breathing difficulties, been in pain, or injured in any way” since termination of his asthma medication. Crews, 2015 U.S. Dist. LEXIS 11445, at *10. Therefore, it is hard to fathom why the court determined Magwood’s asthma symptoms as “clear,” absent any supportive evidence in his complaint to supplement this determination. See Magwood, 652 F. App’x at 845.

42 See Magwood, 652 F. App’x at 845. The district court was correct when it held that Magwood’s complaint was nothing more than just medical disagreement. Crews, 2015 U.S. Dist. LEXIS 11445, at *10. The underlying focus is whether a palpable danger occurred resulting from termination of the blood pressure medication. Coleman, 569 F.2d at 1311. Similar to Coleman, where the plaintiff retained full-range of his shoulder despite enduring constant pain from a five-year-old-injury, Magwood never alleged any loss of bodily function resulting from the termination of his blood pressure medication. Crews, 2015 U.S. Dist. LEXIS 11445, at *10.

43 See Magwood, 652 F. App’x at 845. Unlike in Brown, where prison officials withdrew the plaintiff’s HIV medication “fully aware” of his deteriorating condition, Nichols did not terminate Magwood’s medications in spite of any medical conditions he had. Brown, 387 F.3d at 1351;
was inevitable onto Magwood, Nichols’s actions routinely highlight that she actively chose to engage with Magwood and seek to provide him with proper medical care.\textsuperscript{44} Nichols’s conduct in terminating Magwood’s medication did not rise above simple negligence.\textsuperscript{45}

Magwood’s lack of an actual injury should have led the court to dismiss his complaint since relief cannot be granted if there are no resulting injuries to the plaintiff.\textsuperscript{46} Reluctant to dismiss the complaint due to lack of actual injury, the court held

\textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *11. There was no risk of serious harm from Magwood’s medications being terminated. \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *11. Moreover, Magwood waited nearly two years to seek medical attention. \textit{Id}. Surely this risk of “serious harm” would have evidently worsened his health and well-being if it were at all serious. \textit{Id}. Fortunately for Nichols, there is no evidence in Magwood’s complaint that displayed a risk of serious harm would come from her actions. \textit{Id}. Therefore, the Court was simply incorrect to consider that Nichols “may” have had a subjective knowledge of a risk of serious harm. \textit{See Magwood}, 652 F. App’x at 845.

\textsuperscript{44} See Magwood, 652 F. App’x at 845. A disregard for a serious health risk requires that Nichols first have known of this “serious” risk and secondly that she chose to ignore it, consciously aware of the risk of resulting harm. \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *3. However, Nichols advised Magwood to go to sick call so that he may be able to receive his medication again. \textit{Id}. Unlike in \textit{Brennan}, where the defendant consciously provided inadequate care to the plaintiff’s broken neck, Nichols actively sought to help Magwood with his medical conditions. \textit{Brennan}, 626 F. App’x. at 943; \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *2. Nichols’ advice to Magwood should have alerted the Court that she sought to help him and chose not to disregard any of his medical conditions. \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *2. Therefore, the Court clearly faulted when they decided Nichols’s action “may” have shown an attitude of deliberate indifference. \textit{See Magwood}, 652 F. App’x at 845.

\textsuperscript{45} See Magwood, 652 F. App’x at 845. Amongst the five factors discussed in \textit{Foley} that established conduct rising above negligence, Nichols’ conduct resoundingly does not fall within either category. \textit{See Magwood}, 652 F. App’x at 845; \textit{Foley}, 182 F.3d at 1255. Unlike in \textit{Foley}, where the court held the defendant “basically did nothing” to alleviate the plaintiff’s pain due to terminal colon cancer, Nichols took preventive measures to ensure that Magwood was provided with adequate medical care and assistance. \textit{Id.} at 1257; \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *2. As recited by the district court, Nichols’ conduct would not even be considered medical malpractice. \textit{Crews}, 2015 U.S. Dist. LEXIS 11445, at *2. At best, Magwood’s complaint for Nichols’ conduct is nothing more than a medical disagreement. \textit{Id}. Nichols offered Magwood proper guidance as to how he should monitor his medical conditions, and informed him go to sick call if he felt that his conditions were worsening. \textit{Id}. Thus, Nichols’ conduct only solidifies the fact she remained attentive and helpful in providing adequate medical care to Magwood. \textit{Id}.

\textsuperscript{46} See Magwood v. Sec’y, Fla. Dep’t of Corr., 652 F. App’x. at 845 (11th Cir. 2016) (applying the requirements for standing in federal court adopted in \textit{Lujan}). Magwood would not even be able to pass this first requirement since no injury-in-fact had occurred. \textit{Id}. Although Magwood alleges to have suffered from headaches and dizziness once his medication was terminated, this is
in error that nominal damages were available to Magwood. Ultimately, the court’s holding will open the floodgates for frivolous lawsuits brought from incarcerated inmates with nothing but time on their hands, completely defeating the purpose of the PLRA.

In Magwood v. Sec’y, Fla. Dep’t of Corr., the United States Court of Appeals for the Eleventh Circuit considered whether the district court had erred in dismissing Magwood’s complaint for failure to state a claim upon which relief could be granted. The court should have heeded the reasoning from the district court when it determined that Magwood’s medical condition was not serious. Moreover, the conduct displayed from Nichols was nothing less than prudent, and she provided professional care to all inmates without prejudice. The PLRA no longer serves its purpose within the Eleventh Circuit and as a result, this court should expect to see inmates who have an unlikely injury for which a court would seek redressability.

47 See Magwood, 652 F. App’x. at 845 (explaining that nominal damages offered here does not serve its vindictive purpose as it did in Brooks). In Brooks, the plaintiff was able to recover for the utter and shear embarrassment that he endured. Brooks, 800 F.3d at 1308. The symbolic mechanism for offering nominal damages as a means to validate your deprived constitutional rights simply would not be recognized as important by society here. Brooks, 800 F.3d at 1308. At best, the only emotional damage Magwood received from having his medical prescriptions terminated was unhappiness and bitterness that he would no longer be receiving medication he had grown accustomed to receiving. Crews, 2015 U.S. Dist. LEXIS 11445, at *3.


49 See Magwood, 652 F. App’x. at 841 (holding the district court erred because Magwood’s complaint was sufficient).

50 See Crews, 2015 U.S. Dist. LEXIS 11445, at *10 (finding allegations “may” be serious but not evidenced in complaint).

51 See id. The court reasoned that Magwood’s complaint was nothing more than medical a disagreement. Id.
prosaic medical conditions file a flood of trivial lawsuits for deliberate indifference towards their medical conditions.\textsuperscript{52}

\textsuperscript{52} See Magwood, 652 F. App’x. at 845 (allowing Magwood’s complaint to stand under an extreme liberalistic interpretation).