

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

NICHOLAS BANNING,

Plaintiff,

vs.

Case No. 21-cv-3100

SHELBY COUNTY, SHELBY COUNTY
SHERIFF BRIAN MCREYONALDS, DON
KOONCE, ADVANCED CORRECTIONAL
HEALTHCARE, INC., CWENTON
WILLIAMS, TONYA ATTEBERRY, DEVON
DURBIN, MEGAN WARNER, MELISSA
HAYNES, BRANDON GATTON, CHRIS
ZAKOWSKI, DAINE BURKHEAD, KELLY
ADAMS and JACQUELINE CLATON

Defendants.

ACH DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Now come Defendants, Advanced Correctional Healthcare, Inc., Kelly Adams, and Jacqueline Clayton, by their attorneys, QUINN JOHNSTON, and for their Answer and Affirmative Defenses to Plaintiff's Third Amended Complaint, state as follows:

I. Introduction

1. On March 6, 2020, Nicholas Banning was placed in custody by Shelby County Sheriff's Deputies and booked into the Shelby County Jail.

ANSWER: Defendants admit.

2. While being held at the Shelby County Jail ("the Jail") Mr. Banning was in obvious need of emergency medical care resulting from opioid dependency and withdrawal, and developed asphyxia pneumonia and other serious medical problems, requiring hospitalization for two months.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

3. Prompt and proper medical attention for the medical issue of withdrawal could have prevented Banning's severe medical problems and suffering.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

4. Correctional officers at the Jail were aware of Mr. Banning's condition and medical needs and failed to contact medical providers and otherwise provide adequate medical care for Mr. Banning in violation of the law and Mr. Banning's constitutional rights.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

5. During the arrest and booking process, Mr. Banning informed the arresting deputies and correctional staff that he would be going through withdrawal and that it would be severe.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

6. Correctional staff noted that Mr. Banning would be going through withdrawal on jail intake records and in other reports/emails.

ANSWER: Defendants admit.

7. The Jail has an agreement with Advanced Correctional Healthcare, Inc. ("ACH") to provide medical services and care to individuals detained at the Jail.

ANSWER: Defendants admit.

8. Mr. Banning was not the first inmate to suffer severe medical problems or death in county jails that have contracted with ACH as a result of the failure to render aid to individuals suffering from drug overdose or withdrawal.

ANSWER: Defendants deny.

9. Defendants Shelby County Sheriff Brian McReynolds, former Sheriff Don Koonce, and ACH (as well as former Defendant and interim Sheriff Sean McQueen) failed to implement any meaningful training or provide continuing education to Jail employees that focused on the signs, symptoms and consequences of drug intoxication and/or withdrawal of detainees being held in the Jail and the need to render prompt and adequate medical care.

ANSWER: Defendants deny.

10. During the days he was held at the Jail, Mr. Banning was displaying classic signs of drug withdrawal, such as severe lethargy, vomiting, and an altered mental state. In addition, Mr. Banning was clearly having trouble breathing. These medical problems were observed by the correctional officers/employees at the Jail.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

11. The Jail did not have a nurse or any other medical provider on-site at the jail.

ANSWER: Defendants do not have sufficient knowledge to admit or deny this allegation.

12. No supervising officers of the Jail or Shelby County Sheriff's Office responded to the correctional officers' reports of Mr. Banning's deteriorating condition by providing or ordering medical care for Mr. Banning.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

13. On March 10, 2020, Mr. Banning was released on his own recognizance because his condition had severely deteriorated as the result of the Defendants' failure to render medical aid and refusal to do so.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

14. On March 10, 2020, the Jail transferred Mr. Banning to HSHS Good Shepherd Hospital's emergency department where medical staff noted that he was found unresponsive face down on the bed in jail, and that he was hyperventilating, had diminished right lung breathing sounds, cyanotic skin, cracked and frothy lips, mottled and cool extremities, and yellow bruising on his right chest wall.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

15. On March 10, 2020, Mr. Banning was transferred to St. John's Hospital in Springfield because his condition was too severe to be treated adequately at HSHS Good Shepherd.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

16. Mr. Banning was admitted to the CV ICU of St. John's with respiratory failure as a result of aspiration pneumonia, opioid withdrawal delirium, and a high probability of imminent or life-threatening deterioration.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

17. Mr. Banning spent two months at St. John's including five weeks in the ICU, before being discharged on May 11, 2020. The bills from Mr. Banning's hospital treatment total approximately \$750,000.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

18. ACH, in pitching its contract for jail medical services to various counties, has stated that the company avoids major costs by having persons in custody with the worst medical emergencies released on their own recognizance or "sent somewhere else" so ACH and the County can avoid responsibility for their care and the costs associated with it.

ANSWER: Defendants deny.

19. This policy and/or practice by ACH and the Jail is, in part, what caused the failure to provide the most basic response to Mr. Banning's medical needs, and lead to Mr. Banning experiencing much more severe medical problems requiring a lengthy hospital stay and enormous medical expenses.

ANSWER: Defendants deny.

Jurisdiction and Venue

20. This Court has jurisdiction over this matter under the following:
- a. 28 U.S.C. § 1331, as this is a civil action arising under the Constitution, laws, and/or treaties of the United States;
 - b. 28 U.S.C. § 1337, as this is a civil action or proceeding arising under an Act of Congress regulating commerce and/or protecting trade and commerce against restraints and monopolies; and
 - c. 28 U.S.C. § 1343, as this is a civil action seeking to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom and/or usage, of a right, privilege or immunity secured by the Constitution of the United States and/or by an Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

ANSWER: Defendants admit that this Court has jurisdiction over Plaintiff's Third Amended Complaint.

21. Plaintiff's claims for relief are predicated, in part, upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions pursuant to 42 U.S.C. § 1983.

ANSWER: Defendant admits that Plaintiff is asserting these claims but denies any constitutional violation occurred.

22. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367, to consider the state law claims alleged herein.

ANSWER: Defendants admit that Plaintiff is asserting state law claims.

23. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1391(c), as Defendants do business in this judicial district and the events or omissions giving rise to the claims occurred in this judicial district.

ANSWER: Defendants admit that venue is proper.

Parties

24. Plaintiff Nicholas Banning is an adult currently residing in Christian County, Illinois, and resided in Shelby County during the time period material to this Amended Complaint.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

25. From March 6, 2020, to March 10, 2020, Mr. Banning, was a pre-trial detainee confined in Shelby County Jail in Shelbyville, Illinois, a correctional facility maintained by Defendant (former) Shelby County Sheriff Don Koonce (“Defendant Koonce”).

ANSWER: Defendants admit.

26. At all times material to this Complaint, Defendant Koonce was the duly-elected sheriff of Shelby County and chief administrator of the Shelby County Jail.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

27. At all times material to this Complaint, Koonce was acting under color of law and in the course and scope of his employment as the Sheriff and official policy-maker for Defendant Shelby County on issues relating to care of prisoners in Shelby County Jail, and the policies, procedures, practices, and customs, as well as the acts and omissions,

challenged by this suit, and as the County's (former) chief law enforcement officer. He is sued in his individual capacity.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

28. Defendant Koonce was the commanding officer of all Shelby County sheriff's deputies, correctional officers, and jail employees, and he was responsible for their training, supervision, and conduct.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

29. Defendant Shelby County Sheriff Brian McReynolds is the current sheriff following Defendant Koonce's resignation effective June 25, 2021 and interim Sheriff Sean McQueen's resignation effective November 5, 2021. Defendant McReynolds is the current legal representative for the Shelby County Sheriff's Office and is the Sheriff and official policy-maker for Defendant Shelby County as the County's current chief law enforcement officer. Accordingly, Defendant McReynolds is the proper defendant for Plaintiff's official capacity and Defendant McReynolds is sued in his official capacity.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

30. Defendant Shelby County is joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003).

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

31. At all times material to this Complaint, ACH was and is responsible for the hiring, retaining, training, and supervising of its employees and agents, and was and is responsible for the conduct, policies and practices implemented and followed by its employees and agents.

ANSWER: Defendant denies Paragraph 31 as stated.

32. Defendant ACH is a corporation licensed and incorporated in Illinois, with its principal officers registered in Peoria, Illinois, doing business as a medical provider for various county jails, including Shelby County Jail.

ANSWER: Defendants admit that ACH is incorporated in Illinois and has contracts to provide certain medical services at county jails including Shelby County, Illinois. Otherwise, denied.

33. At all times material to this Complaint, Defendants Cwenton Williams, Tonya Atteberry, Devon Durbin, Megan Warner, Melissa Haynes, Brandon Gatton, Chris Zakowski, and Daine Burkhead (“Defendant Correctional Officers”) were correctional officers at the Shelby County Jail, employed by Shelby County and the Sheriff’s Office (formerly Defendant Koonce, currently Defendant McReynolds) who were responsible for the well-being and safety of detainees, including Mr. Banning.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

34. At all times material to this Complaint, Defendants Kelly Adams, and Jacqueline Clayton (“Medical Defendants”) were medical providers at the Shelby County

Jail, employed by ACH and were responsible for the well-being and safety of detainees, including Mr. Banning.

ANSWER: Defendants admit that they were medical providers employed by ACH to provide care for inmates at the Shelby County Jail. Otherwise denied.

Common Allegations of Fact

35. On or about March 6, 2020, at approximately 3:00 pm, Mr. Banning was transported to the Shelby County Jail after an arrest.

ANSWER: Defendants admit.

36. Mr. Banning informed the arresting officers, David Myers and Justin Dudra, that he would be experiencing withdrawal and requested to have a family member obtain and bring medication for the treatment of withdrawal symptoms to the Jail.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

37. Mr. Banning's family member obtained the withdrawal medication, commonly known as suboxone and provided it to one of the arresting officers who then provided it to the Jail staff.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

38. One or both of the arresting officers Myers and Dudra were present in the Jail when Mr. Banning was processed.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

39. The arresting officers informed Defendant correctional officer Cwenton Williams that Mr. Banning had been using and/or was in possession of heroin.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

40. Mr. Banning also informed the Jail staff during the intake process that he would be suffering withdrawal and that it would be severe.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

41. During the processing, intake records completed by one of the Defendant Correctional Officers reflect that Mr. Banning was under the influence of heroin and was exhibiting signs of drug abuse and withdrawal.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

42. Furthermore, Defendant Williams noted in a March 6, 2020, email that Mr. Banning last used heroin at 3:00 pm and will be coming down hard.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

43. During the four days Mr. Banning was in custody at the Jail, correctional officers, including Defendant correctional officers Warner, Atteberry, Durbin, and Williams, noted in emailed shift reports to supervisors that Mr. Banning was coming down hard from heroin and at times could not or did not take the medication for the treatment of heroin withdrawal.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

44. During the time period of the time in custody, Mr. Banning was unable to eat and drink, unable to stand or move, was vomiting, and was having trouble breathing, among other things.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

45. Various individuals in custody in the same cell as Mr. Banning attempted to help care for Mr. Banning, who was obviously in need of medical care.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

46. One of the individuals in the same cell as Mr. Banning told the Jail staff, including one or more of the Defendant Correctional Officers, that Mr. Banning needed help and without medical treatment “was going to die in here,” or words to that effect.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

47. On March 9, 2020, Mr. Banning was having trouble breathing which Defendant Atteberry observed.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

48. On March 9, 2020, Defendant Atteberry noted that Mr. Banning could not get up, was hyperventilating and could not speak to the public defender or attend bond court.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

49. Upon information and belief, Defendants Kelly Adams and Jacqueline Clayton were made aware of Mr. Banning's medical condition while he was in the Shelby County Jail.

ANSWER: Defendants deny.

50. Defendant Jacqueline Clayton is the primary practitioner to be notified regarding any medical issues in the Shelby County Jail. Her phone number is provided to the correctional officers working in the jail.

ANSWER: Defendants admit.

51. Neither Defendant Jacqueline Clayton nor Kelly Adams requested a higher level of medical care for Mr. Banning after they were notified of his serious medical condition or took any action to address his serious medical needs.

ANSWER: Defendants deny.

52. Alternatively, Defendants Clayton and Adams were not notified of Banning's serious medical needs, in which case the Defendant Correctional Officers failed to properly request medical treatment and/or fully inform medical providers of the seriousness of Banning's medical needs.

ANSWER: Defendants admit that they were not contacted regarding Banning's alleged medical condition. Defendants do not have sufficient knowledge to admit or deny the remaining allegations.

53. Heroin/opioid withdrawal is a serious medical condition, complications of which can be fatal.

ANSWER: Defendants admit that in limited circumstances heroin/opioid withdrawal may have the potential to become a serious medical condition and can potentially result in fatal complications. Defendants deny that it is always a serious medical condition.

54. Medical care can treat and manage the symptoms of withdrawal and prevent more serious complications from occurring.

ANSWER: Defendants admit that medical care has the potential to reduce the risk of more serious complications from developing but deny that all outcomes are similar and/or that more serious complications are invariably preventable.

55. There are clear and established medical protocols for monitoring and treating individuals suffering from opioid withdrawal, including the monitoring of vitals and the use of an assessment scale to determine if additional medical treatment or intervention is needed; many jails follow these widely-established protocols for the basic medical care required to be provided to individuals in custody.

ANSWER: Defendants admit that protocols exist, but deny that such protocols can be used in the absence of medical judgment and deny that any alleged protocols set the standard of care for treatment.

56. The only professional medical care provided to Mr. Banning during the four days he was in the Jail was a doctor's approval for the buprenorphine/naloxone sublingual medication (suboxone) that Mr. Banning's family member provided.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

57. On March 10, 2020, at the prosecution's request, based on communications with one or more of the Defendant Correctional Officers, a judge ordered Mr. Banning released on his own recognizance due to his dire condition.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

58. On March 10, 2020, emergency medical personnel came to the Jail and found Mr. Banning unable to move and observed blood in the bed he had been laying on.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

59. Mr. Banning was transported by ambulance to HSHS Good Shepherd Hospital aka Shelby Memorial Hospital ("SMH").

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

60. Staff at SMH noted that Mr. Banning's medical history was very "sketchy" and that he was tachypneic (experiencing excessive rapid breathing) and experiencing severe hypoxia.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

61. A CTA of the chest showed large infiltrates in the right lung, acute inflammation and aspiration with atelectasis distally.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

62. SMH staff determined that Mr. Banning's condition was so severe that he needed to be transferred to another hospital better equipped to handle the intensive care treatment required, and Mr. Banning was admitted to the cardiovascular ICU of St. John's Hospital ("SJH") in Springfield.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

63. SJH staff documented a concern for aspiration pneumonia with a high probability of imminent or life-threatening deterioration.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

64. Mr. Banning remained at SJH until May 11, 2020; during the two months he was there, he spent five weeks in the intensive care units of the hospital.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

65. It was obvious to anyone, including individuals with no medical training, that Mr. Banning's serious medical needs were not being met by ACH and its personnel or the Jail and its personnel.

ANSWER: Defendants deny.

66. The contract between ACH and the Jail only provides for a nurse to be at the Jail four hours a week and for a doctor to be reachable by telephone.

ANSWER: Defendants deny.

67. The need for medical treatment and the response to such needs are left to the Jail correctional staff who have little or no medical training.

ANSWER: Defendants deny.

68. The medical policies of the Jail provide no guidance for correctional staff to determine when an individual requires medical treatment or how to respond to the need for medical treatment.

ANSWER: Defendants deny.

69. The only directives from the Jail policies regarding logging medical needs of those in custody are to provide a medical request form to the individual and to notify a supervisor or the undersheriff.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

70. The Jail policy specifically states: "If they [inmates] need immediate medical attention, you [correctional staff] will need to provide this immediately."

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

71. The policy contains no information for staff to determine the need for immediate medical attention or how to provide medical attention.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

72. Defendant Koonce was aware there was not sufficient medical staff at the Jail to address the health care needs of the individuals detained at the Jail.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

73. Defendant Koonce was aware that correctional staff were untrained to recognize medical problems and respond to the need for medical attention for detained individuals.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

74. Defendant Koonce knew that the policy provided to the Jail staff said not sufficiently provide the staff necessary information regarding the right of detainees, such as Mr. Banning, to be provided with proper medical care and protected from serious harm and/or injury.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

75. Defendant Koonce was the supervisor for the Jail staff responsible for providing them adequate direction, training, policies and procedures to respond to the medical needs of detained individuals.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

76. Defendant Koonce's supervision and training of the jail staff observing, logging and responding to Mr. Banning's requests for medical care, was non-responsive, wholly inadequate and deliberately indifferent to Mr. Banning's medical needs.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

77. Upon information and belief, Defendant Koonce received emailed "shift briefs" and/or specific information from jail staff regarding Mr. Banning's deteriorating condition and serious medical needs, and thereby had personal knowledge of Mr. Banning's severe opioid withdrawal, but did not respond, either personally, or by directing his staff, to provide adequate medical care to Mr. Banning for his condition.

ANSWER: Defendants do not have sufficient knowledge to admit or deny these allegations.

78. As a direct and proximate result of Defendants' acts and omissions, Mr. Banning suffered severe and preventable complications from opioid withdrawal, requiring intense and prolonged hospitalization and incurring substantial medical expenses.

ANSWER: Defendants deny.

79. Mr. Banning has had to retain counsel and is entitled to reimbursement of reasonable attorneys' fees, pursuant to 42 USC §1988.

ANSWER: Defendants admit that Plaintiff retained counsel, and should he prevail in this action, may be able to recover attorney's fees under 42 USC § 1988. Otherwise denied.

Additional Facts Concerning ACH's Practices

80. ACH markets itself to jails based on its cost-cutting model, which includes procedures wherein it contracts with the jails to have minimal to no medical staff present at the Jail.

ANSWER: Defendants deny.

81. ACH employs an "on-call" doctor who only visits the jail in person on rare occasions and covers multiple jails in a large region managing the medical needs of those in custody by telephone.

ANSWER: Defendants deny.

82. Little to no medical staff are employed physically at the jails contracting with ACH, relying instead on correctional staff who have no formal medical training and cannot adequately assess and address residents' medical needs.

ANSWER: Defendants deny.

83. When medical care is provided, ACH aims to provide the cheapest, most minimal response, for the purpose of eliminating costs, and maximizing profits for the company.

ANSWER: Defendants deny.

84. This minimalist, penny-pinching approach results in woefully deficient medical care to residents.

ANSWER: Defendants deny.

85. ACH is aware that this approach has failed to provide adequate medical care to people in custody, resulting in treatable or manageable medical needs developing into serious, life-threatening conditions for inmates.

ANSWER: Defendants deny.

86. When that happens, as in Plaintiff's case, the inmate is released on their recognizance, discharged from the jail, and sent to a hospital, at which point the completely avoidable and emergency medical treatment is endured by the former inmate, who also bears the extensive pain, suffering and astronomical costs of the treatment.

ANSWER: Defendants deny.

87. For example, in November 2013, in a case very similar to Plaintiff's, Kenneth Collins was arrested for DUI with a BAC of 0.28.

ANSWER: Defendants deny.

88. Upon admission to the jail in Jackson County, Indiana, Collins anticipated he would be suffering severe alcohol withdrawal and requested to be admitted to a hospital.

ANSWER: Defendants deny.

89. Collins' request was denied and he began to experience severe delirium tremens as a result of withdrawal, a medical emergency with a high mortality rate.

ANSWER: Defendants deny.

90. Yet Collins remained in jail, where staff observed that he was delirious, not eating, laying on the floor, and unable to converse or maintain eye contact.

ANSWER: Defendants deny.

91. Over the course of a week, Collins' condition continued to deteriorate and he experienced seizures, broken ribs, hypothermia, hypertension, acute respiratory failure, dehydration and acute kidney injury.

ANSWER: Defendants deny.

92. In this dire condition, Collins was released on his own recognizance and hospitalized, with the costs of his medical care transferred to him from the county.

ANSWER: Defendants deny.

93. At the hospital, he was sedated and put on a ventilator in the ICU, and remained hospitalized for 8 days.

ANSWER: Defendants deny.

94. In another incident, in March 2013, at the Grant County, Kentucky jail, ACH's on-call doctor and on-site nurse failed to provide medical care or adequately respond to Danny Ray Burden, a diabetic individual experiencing an emergency hyperglycemic episode during the booking process.

ANSWER: Defendants deny.

95. Despite multiple and numerous signs of severe distress, Danny Ray Burden was not taken to the hospital until he was unresponsive.

ANSWER: Defendants deny.

96. The hospital admitted Mr. Burden for “altered mental state and cardiac arrest” and Mr. Burden was pronounced dead a week later.

ANSWER: Defendants deny.

97. ACH lost their contract with that detention center as a result.

ANSWER: Defendants deny.

Causes of Action:

I. Claims under 42 U.S.C. 1983 against Defendant Koonce

Defendants are not named in this Count I and do not answer.

II. Claims under 42 U.S.C. 1983:

Defendants Cwenton Williams, Tonya Atteberry, Devon Durbin, Megan Warner, Melissa Haynes, Brandon Gatton, Chris Zakowski, and Daine Burkhead (Defendant Correctional Officers) and Defendants Kelly Adams and Jacqueline Clayton (Medical Defendants)

108. Plaintiff re-alleges the above allegations as if fully set forth herein.

ANSWER: Defendants answer paragraphs 1 through 107 as if fully set forth herein.

109. Plaintiff is entitled to relief against Defendant Correctional Officers and the Medical Defendants under 42 U.S.C. § 1983, based on violation of the Fourteenth Amendment to the U.S. Constitution.

ANSWER: Defendants deny that Plaintiff is entitled to relief under § 1983 or that any constitutional violation occurred.

110. At all times material, Plaintiff had a constitutionally protected right under the

Fourteenth Amendment to the U.S. Constitution to receive necessary care while in the Shelby County Jail, and to have his serious medical needs timely and properly assessed and treated.

ANSWER: Defendants admit to Plaintiff's constitutional rights and deny that any constitutional violation occurred.

111. Defendant Correctional Officers and Medical Defendants deliberately disregarded the immediate and serious threat to the well-being of persons, including Plaintiff, in the Shelby County Jail in need of medical treatment and exhibited deliberate and callous indifference to serious medical and mental health needs, by denying access to immediate and structured medical observation, assessment, and treatment necessary to treat serious medical needs and prevent suffering.

ANSWER: Defendants deny.

112. Defendant Correctional Officers and the Medical Defendants were aware of the fact that there were detainees, including Plaintiff, at the Jail who suffered from severe medical needs and were at risk of injury and/or death. Despite this knowledge, Defendant Correctional Officers and the Medical Defendants intentionally and knowingly failed to provide serious, ongoing case management and treatment for Plaintiff and failed to regularly monitor his medical health care needs.

ANSWER: Defendants deny.

113. Defendant Correctional Officers and the Medical Defendants knew at all times material to this action that there was a substantial risk that detainees with serious medical issues, including Plaintiff, left substantially untreated, could be seriously injured and/or

die, that such injuries and/or deaths were reasonably foreseeable, and that the risk of injuries and/or death was imminent and immediate.

ANSWER: Defendants deny.

114. Defendant Correctional Officers and the Medical Defendants deliberately disregarded the immediate and serious threat to detainees, including Plaintiff's, medical health and well-being, and exhibited deliberate indifference and callous indifference to their serious medical and psychological needs by denying and unreasonably delaying access to competent health care to treat their serious medical issues.

ANSWER: Defendants deny.

115. In light of the aforementioned, Plaintiff suffered from both an objectively and subjectively substantial risk of serious harm while under the care and custody of Defendant Correctional Officers and the Medical Defendants.

ANSWER: Defendants deny.

116. Defendant Correctional Officers and the Medical Defendants responded to this risk in an objectively and subjectively unreasonable manner.

ANSWER: Defendants deny.

117. As a result of Defendant Correctional Officers and Medical Defendants' disregard of and indifference to Plaintiff's constitutionally protected right to be provided with proper care, Plaintiff's medical needs were ignored.

ANSWER: Defendants deny.

118. As a direct and proximate result of Defendant Correctional Officers and Medical Defendants' deliberate indifference to Plaintiff's serious health needs, Plaintiff suffered severe medical complications, injuries, suffering and medical expenses.

ANSWER: Defendants deny.

III. Claims under 42 U.S.C. 1983:

Monell Claim: Defendants Sheriff Brian McReynolds and ACH

119. The violations of Plaintiff's constitutional rights under the Fourteenth Amendment to the United States Constitution, his damages and the conduct of the individual Defendants, were directly and proximately caused by the actions and/or inactions of Defendants ACH and Defendant Brian McReynolds, in his official capacity as Sheriff of Shelby County (i.e. the Sheriff's Office), who have, with deliberate indifference:

- a. failed to establish and/or implement policies, practices and procedures to ensure that detainees at the Shelby County Jail receive prompt and appropriate medical care for serious medical needs, including specifically providing monitoring and care by medically-trained personnel for individuals experiencing drug withdrawal or intoxication/overdose;
- b. failed to adequately assess and provide adequate care and treatment for detainees exhibiting signs of distress;
- c. failed to adequately monitor the deteriorating mental and medical health conditions of detainees;
- d. failed to ensure through training, supervision and discipline that correctional, supervisory and medical staff at or assigned to the Shelby County Jail, in necessary circumstances, make a prompt referral for health care services outside the Jail;

- e. failed to ensure through training, supervision and discipline that correctional and medical staff adequately communicate and document inmates' deteriorating mental and medical health conditions;
- f. failed to ensure through training, supervision and discipline that correctional and medical staff properly respond to inmates' deteriorating mental and medical health conditions;
- g. possessed knowledge of deficiencies in the policies, practices, customs and procedures concerning detainees, and approved and/or deliberately turned a blind eye to these deficiencies.

ANSWER: Defendants deny each and every allegation.

IV. Negligence Claim:

ACH Employees Kelly Adams and Jacqueline Clayton (Medical Defendants)

120. Plaintiff re-alleges the above allegations as if fully set forth herein.

ANSWER: Defendants answer paragraphs 1 through 119 as if fully set forth herein.

121. ACH employees Kelly Adams and Jacqueline Clayton, the Medical Defendants, had a duty to Nicholas Banning to exercise reasonable care according to the conditions known to them or that, through reasonable care should have been known to them.

ANSWER: Defendants deny.

122. The Medical Defendants breached their duty to Nicholas Banning to exercise reasonable care according to the conditions known to them or that, through reasonable care should have been known to them.

ANSWER: Defendants deny.

123. ACH was negligent and deviated from the standard of care in one or more of the following respects:

- a. Although Plaintiff was objectively suffering from a serious medical issue, ACH employees (the Medical Defendants) failed to adequately intervene and determine that a health emergency existed;
- b. ACH employees (the Medical Defendants) failed to properly diagnose and treat Mr. Banning's serious medical health issues; and
- c. ACH failed to properly staff the facility.

ANSWER: Defendants deny.

124. ACH and the Medical Defendants' negligent and wrongful conduct was the direct and proximate cause of injury and damage to Nicholas Banning.

ANSWER: Defendants deny.

125. Plaintiff has sustained the following damages:

- a. pain and suffering, both physical and emotional;
- b. pre- and post-judgment interest; and
- c. significant medical expenses.

ANSWER: Defendants deny.

DEFENDANTS DEMAND TRIAL BY JURY

WHEREFORE, Defendants Advanced Correctional Healthcare, Inc., Kelly Adams, and Jacqueline Clayton, respectfully requests that this Court deny the relief sought by the Plaintiff.

AFFIRMATIVE DEFENSES

First Affirmative Defense

At the time and place alleged, the law was not clearly established such that Defendants were on notice that their conduct was unlawful. Defendants are therefore entitled to qualified immunity. Defendants acknowledge that the Seventh Circuit held in *Petties v. Carter*, 836 F.3d 722, 734 (7th Cir. 2016) that medical contractors such as they are not entitled to assert qualified immunity but includes the defense as the Supreme Court has not definitively ruled on that issue. In the alternative, Defendants assert that they are entitled to good faith immunity. *See, Richardson v. McKnight*, 521 U.S. 399, 401, 413-14 (1997).

Second Affirmative Defense

To the extent that Plaintiff seeks to hold Defendants liable for the acts or omissions of anyone other than themselves, said claims are barred by law, as §1983 does not allow claims based upon vicarious liability or *respondet superior*. *See, Connick v. Thompson*, 131 S.Ct. 1350, 1359 (2011).

Third Affirmative Defense

Plaintiff alleges that Defendants' care was objectively unreasonable, and that Defendants failed to provide Plaintiff with adequate care for his medical conditions. To the extent that Plaintiff's Third Amended Complaint references any action or omission on the part of any Defendant more than two years prior to the date the Plaintiff filed his lawsuit, the federal claims are barred by the statute of limitations.

DEFENDANTS DEMAND TRIAL BY JURY

ADVANCED CORRECTIONAL
HEALTHCARE, INC., JACQUELINE
CLAYTON and KELLY ADAMS,
Defendants

By: s/ Betsy A. Wirth
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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2022, 2022, I electronically filed the foregoing **ACH DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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