

10452-155
BJV/ms

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

NICHOLAS BANNING,)	
)	
Plaintiff,)	
)	
v.)	No. 21-cv-03100-JES-JEH
)	
SHELBY COUNTY, SHELBY COUNTY SHERIFF)	
BRIAN MCREYNOLDS, DON KOONCE,)	
ADVANCED CORRECTIONAL HEALTHCARE,)	
INC., CWENTON WILLIAMS, TONYA)	
ATTEBERRY, DEVON DURBIN, MEGAN)	
WARNER, MELISSA HAYNES, BRANDON)	
GATTON, CHRIS ZAKOWSKI, DAINE)	
BURKHEAD,)	
)	
Defendants.)	

DEFENDANT KOONCE’S AND MCREYNOLDS’

ANSWER AND AFFIRMATIVE DEFENSES

TO THE THIRD AMENDED COMPLAINT (DOC. #56)

NOW COME the Defendants, SHELBY COUNTY SHERIFF BRIAN MCREYNOLDS and DON KOONCE, by Heyl, Royster, Voelker & Allen, their attorneys, and for their Answer to the Third Amended Complaint states:

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: 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: Admit that Mr. Banning was going through heroin withdrawal while at the Jail, and was sent to the hospital where he stayed for some time.

Defendants have insufficient knowledge or information upon which to form a belief about what medical condition(s) Plaintiff developed, and the degree of medical care required to treat these conditions, and therefore deny the same.

Otherwise, denied.

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

ANSWER: Defendants have insufficient knowledge or information upon which to form a belief about what could have prevented Plaintiff's alleged medical problems and suffering, and therefore deny the allegations of this Paragraph.

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: Admit that at some point during Plaintiff's time at the Jail from March 6, 2020 until March 10, 2020, some number of correctional officers were aware that Plaintiff was experiencing heroin withdrawal.

Otherwise, denied.

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: Admit that some number of Jail staff were informed during the booking process that Plaintiff would go through heroin withdrawal.

Otherwise, these Defendants lack sufficient information or knowledge with which to confirm or deny the remaining allegations of this Paragraph, and therefore deny the same.

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

ANSWER: 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: 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 have insufficient knowledge or information upon which to form a belief about what medical issues may or may not have resulted in other Jail facilities ACH provides medical services at for individuals suffering from drug overdose or withdrawal, and what causal relationship those issues have with ACH's provision of care. Accordingly, Defendants deny the allegations of this Paragraph.

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: Denied.

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: Admit that some correctional officer or officers, at some point in time between March 6, 2020 and March 10, 2020, noted Plaintiff appeared lethargic or had vomited.

Otherwise, denied.

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

ANSWER: Admit.

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: Denied.

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: Admit that on March 10, 2020, Plaintiff was released from the Jail on his own recognizance so he could be provided medical treatment.

Otherwise, denied.

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: Admit that on March 10, 2020, Plaintiff was transported from the Jail to HSHS Good Shepherd Hospital's emergency department.

Defendants have insufficient knowledge or information upon which to form a belief about the remainder of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations in this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations in this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations in this Paragraph, and therefore deny the same.

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 have insufficient knowledge or information upon which to form a belief about the allegations in this Paragraph, and therefore deny the same.

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: Denied.

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: Admit that this Court has jurisdiction over Plaintiff's 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: Admit that the cited statutes exist and are what Plaintiff's causes of action appear to be predicated on/seek relief under but otherwise denied.

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: Admit that the cited statute exists and is what appears to be the basis of jurisdiction for Plaintiff's state-law negligence claim in Count IV against Defendants Clayton and Adams. Defendants have not identified any state law causes of action against them, and therefore deny that supplement jurisdiction is proper for any claims against them.

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: Admit venue is proper in this case.

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: Admit that Plaintiff is an adult.

Otherwise, Defendants lack sufficient information or knowledge upon which to form a belief about the remainder of this Paragraph, and therefore deny the same.

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: 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: Admit that Defendant Koonce was the duly-elected sheriff of Shelby County at the time of Plaintiff's incarceration at issue in this lawsuit and at the time the Sheriff's Office contracted with Co-Defendant ACH, and further that former Sheriff Koonce would have ultimately been responsible for the Shelby County Jail while Sheriff.

Otherwise, denied.

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.

ANSWERS: Admit that Defendant Koonce — in relation to Plaintiff’s allegations — was acting under color of law, within the scope of his employment, and in an official policy-maker for the Shelby County Sheriff’s Office on issues relating to the Shelby County Jail. Further admit that the Sheriff is the County’s chief law enforcement officer, and that Defendant Koonce appears to be sued in his individual capacity.

Otherwise, denied.

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: Admit.

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: Admit.

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: Admit that the *Carver* decision exists, and provides a proper basis for joining Shelby County into the instant lawsuit.

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: These Defendants do not have a reason to doubt the allegations in this Paragraph, but also lack sufficient information or knowledge upon which to confidently state this Paragraph's allegations are true. Accordingly, these Defendants deny the allegations in this Paragraph.

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: Admit that ACH is a corporation licensed and incorporated in Illinois, and was retained to provide medical services at the Shelby County Jail.

Otherwise, Defendants lack sufficient information or knowledge upon which to confirm or deny the remainder of this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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: Deny that these Defendants are employees of Shelby County.

Otherwise, admit.

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: Admit that Co-Defendants Adams and Clayton were medical providers at the Shelby County Jail, and that their duties (as understood by Defendants) included maintaining the well-being and safety of detainees (Mr. Banning included) from a medical standpoint.

Defendants do not doubt that Adams and Clayton were employees of Co-Defendant ACH, but do not know for a fact if this is true. Defendants therefore have insufficient information upon which to form a belief about the truth of this portion of this allegation, and deny the same.

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: 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 have insufficient information or knowledge upon which to confirm or deny what Plaintiff told Officers Myers or Dudra, and therefore deny the allegations of this Paragraph.

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: Admit that some medication(s) for Plaintiff was brought to the Jail and ultimately provided by Jail staff.

Defendants believe a brought-in medication was Bupren/Nalox, which is commonly is known as suboxone.

Otherwise, denied.

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

ANSWER: Admit that one or both officers was present for some portion of Plaintiff's booking at the Jail.

Otherwise, denied.

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

ANSWER: Admit.

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 lack sufficient information or knowledge upon which to confirm or deny the remainder of this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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: Admit that one of the booking records notes Plaintiff appeared to be under the influence of heroin, and was exhibiting signs of drug abuse and withdrawal.

To the extent this Paragraph contains any other allegations, those are denied.

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: Admit that Defendant Williams wrote in a March 6, 2020 email that Plaintiff last used heroin around 1500 hours (so, 3pm), and otherwise admit.

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: Admit that Defendant Williams wrote in a March 6, 2020 email that Plaintiff would be coming down hard from heroin withdrawal.

Admit that Defendant Warner wrote in a March 7, 2020 email that Plaintiff refused his medication.

Admit that Defendant Durbin wrote in a March 8, 2020 email that Plaintiff had previously refused his medication.

Admit that Defendant Atteberry wrote in a March 9, 2020 email that Plaintiff was "coming down bad" from heroin.

Otherwise, denied.

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: Admit that at some point in time between March 6, 2020 and March 10, 2020, correctional officer(s) at the Jail were either told or observed that Plaintiff had vomited.

Defendants have insufficient information or knowledge about whether Plaintiff did or did not experience the other described physical symptoms

while at the Jail from March 6, 2020 to March 10, 2020 while outside the presence or observance of these Defendants, and therefore deny the same.

Otherwise, denied.

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: Admit that at least one other inmate in Plaintiff's cell attempted to assist the Jail staff in monitoring Plaintiff.

Otherwise, denied.

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: Denied, as best these Defendants can recall and from available information and knowledge.

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

ANSWER: Admit that Defendant Atteberry wrote in a March 9, 2020 email that Plaintiff was "coming down bad" from heroin.

Otherwise, denied.

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: Admit that Defendant Atteberry wrote in a March 9, 2020 email that Plaintiff was "coming down bad" from heroin, and was not able to speak with "probation or public defender nor attend court."

Otherwise, denied.

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: Admit, based on Defendants' best recollection and available information.

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 lack sufficient information to know whether ACH designated Nurse Clayton as the "primary practitioner" for the Jail, and therefore deny the same.

Otherwise, 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: Admit that Clayton or Adams never conveyed to Defendants any request for Plaintiff to receive a higher level of medical care.

Otherwise, Defendants have insufficient information or knowledge upon which to form a belief about the remainder of this allegation, and therefore deny the same.

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 currently have insufficient information or knowledge to admit or deny whether or the extent to which Nurses Clayton and/or Adams were notified of Plaintiff's "serious medical condition," and therefore deny that portion of this allegation per Federal Rule 8(b)(5).

Otherwise: denied.

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

ANSWER: Admit that – in general - in very limited circumstances heroin/opioid withdrawal may have the potential in some circumstances to become a serious medical condition and can potentially result in fatal complications.

Otherwise, denied.

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

ANSWER: Admit that medical care has the potential to minimize more serious complications from developing but deny that all outcomes are similar and/or that more serious complications are entirely preventable when medical care is provided.

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: Admit that medical protocols for opioid withdrawal exist, and can include the described steps.

Defendants have insufficient knowledge or information upon which to confirm or deny what protocols are used in other correctional institutions, and therefore deny the same.

Otherwise, denied.

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: Denied.

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: Admit that on March 10, 2020, the State requested and the Court granted Plaintiff to be released on his own recognizance based upon Plaintiff's medical needs.

These Defendants currently lack sufficient information or knowledge to admit or deny whether the prosecutor's decision was based on communications had with these Defendants, and therefore must deny that allegation at this time.

Otherwise, denied.

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: Admit that on March 10, 2020, emergency medical personnel came to the Jail for Plaintiff.

Defendants lack sufficient information or knowledge upon which to verify what emergency personnel saw when they first saw Plaintiff, and therefore deny the remainder of this Paragraph's allegations.

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

ANSWER: Admit.

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: These Defendants lack sufficient information or knowledge upon which to affirm or deny this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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

ANSWER: These Defendants lack sufficient information or knowledge upon which to affirm or deny this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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: These Defendants lack sufficient information or knowledge upon which to affirm or deny this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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

ANSWER: These Defendants lack sufficient information or knowledge upon which to affirm or deny this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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: These Defendants lack sufficient information or knowledge upon which to affirm or deny this Paragraph's allegations. Accordingly, these Defendants deny the allegations in this Paragraph.

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: Denied.

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: Admit that the contract between ACH and the Sheriff's Office states on-site nursing coverage will be provided for four hours a week, and that a or a mid-level practitioner is to be available by telephone seven days a week, twenty four hours a day.

Otherwise, denied.

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: Admit that correctional officers are on-site at the Jail, while ACH's medical professionals were absent.

Otherwise, denied.

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: Denied.

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: Denied.

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

ANSWER: Admit that the quoted language is accurately lifted from a Sheriff's Office policy titled "Medical and Prescription Inventory Policy."

To the extent anything else is alleged by this Paragraph, said allegations are denied.

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

ANSWER: Denied.

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: Denied.

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: Denied.

74. Defendant Koonce knew that the policy provided to the Jail staff did 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: Denied.

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: Admit that, as Sheriff, Defendant Koonce was ultimately the official responsible for the Jail, and ultimately responsible for providing the policies and training to Sheriff's Office staff on various issues, among them responding to the needs of detainees.

Otherwise, denied.

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: Denied.

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: Denied.

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: Denied.

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

ANSWER: 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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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

ANSWER: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: Admit that Plaintiff, in this case, was released on his own recognizance by the court, discharged from the jail, and sent to a hospital for medical treatment.

Otherwise, these Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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

ANSWER: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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

ANSWER: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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

ANSWER: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

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

ANSWER: These Defendants have insufficient knowledge or information upon which to form a belief about the allegations of this Paragraph, and therefore deny the same.

CAUSES OF ACTION:

I. CLAIMS UNDER 42 U.S.C. 1983 AGAINST DEFENDANT KOONCE

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

ANSWER: These Defendants incorporate by reference their answers to all allegations Plaintiff re-alleges.

99. Plaintiff is entitled to relief against Defendant Koonce under 42 U.S.C. § 1983, based on violation of the Fourteenth Amendment to the U.S. Constitution.

ANSWER: Denied.

100. At all times material, Plaintiff Nicholas Banning, had a constitutionally protected right under the Fourteenth Amendment to the U.S. Constitution to receive needed care while in the Shelby County Jail, and to have his medical issues timely and properly assessed and treated.

ANSWER: Admit that Plaintiff was in possession of his constitutional rights while incarcerated at the Shelby County Jail.

Otherwise, denied, including that Plaintiff's constitutional rights were violated.

101. Defendant Koonce deliberately disregarded the immediate and serious threat to the medical health and well-being of persons in the Shelby County Jail, including Plaintiff, and exhibited deliberate and callous indifference to serious medical needs, by failing to have

policies, training and personnel equipped to provide essential medical health care, treatment and observation necessary to assess, respond to and treat serious medical needs of individuals in the custody of the Shelby County Jail.

ANSWER: Denied.

102. Defendant Koonce was aware that there were and/or would be detainees confined in the Shelby County Jail who suffered from severe medical health needs and were at risk of injury and/or death. Despite this knowledge, Defendant Koonce intentionally and knowingly failed to provide medical care, equipment, personnel and training necessary to respond to individuals and prevent their injury or death.

ANSWER: Denied.

103. Defendant Koonce deliberately disregarded the immediate and serious threat to detainees' medical health and well-being and exhibited deliberate indifference to their serious medical and psychological needs by denying and unreasonably delaying access to competent medical care to treat their serious medical needs, in that Defendant Koonce's actions in failing to provide close observation and adequate medical care by trained medical professionals was so grossly substandard, incompetent, and inadequate as to amount to no medical and mental health care at all.

ANSWER: Denied.

104. Defendant Koonce contracted with ACH even though the contract did not provide for adequate medical attention for detainees and with the knowledge that ACH's stated objective was to save money by not providing medical care to detainees, and to discharge them from jail when their needs became severe or life-threatening.

ANSWER: Denied.

105. 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 Koonce. Defendant Koonce responded to this risk in an objectively and subjectively unreasonable manner.

ANSWER: Denied.

106. As a result of Defendant Koonce's disregard of and indifference to Plaintiff's constitutionally protected right to be provided with proper care, Plaintiff's medical needs were ignored.

ANSWER: Denied.

107. As a direct and proximate result of Defendant Koonce's deliberate indifference to Plaintiff's serious health needs, Plaintiff suffered severe medical complications, injuries, suffering and medical expenses.

ANSWER: Denied.

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: These Defendants incorporate by reference their answers to all allegations Plaintiff re-alleges.

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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

ANSWER: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

WHEREFORE, these Defendants respectfully request that judgment be entered in their favor, and such other relief as this Court deems warranted.

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: Admit that Defendant McReynolds is presently the Sheriff of Shelby County. Otherwise, denied (including each and every subpart).

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: These Defendants incorporate by reference their answers to all allegations Plaintiff re-alleges.

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

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.

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

ANSWER: *This allegation and Count is not against these Defendants. To the extent a response is required, Defendants deny the same.*

DAMAGES

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.

Accordingly, Plaintiff respectfully requests that the Court award Plaintiff the aforementioned damages; any and all other compensatory damages suffered by Plaintiff; punitive damages; attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and such other and further relief as the Court deems just and equitable.

ANSWER: **Denied, and Defendants respectfully request strict proof of any claimed injury.**

WHEREFORE, these Defendants respectfully request that judgment be entered in their favor, and such other relief as this Court deems warranted.

DEFENDANTS DEMAND A TRIAL BY JURY

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs seek judgment as follows:

- a. Compensatory damages against each of the Defendants herein;
- b. Punitive damages against Defendants sued individually;
- c. Attorneys' fees pursuant to 42 U.S.C. § 1988 and costs of litigation;
- d. Such further relief as the Court deems just and proper.

JURY TRIAL DEMAND

126. Plaintiff demands trial by jury.

Respectfully submitted,

SHERIFF BRIAN MCREYNOLDS AND DON KOONCE,
Defendants

BY: /s/Keith E. Fruehling
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
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AFFIRMATIVE DEFENSES

NOW COME the Defendants, SHELBY COUNTY SHERIFF BRIAN MCREYNOLDS and DON KOONCE, by Heyl, Royster, Voelker & Allen, their attorneys, and for their Affirmative Defenses incorporate by reference all admissions and denials asserted in their Answer, and further state as follows:

1. These individual Defendants are entitled to qualified immunity.
2. To the extent a claim or fact or issue relevant to Plaintiff's claim has been addressed/adjudicated to a final judgment in Plaintiff's criminal proceedings arising from the subject incident or any associated incidents, Plaintiff is precluded from litigating those claims or issues.
3. To the extent Plaintiff seeks to bring any Section 1983 claims that occurred more than two years before the date of this Complaint's filing, or any state-law claims more than one-year from this Complaint's filing, said claims are untimely.

WHEREFORE, Defendants demand a jury by twelve, and that judgment be entered in their favor.

Respectfully submitted,

SHERIFF BRIAN MCREYONLDS, AND DON KOONCE,
Defendants

BY: /s/Keith E. Fruehling
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
301 North Neil Street, Suite 505
Champaign, IL 61820
kfruehling@heyloyster.com

PROOF OF SERVICE

I hereby certify that on May 23, 2022, I electronically filed the foregoing ANSWER TO THE THIRD AMENDED COMPLAINT, with the Clerk of the Court using the CM/ECF system, which will send notification to:

Louis J. Meyer – louismeyer@meyerkiss.com
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311 West Stratford Drive
Peoria, IL 61614

Daniel P. Kiss – dankiss@meyerkiss.com
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Quinn Johnston
227 NE Jefferson
Peoria, IL 61602

I also hereby certify that I have mailed, by United States Postal Service, the foregoing to the following non-CM/ECF participant: None.

s/ Keith E. Fruehling _____
Heyl, Royster, Voelker & Allen

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