

DISTRICT COURT, COUNTY OF EL PASO
COLORADO

Court Address: Judicial Building
20 East Vermijo Avenue
Colorado Springs, Colorado 80903

Phone Number: 719-448-7700

Plaintiffs: AIMEE LOUISE GAHAGAN, Personal Representative of and for the Estate of her brother, ANDREW J. SPILLANE, deceased, and DAVID D. SPILLANE and CATHERINE LEE SPILLANE, surviving parents of ANDREW J. SPILLANE, deceased

Defendants: THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, a governmental entity of the State of Colorado; JOHN WESLEY ANDERSON, in his official capacity as Sheriff of El Paso County, Colorado; DEPUTY BILLY MAESTAS, SARGENT MATTHEW KORTREY, individually; CORRECTIONAL MEDICAL SERVICES, INC., a Missouri corporation; CYNTHIA RENEE FALLHOWE, M.D.; MICHAEL J. THOMPSON, R.N.; JOHN OR JANE DOE, and DENISE LYNN ROBISON, R.N., individually

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Case No. 01CV1451
Division 3

AMENDED COMPLAINT

COME NOW the Plaintiffs, Aimee Louise Gahagan, as Personal Representative of and for the Estate of her deceased brother, Andrew J. Spillane, and David D. and Catherine Lee Spillane, the surviving parents of Andrew J. Spillane, deceased, and as their claims for relief against the Defendants state and allege as follows:

PARTIES AND GENERAL ALLEGATIONS

1. This is an action for civil rights violations, attorneys' fees and costs pursuant to 42 USCA §1983 and §1988 and the Constitution of the United States and an action for negligence and the wrongful death of Andrew J. Spillane, deceased, pursuant to C.R.S. §13-21-201(c) and C.R.S. §13-21-202 and 203.

2. The decedent, Andrew J. Spillane, was a resident of El Paso County, Colorado prior to his death. The decedent's date of birth was April 22, 1970 and his date of death was May 10, 2000. The decedent was 30 years of age at the time of his death. The Plaintiffs, David D. Spillane and Catherine Lee Spillane, are the adoptive parents and next of kin of the decedent Andrew J. Spillane. David D. and Catherine Lee Spillane are and were residents of El Paso County, Colorado.

3. The Plaintiff Aimee Louise Gahagen is the surviving sister of the decedent, Andrew J. Spillane. The Plaintiff Aimee Louise Gahagen is the Personal Representative of the Estate of the decedent, Andrew J. Spillane, pursuant to Order of the El Paso County District Court of January 19, 2001 in Probate matter 01PR43.

4. At all times necessary to this action, the Board of County Commissioners of El Paso County (hereinafter "The Board") was and is a governmental entity organized and existing under the laws of the State of Colorado. The Board is responsible for the jail facilities of the El Paso County Sheriff's department. The Board was provided with timely written notice of claim pursuant to C.R.S. §24-10-109. Thus, all conditions precedent to filing this action have been satisfied and have been met.

5. The Defendant John Wesley Anderson is the Sheriff of El Paso County, Colorado. The Sheriff has final policy-making authority and responsibility for all matters relating to the operation and management of the jail facilities of the El Paso County Sheriff's department. The Sheriff has such authority and responsibility for and/on behalf of The Board and of the office of the Sheriff. The Sheriff's authority and responsibility include: the supervision and treatment of pre-trial detainees and inmates including those with serious medical conditions; formulating and implementing written policies regarding serious medical conditions including identifying and providing proper and necessary medical treatment to detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; ensuring that deputies and other members of the

jail staff are properly and adequately trained to implement policies in a constitutional manner; ensuring that detainees and inmates are provided timely and appropriate medical care and treatment; ensuring that deputies do not use unreasonable and/or excessive force; and, ensuring that detainees and inmates do not sustain unnecessary pain, suffering, injury and/or death.

6. At all times necessary to this action, the El Paso County Sheriff had a duty to formulate, adopt, execute and maintain policies, standards, procedures and practices that did not abridge or violate the civil rights and which protected the civil rights of detainees and inmates including the decedent, Andrew J. Spillane, under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under 42 USCA §1983, and which policies provide proper and necessary medical treatment to detainees including inmates experiencing severe and life-threatening withdrawal from alcohol and which policies protect detainees and inmates including the decedent, Andrew J. Spillane, from sustaining excessive force and unnecessary pain, suffering, injury and death. Further, it was foreseeable that the absence of such policies, standards, procedures and practices would result in the violation of the constitutional rights of detainees and inmates including the decedent, Andrew J. Spillane.

7. At all times necessary to this action, Billy Maestas and Matthew Kortrey were deputies and employees of El Paso County and were acting within the course and scope of their employment relationship and were acting for and on behalf of the El Paso County Sheriff and were acting under color of state law for the purposes of Plaintiffs' 42 USCA §1983 claims.

8. At all times necessary to this action, the Defendant Sheriff John Wesley Anderson had a duty and responsibility to formulate and implement written policies and to train other personnel regarding the use and administration of Oleoresin Capsicum spray, commonly known and referred to as "pepper spray" (hereinafter referred to as "OC spray") including the use of OC spray on psychotic individuals and individuals experiencing agitation or mental distress or crisis and prohibiting the use and application of administering more than a single one second burst of OC spray to an individual and including the duty and responsibility to formulate and implement written policies, procedures, standards and practices prohibiting an individual from being handcuffed with his or her hands behind the back and being laid face down on the stomach and chest after the person has been sprayed with OC spray. Such a practice is known to significantly increase the risk of death of the restrained person.

9. As a deputy and employee of the El Paso County Sheriff's department, the Defendant Matthew Kortrey had the duty and responsibility to formulate and implement written policies, procedures, standards and practices and to train other personnel to not administer and use OC spray on psychotic individuals or individuals experiencing mental distress or crisis and prohibiting the use and application of administering more than a single burst of OC spray to an

individual and the duty and responsibility to formulate and implement written policies, procedures, standards and practices prohibiting an individual from being handcuffed with his or her hands behind the back and being laid face down on the stomach and chest after the person has been sprayed with OC spray. Such a restraint practice is known to significantly increase the risk of death of the restrained person.

10. At all times necessary to this action, the Defendant Correctional Medical Services, Inc. was a corporation organized and existing under the laws of the State of Missouri. The Defendant Correctional Medical Services, Inc. was authorized and registered to do business in the State of Colorado and, in fact, was doing business in the State of Colorado including in El Paso County, Colorado.

11. At all times necessary to this action, the Defendant Correctional Medical Services, Inc. was in the business of providing comprehensive health care services and mental health care services to and for detainees and inmates in jails and correctional facilities including those in the custody of the El Paso County Sheriff's Department. In providing, administering and supervising medical services to and for the detainees and inmates at the El Paso County Jail at the Criminal Justice Center, the Defendant Correctional Medical Services, Inc. was acting under color of state law for the purposes of the Plaintiffs' §1983 claims.

12. At all times necessary to this action, the Defendant Correctional Medical Services, Inc. contracted and undertook the duties and responsibilities to provide medical services and treatment to and for all detainees and inmates in custody of the El Paso County Sheriff's department including the decedent, Andrew J. Spillane. The Defendant Correctional Medical Services, Inc.'s duties included: providing medical treatment of pre-trial detainees and inmates including those with serious medical conditions; formulating and implementing written policies and procedures regarding serious medical conditions including identifying and providing proper and necessary medical treatment of serious and life-threatening withdrawal from alcohol and/or other substances; providing training and policies to ensure that deputies of the Sheriff's Department and employees and agents of Correctional Medical Services, Inc. are properly and adequately trained to implement the policies in a constitutional manner; to ensure that detainees and inmates are provided timely and appropriate medical care and treatment; and, to ensure that detainees and inmates do not sustain unreasonable and/or excessive force and do not sustain unnecessary pain, suffering, injury and/or death. Further, it was foreseeable that the absence of such policies, standards, procedures and practices would result in the violation of the constitutional rights of detainees and inmates including the decedent, Andrew J. Spillane.

13. At all times necessary to this action, the Defendant Correctional Medical Services, Inc. contracted and undertook the duties and responsibilities to provide medical and other health care personnel who were adequately trained and properly qualified to identify and recognize

serious medical conditions including serious and potentially life-threatening withdrawal from alcohol and/or other substances and the duty to adequately train and provide qualified personnel to provide reasonable and necessary medical treatment of such conditions to prevent and avoid threats to a patient's life, serious injury and death.

14. At all times necessary to this action, the Defendant Correctional Medical Services, Inc. had actual knowledge that individuals experiencing alcohol withdrawal have a medical condition which, if not properly treated, becomes severe and is life-threatening and individuals with such a condition require timely and appropriate medical treatment and hospitalization.

15. At all times necessary to this action, Cynthia Renee Fallhowe, M.D. was and is a physician licensed to practice medicine in the State of Colorado and did practice medicine in El Paso County, Colorado.

16. At all times necessary to this action, the Defendant Dr. Fallhowe was an employee and/or agent of Correctional Medical Services, Inc. and acted within the course and scope of her employment with and/or agency for Correctional Medical Services, Inc. The Defendant Dr. Fallhowe held herself out and undertook to perform the duties and responsibilities as the Medical Director at the El Paso County Sheriff's Department jail facility at the Criminal Justice Center and provided, supervised and administered comprehensive medical services to the detainees and inmates who were in custody of the El Paso County Sheriff's Department.

17. The Defendant Dr. Fallhowe was responsible for formulating, approving, adopting, implementing and maintaining policies, procedures, standards and practices for providing medical treatment of detainees and inmates including those with serious medical conditions including: identifying and providing proper and necessary medical treatment to detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; ensuring that deputies and other members of the jail staff were properly and adequately trained to implement policies in a constitutional manner; ensuring that detainees and inmates were provided timely and appropriate medical care and treatment; ensuring that deputies do not use unreasonable and/or excessive force; and, ensuring that detainees and inmates do not sustain unnecessary pain, suffering, injury and/or death. In providing, administering and supervising the clinical medical services to and for the detainees and inmates at the El Paso County Jail at the Criminal Justice Center, the Defendant Dr. Fallhowe was acting under color of state law for the purposes of the Plaintiffs' §1983 claims.

18. At all times necessary to this action, the Defendant Michael G. Thompson, R.N. was a registered nurse pursuant to the laws of Colorado. Nurse Thompson was an employee of the Defendant Correctional Medical Services, Inc. and served as the administrator of the mental health services and health care program that were provided to the detainees and inmates in the

custody of the El Paso County Sheriff's Department.

19. Defendant Thompson was responsible for formulating, approving, adopting, implementing and maintaining policies, procedures, standards and practices for providing medical treatment of detainees and inmates including those with serious medical conditions including: identifying and providing proper and necessary medical treatment to detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; ensuring that deputies and other members of the jail staff were properly and adequately trained to implement policies in a constitutional manner; ensuring that detainees and inmates were provided timely and appropriate medical care and treatment; ensuring that deputies do not use unreasonable and/or excessive force; and, ensuring that detainees and inmates do not sustain unnecessary pain, suffering, injury and/or death. In providing, administering and supervising the mental health services and health care program to and for the detainees and inmates at the El Paso County Jail at the Criminal Justice Center, the Defendant Nurse Thompson was acting under color of state law for the purposes of the Plaintiffs' §1983 claims.

20. At all times necessary to this action, the Defendant or Defendants whose true name is not presently known to the Plaintiffs and who is referred to herein as John or Jane Doe was an employee of the Defendant Correctional Medical Services, Inc. and served as the Regional Manager for the Defendant Correctional Medical Services, Inc. Said Defendant was responsible for the supervision and administration of the medical services that were to be provided to the detainees and inmates in the custody of the El Paso County Sheriff's Department.

21. Defendant John or Jane Doe was responsible for formulating, approving, adopting, implementing and maintaining policies, procedures, standards and practices for providing medical treatment of detainees and inmates including those with serious medical conditions including: identifying and providing proper and necessary medical treatment to detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; ensuring that deputies and other members of the jail staff were properly and adequately trained to implement policies in a constitutional manner; ensuring that detainees and inmates were provided timely and appropriate medical care and treatment; ensuring that deputies do not use unreasonable and/or excessive force; and, ensuring that detainees and inmates do not sustain unnecessary pain, suffering, injury and/or death. In providing and administering and supervising the medical services to and for the detainees and inmates at the El Paso County Jail at the Criminal Justice Center, the Defendant John or Jane Doe was acting under color of state law for the purposes of the Plaintiffs' §1983 claims.

22. At all times necessary to this action, Darin Meek, Cara Siegel, Denise Lynn Robison, R.N., Jeanne L. Sanders, LPN and Jorge E. LaCayo, R.N. were employees and/or agents of the Defendant Correctional Medical Services, Inc. and were acting within the course and scope of

their employment relationship and were acting for and on behalf of Correctional Medical Services in Inc.

23. As employees and/or agents of Correctional Medical Services, Inc., Darin Meek, Cara Siegel, Denise Lynn Robison, R.N., Jeannee L. Sanders, LPN and Jorge E. LaCayo, R.N. had the duty and responsibility to properly assess, examine, observe and treat pre-trial detainees and inmates including those with serious medical conditions and had the responsibility to formulate and implement written policies regarding serious medical conditions including: identifying and providing proper and necessary medical treatment to detainees and inmates experiencing serious and life-threatening withdrawal from alcohol and/or other substances; ensuring that deputies and other members of the jail staff were properly and adequately trained to implement policies in a constitutional manner; ensuring that detainees and inmates were provided timely and appropriate medical care and treatment; ensuring that deputies do not use unreasonable and/or excessive force; and, ensuring that detainees and inmates do not sustain unnecessary pain, suffering, injury and/or death.

24. In their positions as employees and/or agents of Correctional Medical Services, Inc. and in rendering medical services to and for detainees and inmates of the El Paso County Sheriff's Department, including the decedent, Andrew J. Spillane, Darin Meek, Cara Siegel, Denise Lynn Robison, R.N., Jeannee L. Sanders, LPN and Jorge E. LaCayo, R.N. were acting under color of state law for the purposes of Plaintiffs' §1983 claims.

FACTUAL BASIS OF CLAIMS

25. On May 10, 2000 at approximately 6:48 A.M. the El Paso County Sheriff's Department accepted custody of Andrew J. Spillane at the jail in the Criminal Justice Center. At the time the El Paso County Sheriff's Department accepted custody of Mr. Spillane, jail personnel of the Sheriff's Department were presented with a doctor's report that Mr. Spillane was diagnosed as having a "Psychosis" and that Mr. Spillane was to be "Psych[iatric] Eval[uated] in AM or before leaving."

26. During the booking process, jail personnel of the Defendant Sheriff's Department observed that Mr. Spillane was exhibiting signs and symptoms of the medical condition of withdrawal from alcohol in that he was shaking uncontrollably, and was jumping and spinning around. Mr. Spillane had open sores on his legs which he kept picking because, as he told jail personnel, he was "trying to get the bugs off".

27. During the booking process and before 8:41 A.M. on May 10, 2000, Darin W. Meek determined that Mr. Spillane was "suffering from alcohol withdrawals", that he was "pinging off the walls" and that Mr. Spillane had a history of seizures. The Defendant Meek was also

informed that Mr. Spillane had a history of problems after ceasing the use of alcohol. Alcohol withdrawal was noted to be Mr. Spillane's major health problem.

28. During the booking process, Mr. Spillane signed a Patient Consent To Treatment Form in which he “. . . authorize[d] Correctional Medical Services, its employees and agents, and Dr. Fallhowe and/or such assistants as may be selected by him/her, to arrange medical treatment for me.”

29. On May 10, 2000 Mr. Spillane was a pre-trial detainee on charges of growing marijuana plants and having paraphernalia in his apartment.

30. Despite Mr. Spillane's medical history and condition and having been diagnosed with a psychosis and having been determined to need a psychiatric evaluation, Mr. Spillane was not provided and he was wrongfully and improperly denied a psychiatric evaluation or other needed medical services and treatment. Further, Mr. Spillane was not placed in the Infirmary or even in ward 2B which is designated for detainees and inmates with mental health problems. These wrongful actions were the result of: (a) a policy and/or a customary and usual practice of the El Paso County Sheriff's Department and its deputies and employees and the Defendant Correctional Medical Services, Inc. and its employees and/or agents to not provide medical services to detainees and inmates whom the deputies, employees and/or agents assume will soon be released on bond; and (b) the failure of the Defendants to have a policy that required hospitalization of detainees and inmates who experience severe alcohol withdrawal.

31. In the course of the morning and into the afternoon of May 10, 2000, Mr. Spillane continued to exhibit signs and symptoms of alcohol withdrawal. Jail personnel of the Sheriff's Department observed Mr. Spillane to be confused, was again described as “pinging off the walls”, his hands were shaking, he was sweating profusely, he spoke with rapid and jumbled speech and continued to complain of “bugs”.

32. On May 10, 2000 at approximately 5:20 P.M., Mr. Spillane was transferred to the medical Infirmary in the jail. In the Infirmary, the Defendants continued to fail to provide necessary and appropriate medical treatment and Mr. Spillane's medical condition continued to worsen in that his hallucinations continued and he was becoming increasingly agitated, was irrational and delusional.

33. Later, the Defendant Deputy Billy Maestas decided, without a physician's order or proper medical authorization, that Mr. Spillane was to be removed from the Infirmary and placed into a Special Detention Cell in the Bravo Module of the jail. Mr. Spillane was placed in the Special Detention Cell due to his behavior which was the result of his medical condition. While confined in the Special Detention Cell, Mr. Spillane suffered from hallucinations, delirium

tremens and other signs and symptoms of continuing and worsening withdrawal from alcohol.

34. In placing Mr. Spillane in the Special Detention Cell, the Defendants in effect were punishing Mr. Spillane for his medical condition rather than providing necessary medical care and treatment for the serious and potentially life-threatening condition of withdrawal from alcohol.

35. As a result of his hallucinations, delusions, agitated state and disruptive behavior resulting from withdrawal from alcohol, Mr. Spillane was again removed from the Infirmary and placed in a Special Detention Cell at approximately 8:15 P.M. The removal of Mr. Spillane from the Infirmary was without a physician's order or proper medical authorization.

36. The Defendants Billy Maestas and/or Denise Lynn Robison, R.N.'s decision to remove Mr. Spillane from the Infirmary and Deputies Maestas, Mack, Reynolds, Hess and Carrasquillo's removal of Mr. Spillane from the Infirmary and placing him in a Special Detention Cell was, in effect, punishing Mr. Spillane again for his medical condition rather than being provided necessary and reasonable medical care and treatment for a serious and potentially life-threatening medical condition of withdrawal from alcohol.

37. While Mr. Spillane was confined in the Special Detention Cell the Defendants continued to fail to provide necessary and appropriate medical treatment and Mr. Spillane's physical and mental conditions continued to worsen. His hallucinations continued and he was becoming increasingly agitated, irrational, delusional and disruptive.

38. Due to Mr. Spillane's behavior and condition resulting from his withdrawal from alcohol and despite his psychosis and agitation, the Defendant Matthew Kortrey wrongfully and improperly ordered that Mr. Spillane be sprayed with Oleoresin Capsicum spray. Deputy Jason Hess sprayed Mr. Spillane with the OC spray. The OC spray sprayed on Mr. Spillane caused him to have difficulty breathing. Deputies Kortrey, Reynolds, Rupprecht and Hess observed that the OC spray did not have the intended effect on Mr. Spillane.

39. Despite the facts described in paragraph 38, above, and despite the fact that even when OC spray is deemed to be appropriate for use on a subject, its use is to be limited to a single, one second burst, the Defendant Kortrey wrongfully and improperly authorized and directed Deputy Hess to administer a second burst of the Oleoresin Capsicum spray.

40. After the administration of the second OC spray, the Deputies Kortrey, Reynolds, Rupprecht, Hess, Bankey and Roberts entered the Special Detention Cell to place restraints on Mr. Spillane.

41. After the second burst of OC spray was sprayed onto Mr. Spillane, he had even greater difficulty breathing. Notwithstanding these facts, the Defendants restrained Mr. Spillane by handcuffing his hands behind his back and placed leg irons on him. Mr. Spillane was then carried and laid face down on his stomach and chest. Mr. Spillane continued to experience increasing difficulty in breathing, became less and less responsive, had periods of unconsciousness and Mr. Spillane became cyanotic. Within a few minutes, Mr. Spillane died.

42. After conducting an investigation, the Sheriff's Department concluded that the deputies conducted themselves in accordance with their training and department policies.

43. All actions and omissions of the deputies and employees of the Sheriff of El Paso County and of the employees and/or agents of Correctional Medical Services, Inc. which are described in this Amended Complaint, were taken pursuant to and as a result of the policies and practices and customs of their respective employers, the Sheriff of El Paso County and Correctional Medical Services, Inc.

FIRST CLAIM FOR RELIEF
(Civil Rights Violation – The Board and Sheriff Anderson)

44. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 6 and paragraphs 25 through 43 of this Complaint.

45. The Defendants The Board and Sheriff John W. Anderson, in his official capacity, and said Defendants acting under color of state law violated the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and in violation of 42 USCA §1983 which violations include, but may not be limited to the following: (a) the failure to adequately train deputies and employees of the Sheriff's department regarding detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; (b) the delay and denial and lack of necessary and basic medical services and hospital treatment for Mr. Spillane's serious and life-threatening medical condition consisting of withdrawal from alcohol; (c) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition constituted a violation of his basic right to be confined in a safe and healthy environment; (d) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail constituted the administration and infliction of unreasonable and excessive force; and, (e) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail resulted in unnecessary pain, suffering and injury to Mr. Spillane and in the death of Mr. Spillane.

46. The acts and omissions of the Defendant John W. Anderson as described in paragraph 45, above, reflect the Defendants' deliberate indifference to Mr. Spillane's serious medical condition and need for proper hospital and medical treatment. Further, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 45, above, were deliberately indifferent to Mr. Spillane's rights to necessary and basic medical treatment, to the right to be confined in a safe and healthy environment and to not be subject to unnecessary and excessive force and to not be subject to unnecessary pain, suffering, injury and/or death.

47. Further, given the actual knowledge of these Defendants of the medical necessity to provide adequate hospital and medical treatment to individuals with the medical condition and history of Mr. Spillane coupled with these Defendants' actual knowledge that inadequate medical treatment of such individuals substantially increases the risk of death, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 45, above, are such that they shock the conscience.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

SECOND CLAIM FOR RELIEF
**(Civil Rights Violations – Billy Maestas and
Denise Lynn Robison, LPN, individually)**

48. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 8 and paragraphs 22 through 43 of this Complaint.

49. The Defendants Billy Maestas and Denise Lynn Robison, R.N., individually, violated the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment of the United State Constitution and in violation of 42 USCA §1983 by the conduct and actions described in paragraphs 32 through 37 above. Such violations include but may not be limited to the following: (a) the removal of Mr. Spillane from the Infirmary and confining him to a Special Detention Cell constituted improper and unreasonable punishment for a medical condition and thus was a violation of Mr. Spillane's rights; (b) the delay and denial and lack of necessary and basic medical services and hospital treatment for Mr. Spillane's serious and life-threatening medical condition consisting of withdrawal from alcohol; (c) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition constituted a violation of his basic right to be confined in a safe and healthy environment; (d) the delay and denial of necessary and basic medical services and hospital treatment for Mr.

Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail constituted the administration and infliction of unreasonable and excessive force; and, (e) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail resulted in unnecessary pain, suffering and injury to Mr. Spillane and in the death of Mr. Spillane.

50. The acts and omissions described in paragraph 49, above, of those Defendants names in paragraph 49, above, reflect said Defendants' deliberate indifference to Mr. Spillane's serious medical condition and need for proper hospital and medical treatment. Further, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 49 above, were deliberately indifferent to Mr. Spillane's rights to necessary and basic medical treatment, to the right to be confined in a safe and healthy environment and to not be subject to unnecessary and excessive force and to not be subject to unnecessary pain, suffering, injury and/or death.

51. Further, given the existence of an adopted policy and procedure which required an appropriate physician's order to remove a patient from the Infirmary, the actions of these Defendants in removing Mr. Spillane from the Infirmary without an appropriate physician's order shocks the conscience.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

THIRD CLAIM FOR RELIEF
(Civil Rights Violations – Improper Use of OC Spray)

52. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 9 and paragraphs 25 through 43 of this Complaint.

53. The Defendants The Board, Sheriff John W. Anderson, in his official capacity, and Sargent Matthew Kortrey, individually, violated the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment of the United State Constitution and in violation of 42 USCA §1983 by the conduct and actions described in paragraphs 35 through 39 above. Such violations include but may not be limited to the following: (a) the failure to adequately train deputies of the Sheriff regarding the proper use of OC spray and regarding the use of improper restraint as descried in paragraph 55 through 57, *infra*; (b) OC spray should not have been used on Mr. Spillane as individuals who are psychotic, who are agitated or are in a state of mental distress or crisis should not be sprayed with OC spray; (c) the administration of a

second burst of OC spray to Mr. Spillane was improper and unnecessary; (d) the use of OC spray on Mr. Spillane constituted a violation of his basic right to be confined in a safe and healthy environment; (e) the use of OC spray on Mr. Spillane constituted the administration and infliction of unreasonable and excessive force; and, (f) the use of OC spray on Mr. Spillane resulted in unnecessary pain, suffering and injury to Mr. Spillane and was a cause of the death of Mr. Spillane.

54. The policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 53, above, and the Defendants The Board, Sheriff Anderson and Sargent Kortrey were deliberately indifferent to Mr. Spillane's rights to necessary and basic medical treatment, to the right to be confined in a safe and healthy environment and to not be subject to unnecessary and excessive force and to not be subject to unnecessary pain, suffering, injury and/or death.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

FOURTH CLAIM FOR RELIEF
(Civil Rights Violations – Improper Restraint)

55. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 9 and paragraphs 25 through 43 of this Complaint.

56. The Defendant Kortrey, individually and Deputies Reynolds, Rupprecht, Hess, Bankey and Roberts violated the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment of the United State Constitution and in violation of 42 USCA §1983 by the conduct and actions described in paragraphs 35, 36, 38 through 41 above. Such violations include but may not be limited to the following: (a) the Defendants handcuffing Mr. Spillane's hands behind his back and the placement of leg irons was an improper restraint and violation of his rights given the fact that after the first burst of OC spray, Mr. Spillane had difficulty breathing and after the second burst of OC spray, he had greater difficulty breathing and was becoming increasing cyanotic and unresponsive. These facts coupled with the Defendants' knowledge of risks presented by restraints which cause positional asphyxia constitute a violation of his basic right to be confined in a safe and healthy environment; (b) the use of OC spray and the restraint of Mr. Spillane constituted the administration and infliction of unreasonable and excessive force; and, (c) the use of OC spray and the restraining of Mr. Spillane resulted in unnecessary pain, suffering, and injury to Mr. Spillane and were causes of the death of Mr. Spillane.

57. The acts and omissions described in paragraph 56, above, of those Defendants named

in paragraph 56, above, reflect said Defendants' deliberate indifference to Mr. Spillane's serious medical condition and need for proper hospital and medical treatment. Further, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 56, above, were deliberately indifferent to Mr. Spillane's rights to necessary and basic medical treatment, to the right to be confined in a safe and healthy environment and to not be subject to unnecessary and excessive force and to not be subject to unnecessary pain, suffering, injury and/or death.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

FIFTH CLAIM FOR RELIEF
**(Civil Rights Violations – Correctional Medical Services, Inc.
and its Employees, individually)**

58. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 6 and paragraphs 10 through 43 of this Complaint.

59. The Defendant Correctional Medical Services, Inc. and each of the following Defendants individually, Cynthia Renee Fallhowe, M.D., Michael J. Thompson, R.N., John or Jane Doe, and Denise Lynn Robison, R.N. all while acting under color of state law, violated the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and in violation of 42 USCA §1983 which violations include, but may not be limited to the following: (a) the failure to adequately train employees and agents of Correctional Medical Services, Inc. and deputies and employees of the Sheriff's department regarding detainees and inmates experiencing serious and life-threatening withdrawal from alcohol; (b) the delay and denial and lack of necessary and basic medical services and hospital treatment for Mr. Spillane's serious and life-threatening medical condition consisting of withdrawal from alcohol; (c) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition constituted a violation of his basic right to be confined in a safe and healthy environment; (d) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail constituted the administration and infliction of unreasonable and excessive force; and, (e) the delay and denial of necessary and basic medical services and hospital treatment for Mr. Spillane's condition and the manner in which Mr. Spillane was confined and treated in the jail resulted in unnecessary pain, suffering and injury to Mr. Spillane and in the death of Mr. Spillane. (f) Further, the Defendant Cynthia Renee Fallhowe, M.D. was informed of Mr. Spillane's serious medical condition consisting of withdrawal from alcohol and knew that such a condition is life-threatening and nevertheless, the Defendant failed to order that Mr. Spillane be hospitalized.

60. The acts and omissions described in paragraph 59, above, of those Defendants named in paragraph 59, above, reflects said Defendants' deliberate indifference to Mr. Spillane's serious medical condition and need for proper hospital and medical treatment. Further, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 59, above, were deliberately indifferent to Mr. Spillane's rights to necessary and basic medical treatment, to the right to be confined in a safe and healthy environment and to not be subject to unnecessary and excessive force and to not be subject to unnecessary pain, suffering, injury and/or death.

61. Further, given the actual knowledge of these Defendants of the medical necessity to

provide hospital and adequate medical treatment to individuals with the medical condition and history of Mr. Spillane coupled with these Defendants' actual knowledge that inadequate medical treatment of such individuals substantially increases the risk of death, the policies, procedures and practices at the jail facility that existed on and before May 10, 2000 which caused, enabled and contributed to the violations of rights described in paragraph 59, above, are such that they shock the conscience.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

SIXTH CLAIM FOR RELIEF
(Civil Rights Violations)

62. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 43, 45 through 47, 49 through 51, 53, 54, 56, 57, and 59 through 61.

63. The Defendants' violations of the civil rights of Andrew J. Spillane under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and in violation of 42 USCA §1983 all while acting under color of state law were a direct and proximate cause of the death of Andrew J. Spillane on May 10, 2000.

64. As a direct result of the violations of the civil rights of Andrew J. Spillane, the Estate of Andrew J. Spillane seeks recovery of damages from the Defendants for injuries sustained before his death for the Defendants' administration and infliction of unnecessary and excessive force and for the unnecessary physical and mental pain and suffering and mental and emotional distress that Mr. Spillane suffered prior to his death. The award of such legal remedies is consistent with and serves to promote and accomplish the purposes and objectives of 42 USCA §1983 and it is in the interest of justice.

WHEREFORE, the Plaintiffs respectfully pray for a judgment consisting of all damages and remedies consistent with accomplishing the purposes of 42 USCA §1983 together with costs, expert witness fees, all interest allowed by law, and attorneys' fees.

SEVENTH CLAIM FOR RELIEF
(Wrongful Death)

65. The Plaintiffs incorporate herein and adopt as a part hereof, paragraphs 1 through 43 of this Complaint.

66. The Defendants The Board, Sheriff John W. Anderson and the employees and agents of the County working for and on behalf of the El Paso County Sheriff's Department, Correctional Medical Services, Inc. and its employees and agents, were negligent in that they failed to exercise reasonable care in the circumstances on May 10, 2000 with regard to Andrew J. Spillane. The Defendants' negligence included, but may not be limited to:

- a. The Defendants' negligent failure to provide necessary and adequate medical and hospital treatment to Mr. Spillane for his medical condition of alcohol withdrawal;
- b. The negligent failure to properly and adequately train jail personnel to identify the seriousness of the medical condition of alcohol withdrawal and to properly train jail personnel to provide necessary hospital and medical treatment of the condition of alcohol withdrawal;
- c. The negligent and improper "punishing" of Mr. Spillane for his medical condition by improperly removing him from the Infirmary and confining him to a Special Detention Cell;
- d. The negligent and improper administration of OC spray to Mr. Spillane. Said negligence was compounded and aggravated by the improper administration of a second burst of OC spray;
- e. The negligent and improper restraint of Mr. Spillane by handcuffing his hands behind his back and laying him face-down after OC spray had been sprayed onto Mr. Spillane on two occasions and he was experiencing increasing difficulty in breathing.

67. As a direct and proximate result of the negligence described in paragraph 66, above, Andrew J. Spillane died on May 10, 2000.

68. As a direct result of the wrongful death of their son, David D. Spillane and Catherine Lee Spillane sustained and incurred losses and damages. Mr. and Mrs. Spillane have endured and will in the future endure injuries including emotional distress, mental suffering, grief and permanent loss of their son's affection, society, companionship, aid and comfort. Mr. and Mrs. Spillane seek an award of damages to fairly and reasonably compensate them for their losses and damages.

WHEREFORE, the Plaintiffs David D. and Catherine Lee Spillane pray that damages be awarded against the Defendants for compensatory damages together with interest from May 10, 2000 and compounded as of the date of the filing of this action together with all other interest

provided by law, costs and expert witness fees and such other and further relief as this Court deems just under the circumstances of this case.

Dated this _____ day of July, 2001.