

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

THIRD DIVISION

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John Berg and Judy Berg,

Appointed Trustees for the Heirs of  
Jeffery R. Berg, Decedent

Plaintiffs,

vs.

County of Hennepin, A Municipal  
Corporation;

Defendant.

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**COMPLAINT**

Court File No. \_\_\_\_\_

John and Judy Berg, Appointed Trustees for the Heirs of Jeffery R. Berg, Decedent, for their Complaint against Defendants above-named, state and allege as follows:

**NATURE OF CLAIM**

This is an action at law to redress the wrongful death of Jeffery Robert Berg under color of rights secured to Plaintiffs by the Fifth and Fourteenth Amendments to the Constitution of the United States (42 U.S.C. § 1983), and arising under Minnesota Statute §573.02. Plaintiffs demand a trial by jury of all issues.

**BACKGROUND/PARTIES**

1. Plaintiff, John Berg, Appointed Trustee for the Heirs of Jeffery Berg, is and at all relevant times hereto residing at 4500 Welcome Avenue North, Crystal MN 55422.

2. Plaintiff, Judy Berg, Appointed Trustee for the Heirs of Jeffery Berg, is and at all relevant times hereto residing at 5305 140<sup>th</sup> Avenue NW, Ramsey, MN 55305.
3. The County of Hennepin is a duly organized political subdivision in the State of Minnesota and is a county within the State of Minnesota.

#### **JURISDICTION AND VENUE**

4. The jurisdiction of the Court is invoked under 28 U.S.C. § 1343(3), this being an action authorized by law to redress the deprivation under color of state law, statute, ordinance, regulation, custom, and usage of a right, privilege and immunity secured to Plaintiffs by the Fifth and Fourteenth Amendments to the Constitution of the United States.
5. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1331, this being an action arising under the Constitution and the laws of the United States. The jurisdiction of this Court is further invoked under 28 U.S.C. § 1367 for pendent state law claims.
6. The matter in controversy exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand Dollars (\$75,000) (28 U.S.C. § 1332).
7. This action properly lies in the District of Minnesota, Third Division, pursuant to 28 U.S.C. § 1391(b), because the claim arose in this judicial district.

#### **GENERAL ALLEGATIONS**

8. Jeffery Robert Berg (Jeffery) was convicted of felony drug possession on March 1, 2007 and was sentenced to one (1) year of jail in connection with that conviction.

9. On June 1, 2007 Jeffery reported to the Hennepin County Workhouse to satisfy such jail obligation. At the time of his incarceration, Jeffery qualified for work release privileges.
10. On November 11, 2007, while still in custody at the Workhouse, Jeffery overdosed on a combination of cocaine, oxycodone, and trazodone.

#### JEFFERY'S DRUG ADDICTION AND DESIRE FOR TREATMENT

11. Prior to his conviction, and entry into the Hennepin County Workhouse, Jeffery suffered from a serious drug addiction that he desired to seek treatment for while in the custody of the Hennepin County Sheriff.
12. During Jeffery's time in the Workhouse, he very much desired to receive treatment to help him deal with his addiction. During his first few weeks of incarceration, he was allowed Psychology Services.
13. However, almost immediately after his incarceration in the Hennepin County Workhouse, Jeffery's addiction began to cause him trouble as he was unable to follow Workhouse rules. Specifically, he continued to use illicit drugs while in custody.
14. As a result of the penalties imposed on Jeffery, he was prevented from attending his counseling sessions despite the obvious: the counseling was designed to assist Mr. Berg with his addiction.
15. Just over a week after being admitted, Jeffery received his first verbal warning for unauthorized use of tobacco when a guard caught Jeffery using chewing tobacco in his cell. (See attached as Exhibit A: Hennepin County Adult Corrections Offense Reports relating to Jeffery's violations of Workhouse Rules.)

16. On June 1, 2007, Jeffery's urine was collected for purpose of analysis. Such results were received on June 12, 2007. The results were positive showing the presence of cocaine. On that same day, Jeffery was found to be in possession of a marijuana pipe in violation of Workhouse rules. As the result of such violations, Jeffery's work related privileges were terminated.
17. On June 23, 2007, Jeffery was found by guards to be in possession of a pill containing seroquel, which of course, he was not authorized to have. At that time he was given 10 days of segregation which was stayed pending no further write-ups.
18. On July 4, 2007, Jeffery was again found to be in possession of seroquel. At that time he was assessed another 15 days of segregation and his prior 10 days of segregation were imposed for a total of 25 days.
19. On August 18, 2007, guards observed that Jeffery was in possession of contraband items and he was given another 10 days of segregation.
20. Then on September 11, 2007, Jeffery underwent a urinalysis drug test which came back positive for the presence to THC. He was given an additional 20 days of segregation. On that same date, he was given another 10 days of segregation as he was found to be in possession of a bic lighter.
21. Records obtained by Plaintiff show that Jeffery attended his first appointment with Psychology Services on June 20, 2007. During that counseling session, Jeffery expressed a desire to attend counseling sessions while in custody.
22. However, while in segregation, Jeffery was not allowed to continue with the psychological services, despite all the obvious signs that Jeffery was in desperate need of such services.

23. Untreated, Jeffery's addictive behavior, continued up until his death. Confined to the Workhouse, isolated from his friends and family, Jeffery continued to test positive for drug use when given urinalysis tests.
24. During his time in the Workhouse, Jeffery attended therapy a total of three (3) times and was thereafter not allowed to attend his appointments because of the repeated positive UAs.

JEFFERY WAS NOT ALLOWED TO ATTEND THE TELESIS DRUG TREATMENT PROGRAM THE WORKHOUSE OFFERED WHILE IN CUSTODY.

25. Jeffery entered the Hennepin County Workhouse addicted to cocaine: He was in desperate need of treatment.
26. During the period of time while Jeffery was in custody at the Workhouse, the Workhouse offered a drug treatment addiction program called Telesis which Jeffery wished to attend.
27. In order to be eligible for the Telesis program, Jeffery was told that he would have to undergo a Rule 25 Chemical Health Assessment. Jeffery promptly agreed to undergo such assessment.
28. However, after repeated attempts by Jeffery, his attorney, and his mother to secure such assessment, Jeffery and the others received word that Hennepin County would not perform the Rule 25 Assessment.
29. Jeffery was informed by Workhouse staff that he was unable to have a Rule 25 treatment assessment because he was not a resident of Hennepin County even though he was confined to the Hennepin County Workhouse for an entire calendar year.

30. Defendant determined that Jeffery was not a Hennepin County resident based on the fact that he has been living with his mother in Ramsey Minnesota prior to his incarceration at the Workhouse.
31. However, Jeffery was a resident of Hennepin County and both he and his mother tried repeatedly to explain to Defendant.
32. Jeffery had been staying with his mother in Ramsey Minnesota only for a very short time while he recuperated from injuries suffered as the result of a car accident in late 2006.
33. Jeffery had been a resident of Hennepin County for 32 years at the time he was taken into custody by the Hennepin County Sheriff.
34. During most of the prior 32 years, Jeffery had resided in Crystal Minnesota, with his father, which is the County of Hennepin.
35. At the time Jeffery entered the Workhouse, he had a valid Minnesota Driver's License which stated that his address of residence was: 4500 Welcome Avenue North, Crystal, Minnesota 55422. (See attached as Exhibit B a completed Minnesota Driver's License Application with payment receipt.)
36. Jeffery was in contact with his in-custody probation officer, Erica May, regarding his alleged ineligibility for the Telesis program.
37. This contact was done via "kites", which are a method used for inmates to communicate with workhouse staff.
38. After receiving a kite, Jeffery would read the contents of that kite to his mother when they had phone contact. Despite the fact Jeffery read the contents of these "kites" to

- his mother, such communications were not provided to Mr. and Ms. Berg with the documentation that was provided the family after the passing of Jeffery Berg.
39. Ms. Berg is aware that such "kites" existed because Jeffery read the contents of them to her at the time he received them.
40. Jeffery's mother, Judy Berg, contacted Jeffery's in-house probation officer and explained to her that Jeffery was really a resident of Hennepin County and thus should be eligible to receive a Rule 25 Assessment.
41. Ms. Berg was told by Jeffery's in-house probation officer, Erica May, that it would not matter as Jeffery's file contained a no treatment and no furlough order. Clearly the no treatment could not have related to the in-custody Telesis program.
42. Ms. Berg was informed this no treatment order had been put on Jeffery's file by his Hennepin County Probation Officer, Sondra Springer.
43. Ms. Berg contacted Ms. Springer and informed her that Jeffery was a Hennepin County resident and asked about Jeffery qualifying for the Telesis program.
44. Ms. Springer informed Ms. Berg that she wanted Jeffery to stay in the Workhouse for his eight months and then go to treatment.
45. Ms. Berg also informed Ms. Springer that if cost of attending treatment was an issue, that Jeffery had medical insurance through his employer that would cover the cost of such treatment.
46. Ms. Berg was informed by Ms. Springer that Jeffery's medical insurance would only cover either Telesis or an in-patient treatment program at the end of Jeffery's eight month sentence.

47. Ms. Berg expressed to Ms. Springer that she felt that it was not in Jeffery's best interest to spend the next eight months in the drug infested Workhouse without any treatment.

48. Ms. Berg informed Ms. Springer that she was willing to pay out of pocket for Jeffrey to go to Telesis if that was what it took to make sure Jeffrey got treatment while he was in custody.

49. Ms. Berg was informed that there was nothing she could do that would result in Jeffrey being able to receive treatment for his drug addiction while in custody.

50. Jeffrey did not receive any sort of treatment to help deal with his addiction while in the custody of the Hennepin County Sheriff.

WHILE ISOLATED FROM HIS LOVED ONES AND CONFINED TO THE WORKHOUSE, UNTREATED, JEFFERY WAS ABLE TO OBTAIN DRUGS.

51. Jeffrey's work release was revoked on June 12, 2007, just 12 days after he reported to the workhouse.

52. After that time, he was confined exclusively to the Hennepin County Workhouse.

53. However, Jeffrey continued to obtain and use drugs on a regular basis, and his repeated use was obviously known to the workhouse staff.

54. Jeffrey was able to obtain drugs from both visitors and other Workhouse residents due to the ease with which both were able to gain access to the Workhouse.

55. Jeffrey was often able to obtain drugs through inmates who had work release. Those inmates were able to obtain drugs while they were out on work release and then smuggle them into the Workhouse due to improper and lax security measures employed by the Hennepin County Sheriff.

56. During the time Jeffery was continuously violating Workhouse policies by possessing and using various drugs, he was prevented from attending counseling which was designed to assist him with his addiction.

57. Untreated, isolated from his loved ones, with drugs readily available, Jeffery's tragic death was foreseeable to the Hennepin County Sheriff.

#### DISCOVERY THAT JEFFERY WAS NOT BREATHING AND SUBSEQUENT TREATMENT

58. Paragraphs 1 through 57 are based upon information and belief.

59. Jeffery died at around 10:20 p.m. on November 11, 2007.

60. At around 9:30 p.m. Corrections Officer Coleman, while doing a routine cell check noticed that Jeffery was lying face down in his bunk with his pants pulled down slightly.

61. At approximately 10:20 p.m. Officer Coleman, while again making routine rounds, noticed that Jeffery was in the exact same position that he had been in during his previous rounds.

62. Officer Coleman then made an attempt to wake Jeffery up by calling out his name.

63. Officer Coleman was unable to get Jeffery to respond and at approximately 10:23 p.m. called Corrections Officer Grahme for assistance.

64. Officer Coleman asked Officer Grahme if he had noticed Jeffery in that same position when he did his rounds. Officer Grahme replied that he had not.

65. At that time Officer Coleman called for Supervisor Scott who arrived outside Jeffery's cell at approximately 10:30 p.m.

66. At around 10:30 p.m., Supervisor Scott instructed Officer Coleman to open the cell door.

67. Upon entering Jeffery's cell, Officers determined that he was not breathing.
68. Officers then pulled Jeffery out of his cell and into the hallway where they began CPR.
69. Officers did not call paramedics to report Jeffery's condition until 10:34 p.m. and continued with CPR until paramedics arrived on the scene at approximately 10:40 p.m.
70. Corrections officers used an automated external defibrillator in an attempt to start Jeffery's heart. Officers did this by following the on screen instructions the AED provided them with.
71. Paramedics took over Jeffery's care upon their arrival. They attempted to revive him until approximately 11:08 p.m., at which time paramedics determined there was nothing more they could do and ended life support techniques.
72. Jeffery died as the result of a drug overdose while in the custody of the Hennepin County Sheriff's Department.

### COUNT I

#### **NEGLIGENCE IN ALLOWING JEFFERY TO OBTAIN AND USE DRUGS WHILE HE WAS SPENDING 24 HOURS A DAY IN THE WORKHOUSE**

73. Plaintiffs hereby incorporate and reallege paragraphs 1 through 72 as if stated in full.
74. Defendants, who were holding Jeffery involuntarily, owed Jeffery a duty to take reasonable steps to ensure that Jeffery, an addict, would not be constantly exposed to drugs and to ensure that while he was in their custody that steps were taken to curb his addiction.

75. Defendants were aware of Jeffery's problems with drug addiction due to the fact Jeffery was found to be violating the Workhouse drug possession and use policies on a regular basis. Furthermore, he was serving time for a drug possession charge.
76. Despite the fact Defendants were aware of Jeffery's addiction; Defendants persisted in holding Jeffery in an environment where drugs were easily and readily available.
77. In doing this, Defendants breached the duty it owed to Jeffery.
78. As the direct and proximate result of the negligent acts of Defendants, Jeffery overdosed on drugs obtained while he was confined to the custody of Defendant and died.

## **COUNT II**

### **NEGLIGENCE IN NOT ALLOWING JEFFERY TO OBTAIN TREATMENT FOR HIS ADDICTION**

79. Plaintiffs hereby incorporate and reallege paragraphs 1-78 as if stated in full.
80. Defendants confined Jeffery to the Workhouse and Jeffery was unable to leave.
81. Because Defendants were holding Jeffery in confinement, Defendants owed a duty to Jeffery to allow him access to treatment to help deal with his problems with addiction. Such obligation is not dissimilar to provide a diabetic with insulin during a period of incarceration.
82. This duty to allow Jeffery access to treatment was particularly important as Jeffery was being held in an environment where it was easy to obtain drugs and drug use was prevalent among residents of the Workhouse.
83. Defendants breached this duty by not allowing Jeffery to attend treatment sessions to deal with his addiction despite the fact that his addiction problems were obvious.

84. As the direct and proximate result of the negligent acts of Defendants, Jeffery overdosed on drugs obtained while he was confined to the custody of Defendant and died.

### **COUNT III**

#### **NEGLIGENCE IN FAILING TO ALLOW JEFFERY TO ATTEND THE EIGHT (8) WEEK TELESIS TREATMENT PROGRAM THAT THE WORKHOUSE OFFERED WHILE JEFFERY WAS IN CUSTODY**

85. Plaintiffs hereby incorporate and reallege paragraphs 1-84 as if stated in full.

86. Defendant denied Jeffery access to the Telesis addiction treatment program he wished to attend based on an explanation that he was not a Hennepin County resident.

87. However, Defendant was either negligently or willfully, ignored evidence presented by both Jeffery and his mother, which clearly showed that Jeffery was a resident of Hennepin County.

88. Because Jeffery was a resident of Hennepin County, there was no justifiable reason to deny him access to a treatment program which either his medical insurance or mother would cover the cost of.

89. As a direct and proximate result of Defendant improperly denying Jeffery access to the Telesis drug treatment program, Jeffery's addiction went unchecked and Jeffery died of a drug overdose.

### **COUNT IV**

#### **NEGLIGENCE IN DETERMINING IF JEFFERY WAS IN NEED OF MEDICAL ASSISTANCE**

90. Plaintiffs hereby incorporate and reallege paragraphs 1-89 as if stated in full.

91. Defendant owed to Jeffery a duty of reasonable care in taking measures to ensure that he received necessary medical treatment in a prompt and effective manner.

92. This is particularly true in light of Jeffery's known addiction to drugs and the readily available supply of drugs in the Workhouse.

93. By failing to respond in a reasonable and timely manner, Defendant breached the duty it owed to Jeffery.

94. As a direct and proximate result of this breach, Jeffery died of a drug overdose. Had corrections officers responded in a reasonable and timely manner, Jeffery's death could have been avoided.

#### **COUNT V**

#### **NEGLIGENCE IN FAILING TO PROVIDE JEFFERY WITH ADEQUATE CARE AFTER DETERMINING THAT HE WAS IN NEED OF IMMEDIATE MEDICAL ASSISTANCE**

95. Plaintiffs hereby incorporate and reallege paragraphs 1-94 as if stated in full.

96. Upon learning that Jeffery was in dire need of medical assistance, Defendant owed Jeffery a duty to provide him with reasonable and effective medical assistance.

97. Specifically, Defendants breached this duty by waiting nearly five minutes from the time they learned that Jeffery was not breathing to calling for paramedics.

98. As a direct and proximate result of this breach, Jeffery died of a drug overdose. Had corrections officers provided for Jeffery's medical treatment in a timely and effective manner, Jeffery's death could have been avoided.

#### **COUNT VI**

#### **WRONGFUL DEATH**

99. Plaintiffs hereby incorporate and reallege paragraphs 1-98 as if stated in full.

100. A number of Defendant's employees were entrusted with providing supervision and care for Jeffery and as such owed Jeffery a duty of reasonable care in providing that supervision and care.

101. That by allowing the Workhouse to become infested with drugs, withholding treatment for addiction, and failing to provide reasonable in a reasonable and timely medical care when Jeffery was in need of medical care, Defendant failed to exercise that duty of care which it owed, wrongfully causing Jeffery's death.

## COUNT VII

### **VIOLATION OF 42 U.S.C. § 1983**

102. Plaintiffs hereby incorporate and reallege paragraphs 1-101 as if stated in full.

103. Each of the individual Defendants, separately and in concert, acted outside the scope of their jurisdiction and without authorization of law, and each of the individual defendants, separately and in concert, acted willfully, knowingly, and purposefully with specific intent to deprive Plaintiffs of their right to equal protection of the laws. This Right is secured to Plaintiffs by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and by Title 42, United States Code, § 1983.

104. Defendants engaged in unreasonable and conscious acts and/or omissions in disregard for the safety and health of Plaintiffs, all of which were in violation of 42 U.S.C. § 1983.

105. As a direct and proximate result of the acts and/or omissions of these Defendants, Plaintiffs suffered adverse consequences and therefore are entitled to recovery against all Defendants jointly and severally in an amount exceeding \$75,000.00.

106. Plaintiffs are entitled to punitive damage in an amount exceeding \$75,000.00.

107. Plaintiffs are entitled to recovery of their reasonable attorney's fees and costs under 42 U.S.C. § 1988.

**WHEREFORE** Plaintiffs demand the following:

- a. Judgment against Defendant, for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000);
- b. Judgment against Defendant for punitive damages, the exact amount to be determined at trial in this matter; and
- c. The costs and disbursements, including reasonable attorney's fees, of this action;

**A JURY TRIAL IS DEMANDED**

Dated: \_\_\_\_\_

**MCGRAW LAW FIRM, P.A.**

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211 to the party against whom the allegations in this pleading are asserted.

Beau D. McGraw (31190X)