

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

FELITA MCGEE, as Independent)
Administrator of the Estate of MICHAEL)
CARTER, SR., deceased and as next-of-kin,)

Plaintiff,)

v.)

Case No. 2:16-cv-02221

MACON COUNTY SHERIFF'S)
DEPARTMENT; DECATUR MEMORIAL)
HOSPITAL; DMH CORPORATE)
HEALTH SERVICES; ROBERT)
BRACO, M.D., JO BATES, LPN;)
RANDALL WEST; LARRY PARSANO;)
TERRY COLLINS; MICHAEL PATTON;)
and JOSHUA PAGE,)

Defendants.)

**DEFENDANT JO BATES' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT AT LAW
AND DEMAND FOR JURY**

NOW COMES the Defendant, Jo Bates, by her attorneys KEHART, WISE, TOTH & LEWIS, and for its Answer and Affirmative Defenses to the Amended Complaint at Law, allowable without leave of court pursuant to FRCP 15(a)(1), states as follows:

Note: Plaintiff's Amended Complaint is directed at Defendant, Jo Bates, in Counts I, VI, and VII. Defendant, Jo Bates, responds and answers only to those Counts.

PRELIMINARY STATEMENT

1. Michael Carter, Sr., a 35 year-old African-American male, and United States citizen, was taken into custody of the Macon County Sheriff's Department at its jail in Decatur, Illinois on July 13, 2015. His prescribed diabetes medication was confiscated at booking. Mr. Carter became ill after being deprived of his medication, and was then deprived of emergency medical care over several days for an obviously serious diabetic condition, and denied emergency ambulatory transport to the hospital. On July 18, 2015, and just five days after Mr. Carter's arrest, he died alone in a jail cell due to diabetic ketoacidosis.

ANSWER: Defendant admits the allegations contained in the first sentence of paragraph 1. The Defendant is without sufficient personal knowledge to regarding the allegation set forth in the second sentence of paragraph 1. The Defendant admits that Mr. Carter became ill and died on July 18, 2015. The Defendant denies the remaining allegations in paragraph 1.

PARTIES

2. Plaintiff, Felita McGee, is a resident of the City of Decatur, State of Illinois.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 2 and therefore must deny said allegations.

3. Decedent, Michael Carter, Sr., was U.S. citizen and a resident of the City of Decatur, County of Macon, State of Illinois.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 3 and therefore must deny said allegations.

4. Defendant Decatur Memorial Hospital is an Illinois corporation with offices in the City of Decatur, Illinois.

ANSWER: The Defendant admits the allegations of Paragraph 4.

5. Defendant Macon County Sheriff's Department is a governmental entity with offices in the City of Decatur, Illinois.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 5 and therefore must deny said allegations.

6. Defendant DMH Corporate Services is an Illinois corporation with offices in the City of Decatur, Illinois.

ANSWER: The Defendant denies the allegations of Paragraph 6.

7. Defendant Robert Braco, M.D., was a resident of Illinois at the time of the events described herein, was employed, retained, and/or contracted by Defendant Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a medical doctor to provide medical care to inmates at Macon County Jail. He is sued in his individual and

official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

ANSWER: The Defendant admits to the allegations contained in Paragraph 7 in so far as Robert Braco, M.D. was a resident of Illinois during the relevant timeframe, was employed by Decatur Memorial Hospital during the relevant timeframe, that he did provide medical care to inmates in Macon County Jail, and that he is sued in his individual and official capacities. The Defendant denies that Robert Braco, M.D. is capable of being sued as an agent of Macon County Sheriff's Department and/or DMH Corporate Services and any other allegations that could be construed to be remaining in Paragraph 7.

8. Defendant, Jo Bates, LPN, was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services as a nurse to provide medical and nursing treatment to inmates at the Macon County Sheriff's jail facility. She is sued in her individual capacity and official capacities, and as an agent of Macon County Sheriff's Department, Decatur Memorial Hospital, and/or DMH Corporate Services.

ANSWER: The Defendant admits to the allegations contained in Paragraph 8 in so far as she was a resident of Illinois during the relevant timeframe, was employed by Decatur Memorial Hospital during the relevant timeframe, that she did provide medical and nursing care to inmates in Macon County Jail, and that she is sued in her individual and official capacities. The Defendant denies that Jo Bates, LPN, is capable of being sued as an agent of Macon County Sheriff's Department and/or DMH Corporate Services and any other allegations that could be construed to be remaining in Paragraph 8.

10. Corporate Randall West was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 10 and therefore must deny said allegations.

11. Larry Parsano was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 11 and therefore must deny said allegations.

12. Terry Collins was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 12 and therefore must deny said allegations.

13. Michael Patton was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 13 and therefore must deny said allegations.

14. Joshua Page was a resident of the State of Illinois at the time of the events described herein, and was employed by Macon County Sheriff's Department. He is sued in his official capacity, individual capacity, and as an agent and/or employee of Macon County Sheriff's Department.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 14 and therefore must deny said allegations.

15. At all relevant times, all defendants acted under color of state law, and within the scope of their employment and/or agency.

ANSWER: The Defendant admits the allegations of Paragraph 15.

JURISDICTION & VENUE

16. This Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331, 28 U.S. C. § 13443, and 28 U.S.C. § 1983 because the matters in controversy arise under the Constitution and laws of the United States.

ANSWER: The Defendant admits the allegations of Paragraph 16.

17. This Court has supplemental jurisdiction of the Illinois state law claims pursuant to 28 U.S.C. § 1367.

ANSWER: The Defendant admits the allegations of Paragraph 17.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that give rise to plaintiff's claims took place within the Central District of Illinois.

ANSWER: The Defendant admits the allegations of Paragraph 18.

STATEMENT OF CLAIM

19. At all times relevant to the matters stated in this Complaint, there was in force and effect the Constitution of the United States which provided in relevant part as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- Constitution of the United States, Amendment XIV

ANSWER: The Defendant admits the allegations of Paragraph 19.

20. At all times relevant to the matters stated in this Complaint, there was in force and effect a federal law known as the Civil Rights Act of 1871 which provided in relevant part as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State. . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983.

ANSWER: The Defendant admits the allegations of Paragraph 20.

21. At all times relevant to the matters stated in this Complaint, there was in force and effect certain statutes in the State of Illinois which provided in relevant part as follows:

Sheriff custodian of courthouse and jail.

He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided. 55 ILCS 5/3-6017.

The Sheriff of each county in this State shall be the warden of the jail of the county, and have custody of all prisoners in the jail, except when otherwise provided in the "County Department of Corrections Act". The Sheriff may appoint a superintendent of the jail, and remove him at his pleasure, for whose conduct and training, he shall be responsible. The Sheriff shall also be responsible for the hiring and training of all personnel necessary to operate and maintain the jail. 730 ILCS 125/2 and 3.

The Warden of the jail shall furnish necessary bedding, clothing, fuel and medical aid for all prisoners under his charge, and keep an accurate account of the same. 730 ILCS 125/17.

ANSWER: The Defendant admits the allegations of Paragraph 21.

22. Beginning on or about July 13, 2015, Michael Carter, Sr. was arrested and placed into the custody of defendant Macon County Sheriff's Department at its jail in Decatur, Illinois. During Mr. Carter's initial booking interview, he informed defendants and jail staff that he was diabetic and required medication.

ANSWER: The Defendant denies the allegations in Paragraph 22 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

23. At intake, Mr. Carter possessed prescription oral medication to manage his diabetes. Mr. Carter asked various defendants, at various times, to administer his medication as prescribed.

ANSWER: The Defendant denies the allegations in Paragraph 23 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

24. That in spite of notice of Mr. Carter's diabetic condition, Mr. Carter's prescribed medication was confiscated, and in furtherance of the policies and customs of Macon County Sheriff's Department and Decatur Memorial Hospital.

ANSWER: The Defendant denies the allegations in Paragraph 24 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

25. That for all times relevant, Macon County Sheriff's Department and Decatur Memorial Hospital maintained a contractual partnership to provide healthcare and healthcare management services to individuals detained at the Macon County Jail.

ANSWER: The Defendant admits the allegations of Paragraph 25.

26. Shortly after being assigned a jail cell, Mr. Carter began to complain to jail staff and defendants that he was ill, need his medication, and wanted to see a doctor. His pleas went ignored.

ANSWER: The Defendant denies the allegations in Paragraph 26 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

27. Mr. Carter's health deteriorated rapidly over the next two days. During this time, complained to his fiancée on the phone about extreme abdominal pain, vomiting, weakness, fatigue, and shortness of breath. She knew he was in serious medical danger based on his obvious difficulty breathing and disorientation.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 27 and therefore must deny same.

28. That on July 15, 2015, Mr. Carter was transferred to the jail's medical unit for observation. He still was not given medication to treat his diabetic condition. He was then transferred back to a general population jail cell, where he was not monitored for his medical distress, and received no treatment for his worsening diabetic condition.

ANSWER: The Defendant denies the allegations in Paragraph 28 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

29. That on July 17, 2015, Mr. Carter told his fiancée he had been returned to a general population jail cell, in spite of his obvious difficulty breathing. Mr. Carter asked defendants for help multiple times, not one assisted.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 29 with respect to conversations Mr. Carter had with his fiancée. This defendant denies the remaining allegations of Paragraph 29 as it relates to this Defendant specifically.

30. That on July 17, 2015, Mr. Carter's mother called the Macon County Sheriff's Department's jail division and spoke with defendant Jo Bates, a nurse working at the jail. Mr. Carter's mother informed defendant Bates that she too was a nurse, and that her son was diabetic and was having respiratory distress, shortness of breath, vomiting, and was clearly disoriented.

ANSWER: The Defendant does not recall having a telephone conversation with Mr. Carter's mother and therefore must deny the allegations in Paragraph 30.

31. Mr. Carter's mother warned defendant Bates that his symptoms sounded like diabetes ketoacidosis, an emergency life-threatening medical situation. She asked defendant Bates to immediately transfer him to a nearby hospital so he could receive adequate medical attention and an IV insulin drip. Defendant Bates refused, telling Mr. Carter's mother that defendant Doctor Braco would check on him the following day. Defendant Bates further told Mr. Carter's mother that he was simply having "anxiety" about being incarcerated.

ANSWER: The Defendant denies the allegations of Paragraph 31.

32. That sometime later on July 17, 2015, Mr. Carter was again returned to the jail's medical unit. Later that evening, he was briefly seen by Defendant Dr. Braco, but not treated. No glucose level tests were performed, and defendant Dr. Braco continued to refuse to give Mr. Carter diabetic medication to treat his deteriorating condition. And in spite of his obvious and serious medical distress, Dr. Braco ordered that Mr. Carter be returned to a general population jail cell the following morning.

ANSWER: The Defendant denies the allegations in Paragraph 32 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

33. That on following morning of July 18, 2015, Mr. Carter was in obvious medical distress and unable to stand on his own, and was unable to speak clearly. He was lethargic and completely disoriented. He had not eaten his dinner meal from the evening before. His glucose level was greater than 500 milligrams per deciliter. He still had not been given insulin or his prescribed diabetes medication.

ANSWER: The Defendant denies the allegations in Paragraph 33 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

34. In spite of Mr. Carter's obvious serious medical distress on July 18, 2015, and severe risk of great injury and/or death, he was forcibly removed from his medical his cell by defendants West, Parsano, Patton, Collins, and Page, all employed by defendant Macon County Sheriff's Department. Defendant West stepped on Mr. Carter's hand and kicked him numerous times, before picking him up around his neck, and putting him into a wheelchair. He was wheeled to a segregated housing area of the jail known as "deadlock", an area reserved for uncooperative inmates. He had been considered uncooperative simply because he couldn't stand on his own and was non-responsive. The segregated cell he was taken to contained no video surveillance for medical monitoring.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 34 and therefore must deny same.

35. That throughout the morning of July 18, 2015, various jail staff and the defendants observed Mr. Carter in his jail cell in obvious medical distress and still refused to call an ambulance. As hours passed by, an officer at the jail finally demanded defendant Bates summon an ambulance so he could be transported to the hospital. Defendant Bates refused, and instead telephoned defendant Dr. Braco, who was away from the jail facility. In spite of various jail staff and defendants witnessing Mr. Carter's obvious medical distress, no one called an ambulance.

ANSWER: The Defendant denies the allegations in Paragraph 35 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

36. That even after defendant Bates told Defendant Dr. Braco that Mr. Carter was in obvious serious medical distress, Dr. Braco refused to allow Mr. Carter's emergency transfer to the hospital, saying he would evaluate him on his regular rounds later that day. Only after pressure from officer at the jail, did defendants Dr. Braco and Bates finally relent and authorize Mr. Carter's transfer to a hospital, but only by patrol car. None of the patrol cars were equipped to handle a medical emergency.

ANSWER: The Defendant denies the allegations in Paragraph 36 insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

37. That although it was common knowledge that failure to treat diabetes could result in diabetic ketoacidosis and death, defendant Dr. Braco ordered that Mr. Carter could only be transferred to the hospital using a regular patrol car because he didn't want to incur the \$1000 bill for an ambulance. Defendant Bates agreed.

ANSWER: The Defendant denies the allegations on Paragraph 37.

38. Nearly three hours after being forcibly removed from the medical unit, and denied ambulatory transport to the hospital, Mr. Carter died, alone, in a segregated jail cell due to diabetes ketoacidosis.

ANSWER: The Defendant admits that Mr. Carter died on July 18, 2015. With respect to the remaining allegations, the Defendant denies same insofar as Mr. Carter's condition(s) and any treatment or care he received is more accurately set forth in the administrative and medical records in this case.

39. Defendants, by their acts or omissions as set forth above, showed deliberate indifference to a serious and known medical condition of the decedent.

ANSWER: The Defendant denies the allegations of Paragraph 39.

40. As a consequence of one or more of the foregoing acts or omissions of the various defendants, as set forth above, failed to provide Mr. Carter with adequate medical care and demonstrated a deliberate indifference to his medical condition. As the proximate result of all the above, Mr. Carter suffered excruciated pain and suffering, and ultimately death.

ANSWER: The Defendant denies the allegations of Paragraph 40.

41. The Court has authority pursuant to 42 U.S.C. § 1983 to award appropriate actual, consequential, compensatory, and punitive damages, and has authority under 42 U.S.C. § 1988 to award attorneys fees and costs to successful civil rights plaintiffs.

ANSWER: The Defendant admits the allegations of Paragraph 41, but denies that Plaintiff is entitled to the stated recovery.

CAUSES OF ACTION

COUNT I: DENIAL OF MEDICAL CARE

**Deprivation of Fourteenth Amendment Rights and 42 U.S.C. § 1983
All Defendants**

NOW COMES the Defendant, Jo Bates, by her attorneys KEHART, WISE, TOTH & LEWIS, and for its Answer to Count I of Amended Complaint at Law, states as follows:

42. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

ANSWER: The Defendant incorporates by reference, as though set forth fully herein, Paragraphs 1-40, inclusive, of its Answer to this Amended Complaint as its Answer to Paragraph 42.

43. Defendants, each of them, had a duty to take reasonable measures in response to the obvious serious medical need and risk posed by Mr. Carter's condition.

ANSWER: The Defendant denies the allegations of Paragraph 43 as alleged.

44. Defendants, each of them, were aware that Mr. Carter condition began to deteriorate, and yet took no action to provide or request medical care for Mr. Carter, disregarding the obvious risk to his health.

ANSWER: The Defendant denies the allegations of Paragraph 44 as alleged.

45. That the conduct and actions of defendants, acting under color of law, in failing to request or obtain medical attention for Michael Carter, Sr., was unreasonable, was done intentionally, willfully, maliciously, with a deliberate indifference and/or with a reckless disregard for his serious medical needs, and was designed to and did cause specific and serious physical and emotional pain and suffering in violation of his substantive due process rights as guaranteed under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. The defendants knew Mr. Carter faced a substantial risk of harm, and disregarded that risk by failing to take reasonable measure to abate it. As a direct and proximate result of the foregoing, Mr. Carter was subjected to great physical and emotional pain and suffering, and ultimately death.

ANSWER: The Defendant denies the allegations of Paragraph 45 as alleged.

COUNT II: MONELL CLAIM
Macon County Sheriff's Department
42 U.S.C. 1983

Count II is not directed against this Defendant, Jo Bates, and therefore Defendant does not respond to same.

COUNT III: *MONELL CLAIM*
Decatur Memorial Hospital 42 U.S.C. 1983

Count III is not directed against this Defendant, Jo Bates, and therefore Defendant does not respond to same.

COUNT IV: INSTITUTIONAL NEGLIGENCE
(Illinois Claim)
Macon County Sheriff's Department

Count IV is not directed against this Defendant, Jo Bates, and therefore Defendant does not respond to same.

Count V: INSTITUTIONAL NEGLIGENCE
(Illinois Claim)
Decatur Memorial Hospital

Count V is not directed against this Defendant, Jo Bates, and therefore Defendant does not respond to same.

COUNT VI: MEDICAL MALPRACTICE/WRONGFUL DEATH
(Illinois Claim)

Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates

NOW COMES the Defendant, Jo Bates, by her attorneys KEHART, WISE, TOTH & LEWIS, and for its Answer to Count VI of Amended Complaint at Law, states as follows:

83. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

ANSWER: The Defendant, Jo Bates, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of its Answer to this Amended Complaint as its Answer to this Paragraph 83.

84. At all times relevant Defendant Decatur Memorial Hospital (DMH) was a hospital located in the City of Decatur and the County of Macon in the State of Illinois.

ANSWER: The Defendant admits the allegations of Paragraph 84.

85. At all times relevant Defendants DMH, DMH Corporate Services, Macon County, Defendant Braco, and Macon County Sheriff's Department maintained a contractual relationship

for the provision of medical services to inmates housed at its jail and via authorized their agents and/or employees, including but not limited to Defendants Braco and Bates.

ANSWER: The Defendant admits that Decatur Memorial Hospital and the County of Macon have a contractual relationship with respect to inmate health services.

86. Defendants, each of them, either individually and/or via their authorized agents and/or employees, breached the appropriate standards of care and were negligent in one or more of the following respects.

- a. Improperly confiscated and withheld decedent's prescribed diabetic medication, without providing a proper replacement;
- b. Failed to properly monitor decedent's diabetic condition.
- c. Failed to take appropriate medical action once decedent's diabetic condition didn't improve.
- c. Failed to adequately and properly treat decedent's diabetic condition, when Defendants knew, or in the exercise of ordinary care should have known, said adequate and proper treatment was necessary to prevent serious injury and death;
- d. Failed to timely transport decedent to a hospital, wherein he could receive life-saving treatment for his diabetic condition.

ANSWER: The Defendant denies the allegations of Paragraph 86.

87. As a proximate result of one or more of the foregoing negligent acts or omissions, Mr. Carter, deceased, sustained injuries which resulted in his death on July 18, 2015.

ANSWER: The Defendant denies the allegations of Paragraph 87.

88. Mr. Carter left surviving him a son who has suffered pecuniary loss as a result of his death.

ANSWER: The Defendant has insufficient knowledge regarding the allegations of Paragraph 88 and therefore must deny same.

89. Felita McGee, is the duly appointed Independent Administrator of Michael Carter, Sr., deceased, and as such brings this cause of action both individually and on behalf of the Estate of the decedent pursuant to Chapter 70, Sections 1 and 2 of the Illinois Revised Statutes commonly known as the Wrongful Death Act of the State of Illinois.

ANSWER: The Defendant admits the allegations of Paragraph 89.

COUNT VII: MEDICAL MALPRACTICE/SURVIVAL ACTION

(Illinois Claim)

Decatur Memorial Hospital, DMH Corporate Health Services, Dr. Braco, Nurse Bates

NOW COMES the Defendant, Jo Bates, by her attorneys KEHART, WISE, TOTH & LEWIS, and for its Answer to Count VII Amended Complaint at Law, states as follows:

90. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

ANSWER: The Defendant, Jo Bates, incorporates by reference, as though set forth fully herein, the foregoing paragraphs of its Answer to this Amended Complaint as its Answer to this Paragraph 90.

91. As a proximate result of one or more of the foregoing negligent acts or omissions, Mr. Carter, deceased, died on July 18, 2015, and had conscious pain and suffering before his death, and had he survived, he would have been entitled to bring an action for damages, said acting having survived him.

ANSWER: The Defendant denies the allegations of Paragraph 91.

92. Plaintiff, Felita McGee, is the duly appointed Independent Administrator of the Estate of Michael Carter, Sr., Deceased, and brings this Survival Action on behalf of the Estate pursuant to Illinois Revised Statutes, Chapter 110/1/2, Section 27-6, and Chapter 37, Section 439.8.

ANSWER: The Defendant admits the allegations of Paragraph 92.

COUNT VIII: NEGLIGENT SUPERVISION, RETENTION AND TRAINING

(Illinois claim)

Macon County Sheriff's Department

Count VIII is not directed against this Defendant, JO BATES, LPN, and therefore Defendant does not respond to same.

COUNT IX: BATTERY

(Illinois Claim)

Randell West and Macon County Sheriff's Department (Respondeat Superior)

Count IX is not directed against this Defendant, JO BATES, LPN, and therefore Defendant does not respond to same.

REQUEST FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief requested as to Jo Bates.

WHEREFORE, Defendant, JO BATES, LPN, respectfully requests that this Court deny the Plaintiff the relief that she requests, and grant judgment in favor of the Defendant and such relief the Court deems equitable and just.

DEFENDANT DEMANDS TRIAL BY JURY ON ALL COUNTS

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, JO BATES, LPN, by her attorneys KEHART, WISE, TOTH & LEWIS, and for its Affirmative Defenses to Plaintiff's Amended Complaint at Law, states:

1. The Plaintiff lacks the legal capacity to sue individually.
2. With respect to the state law medical malpractice claims brought against Jo Bates (Counts VI and VII), the Plaintiff has failed to state a claim upon which relief can be granted pursuant to 735 ILCS 5/2-615, 735/ILCS 5/2-619, 735 ILCS 5/2-622 and FRCP 12(b)(6).
3. The decedent's injuries and death was the result of an intervening and independent cause.
4. Jo Bates is entitled to qualified immunity.

DEFENDANT DEMANDS TRIAL BY JURY AS TO THESE AFFIRMATIVE DEFENSES.

Respectfully submitted,

JO BATES, LPN,
Defendant,

By: /s/ Regan Lewis (#6301846)

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PROOF OF SERVICE

The undersigned certifies that the foregoing document was filed on the 10th day of November 2017 through the ECF system with the United States District Court for the Central District of Illinois for delivery to registered participants for the litigation in which said document has been filed.

/s/ Regan Lewis

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