

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

Lehigh

County

For Prothonotary Use Only:

Docket No:

2012-C-5478

FILED  
2012 DEC 28 AM 10:39  
CLERK OF COURTS  
LEHIGH COUNTY, PA

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint   
  Writ of Summons   
  Petition   
  Notice of Appeal  
 Transfer from Another Jurisdiction   
  Declaration of Taking

Lead Plaintiff's Name:  
Edward Magditch and Rose Magditch

Lead Defendant's Name:  
Lehigh County

Check here if you are a Self-Represented (Pro Se) Litigant

Name of Plaintiff/Appellant's Attorney: Thomas R. Kline, Esquire / David K. Inscho, Esquire

Are money damages requested? :  Yes     No

Dollar Amount Requested: \_\_\_\_\_ within arbitration limits  
(Check one)     outside arbitration limits

Is this a *Class Action Suit*?     Yes     No

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT (do not include Mass Tort)**

- Intentional  
 Malicious Prosecution  
 Motor Vehicle  
 Nuisance  
 Premises Liability  
 Product Liability (does not include mass tort)  
 Slander/Libel/ Defamation  
 Other:  
 Wrongful Death \_\_\_\_\_

**CONTRACT (do not include Judgments)**

- Buyer Plaintiff  
 Debt Collection: Credit Card  
 Debt Collection: Other \_\_\_\_\_  
  
 Employment Dispute:  
 Discrimination \_\_\_\_\_  
 Employment Dispute: Other \_\_\_\_\_  
  
 Other: \_\_\_\_\_

**CIVIL APPEALS**

- Administrative Agencies**  
 Board of Assessment  
 Board of Elections  
 Dept. of Transportation  
 Zoning Board  
 Statutory Appeal: Other \_\_\_\_\_  
  
**Judicial Appeals**  
 MDJ - Landlord/Tenant  
 MDJ - Money Judgment  
 Other: \_\_\_\_\_

**MASS TORT**

- Asbestos  
 Tobacco  
 Toxic Tort - DES  
 Toxic Tort - Implant  
 Toxic Waste  
 Other: \_\_\_\_\_

**REAL PROPERTY**

- Ejectment  
 Eminent Domain/Condemnation  
 Ground Rent  
 Landlord/Tenant Dispute  
 Mortgage Foreclosure  
 Partition  
 Quiet Title  
  
 Other: \_\_\_\_\_

**MISCELLANEOUS**

- Common Law/Statutory Arbitration  
 Declaratory Judgment  
 Mandamus  
 Non-Domestic Relations  
 Restraining Order  
 Quo Warranto  
 Replevin  
  
 Other: \_\_\_\_\_

**PROFESSIONAL LIABILITY**

- Dental  
 Legal  
 Medical  
 Other Professional: \_\_\_\_\_

**KLINE & SPECTER**  
A PROFESSIONAL CORPORATION  
BY: THOMAS R. KLINE, ESQUIRE  
DAVID K. INSCHO, ESQUIRE  
ID #: 28895/90267  
The Nineteenth Floor  
1525 Locust Street  
Philadelphia, PA 19102  
215-772-1000 telephone/215-772-1359 facsimile

Attorneys for Plaintiffs

Edward and Rose Magditch, Individually :  
and as Co-Administrators of the :  
Estate of Travis Magditch, Deceased :  
826 Seneca Street :  
Bethlehem, PA 18015 :

v. :

Lehigh County :  
Government Center :  
17 South 7th Street :  
Allentown, PA 18101 :

and :

Edward Sweeney, in his individual :  
Capacity and as Director of :  
Corrections for Lehigh County :  
38 North Fourth Street :  
Allentown, PA 18102 :

and :

Denis Erik VonKiel, D.O., :  
a/k/a Eric Von Kiel, :  
a/k/a Dennis Fluck :  
38 North Fourth Street :  
Allentown, PA 18102 :

and :

PrimeCare Medical Incorporated :  
3940 Locust Lane :  
Harrisburg, PA 17109 :

COURT OF COMMON PLEAS  
OF LEHIGH COUNTY

NO.

2012-C-5428

JURY TRIAL DEMANDED

2012 DEC 28 AM 10:39  
CLERK OF COURTS  
LEHIGH COUNTY, PA

FILED

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service  
Lehigh County Bar Association  
1114 Walnut Street  
Allentown, PA 18102  
(610) 433-6204

**ADVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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(610) 433-6204

**CIVIL ACTION COMPLAINT**

Plaintiffs, Edward and Rose Magditch, individually and as Co-Administrators of the Estate of Travis Magditch, deceased, by and through her undersigned counsel, Thomas R. Kline, David K. Inscho and Kline & Specter, P.C., hereby demands damages of the above-captioned Defendants in a sum in excess of the local arbitration limits, exclusive of interests, costs and damages for prejudgment delay, upon the causes of action set forth below:

**PARTIES AND VENUE**

1. Plaintiffs, Edward and Rose Magditch are the natural parents of Travis Magditch, deceased, and are adult persons and citizens of the Commonwealth of Pennsylvania, residing at 826 Seneca Street, Bethlehem, PA 18015.

2. Plaintiffs, Edward and Rose Magditch are the Co-Administrators of the Estate of Travis Magditch, deceased, having been so appointed by the Court of Common Pleas of Lehigh County on May 3, 2012. See Letters of Administration attached hereto as Exhibit "A."

3. Travis Magditch, deceased, was a citizen and resident of the Commonwealth of Pennsylvania, residing at 826 Seneca Street, Bethlehem, PA 18015.

4. Travis Magditch, deceased, was born on August 30, 1984, and died on January 5, 2012.

5. Defendant County of Lehigh [“Lehigh County”], is a political subdivision of the Commonwealth of Pennsylvania with its primary offices located at Government Center, 17 South 7<sup>th</sup> Street, Allentown, PA 18101. Lehigh County owns and operates the Lehigh County Prison located 38 North Fourth Street, Allentown, PA 18102.

6. Defendant Edward Sweeney is an adult person and resident of the Commonwealth of Pennsylvania with a business address at 38 North Fourth Street, Allentown, PA 18102. Mr. Sweeney is the Director of Corrections for Lehigh County. Plaintiffs are asserting claims against Mr. Sweeney, in his individual capacity and his official capacity as the Director of Corrections for Lehigh County.

7. At all time relevant hereto, Defendant Sweeney was acting in his official and individual capacity under the color of state law.

8. At all times relevant hereto, other individuals, including correctional officers and other employees of the Lehigh County, Lehigh County Department of Corrections, and the Lehigh County Prison, who interacted with Plaintiffs’ decedent on January 4-5, 2012, were acting under the color of state law. The identities of these individuals are known to the Defendants and not to the Plaintiffs in the absence of discovery.

9. Defendant Dennis Erik Von Kiel, D.O., a/k/a Eric Von Kiel, a/k/a Dennis Fluck, [“Von Kiel”] is an adult resident of the Commonwealth of Pennsylvania with a business address

at 38 North Fourth Street, Allentown, PA 18102. Dr. Von Kiel is a duly licensed physician in the Commonwealth of Pennsylvania. At all times relevant hereto, Dr. Von Kiel was the Medical Director of Lehigh County Prison and Vice President of the Defendant PrimeCare Medical, Incorporated. A Certificate of Merit pursuant to Pa.R.C.P. 1042.1 regarding the treatment, practice or work of this Defendant is attached hereto as Exh. "B."

10. Defendant PrimeCare Medical, Incorporated ["PrimeCare"], is a corporation or other jural entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania and with a business address at 3940 Locust Avenue, Harrisburg, Pennsylvania. The claim asserted against this Defendant is for the professional negligence of its agents, ostensible agents, employees, and servants, as stated more fully herein. A Certificate of Merit pursuant to Pa.R.C.P. 1042.1 regarding the treatment, practice or work of this Defendant is attached hereto as Exh. "C."

11. Dr. Von Kiel was an employee, shareholder, partner, and/or actual, apparent and/or ostensible agent of Defendant PrimeCare and/or Defendant Lehigh County.

12. At all times relevant hereto, Defendant PrimeCare was acting by and through their actual and/or ostensible agents, servants, and/or employees including Megan Hughes PA-C, Dennis Von Kiel, D.O., Deborah Penn, L.P.N., Kathleen Geisel, R.N. and other physicians, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the Plaintiffs, after reasonable investigation and in the absence of any discovery.

13. At all times material hereto, Defendant PrimeCare Medical was liable for the negligent acts and/or omissions of Megan Hughes PA-C, Dennis Vonkiel, D.O., Deborah Penn, L.P.N., Kathleen Geisel, R.N. and other physicians, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the Plaintiffs, after reasonable investigation and in the absence of any discovery under theories of agency, master-servant, respondeat superior and/or control or right of control.

14. At all times material hereto, PrimeCare and its actual and/or ostensible agents and/or employees and/or servants, as identified herein, were engaged in the practice of medicine and/or nursing, and were obligated to bring to bear in the practice of their respective professions the professional skill, knowledge, and care that they possessed, and to pursue their professions in accordance with reasonably safe and acceptable standards of medicine and nursing in general, and in their particular specialties.

15. At all times relevant hereto, Defendant Dr. Von Kiel was acting by and through other providers who were his actual and/or ostensible agents, servants, and/or employees including Megan Hughes PA-C, Deborah Penn, L.P.N., Kathleen Geisel, R.N. and other physicians assistants, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the Plaintiffs, after reasonable investigation and in the absence of any discovery.

16. At all times material hereto, Defendant Dr. Von Kiel was liable for the negligent acts and/or omissions of Megan Hughes PA-C, Deborah Penn, L.P.N., Kathleen Geisel, R.N. and

other physicians, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the Plaintiffs, after reasonable investigation and in the absence of any discovery under theories of agency, master-servant, respondeat superior and/or control or right of control.

17. At all times material hereto, Megan Hughes PA-C, was a duly licensed physicians assistant in the Commonwealth of Pennsylvania. As a physician's assistant Ms. Hughes could only provide medical care to a patient under the supervision of a supervising physician.

18. At all times material hereto, Defendant Dr. Von Kiel was the supervising physician for Ms. Hughes and legally and professionally responsible for all of the care and treatment rendered to Travis Magditch by Ms. Hughes.

19. Venue in this matter is properly laid in Lehigh County.

#### **FACTS GIVING RISE TO LIABILITY**

20. Travis Magditch was born on August 30, 1984.

21. Travis Magditch had a medical history significant for asthma diagnosed by his primary care physician, William Kuehner, III, M.D. Dr. Kuehner prescribed an Albuterol rescue inhaler for Travis Magditch.

22. Travis Magditch's medical history included symptoms related to his asthma including longstanding shortness of breath, severe prolonged shortness of breath, and frequent cough.

23. In approximately 2010, Travis Magditch developed an addiction to heroin.

24. On or about the night of January 3, Allentown Police arrested Travis Magditch for possession of illegal drugs.

25. At some point following Travis Magditch's arrest, the Allentown Police Department contacted Travis's father, Edward Magditch. The Allentown Police offered to release Travis Magditch to his father's custody. Edward Magditch, who was concerned about his son's drug addiction, refused this request in the hope that Travis's arrest would force Travis to enter a drug rehabilitation program.

26. At approximately 10:17 p.m. on January 3, 2012, Travis Magditch was brought to the Lehigh County Prison by members of the Allentown Police Department. He was housed on Pod 2A at the Lehigh County Prison.

27. On the night of January 3 and the early morning of January 4, Leonard Berger conducted an initial screening/health assessment of Travis Magditch. Mr. Berger noted that Travis had a medical history of asthma and that his current medications included Ventalin HFA (Albuterol) inhaler 90MCG and Advair Diskus 250/50 MCG. The Ventalin HFA (Albuterol) inhaler was a rescue inhaler prescribed on an as needed basis for Travis Magditch to respond to a potential asthma attack.

28. As part of the initial screening/health assessment, Mr. Berger also recorded that Travis Magditch's family physician was Dr. Keuhner and recorded that contact information for his pharmacy.

29. As part of the initial screening/health assessment, Travis Magditch completed an authorization to permit the prison to obtain his medical records and health information from his primary care physician, Dr. Keuhner.



30. At approximately 9:14 a.m. on January 4, 2012, physicians assistant Megan Hughes ordered medications for Travis Magditch to treat him for symptoms of withdrawal from heroin use. These included Bentyl and Vistaril. These medications were ordered under Defendant Dr. Von Kiel's name and license number.

31. No new medications were prescribed to treat Travis Magditch's known condition of asthma.

32. According to records, at approximately 9:33 a.m. physicians assistant Hughes saw Travis Magditch for a "sick call" for "asthma-heroin detoxing." The visit was listed as a priority "1," meaning that it was the highest priority visit.

33. Ms. Hughes recorded that Travis Magditch had a history of asthma and was taking Albuterol.

34. Upon information and belief, despite the Defendants being aware that Travis Magditch had a known history of asthma for which he required a rescue inhaler, Travis Magditch was not supplied with a rescue inhaler while in his cell at the Lehigh County Prison.

35. At approximately 9:00 p.m. on January 4, 2012, Travis Magditch was locked in his cell on Pod 2A.

36. Upon information and belief, during the evening of January 4, Travis Magditch called out from his cell for assistance.

37. No one from the Lehigh County Prison responded to Travis Magditch's calls for help on the evening of January 4.

38. At approximately 7:30 a.m., on January 5, guards at the Lehigh County Prison found Travis Magditch unresponsive in his cell. Cardiopulmonary resuscitation was initiated, but not successful. Emergency medical personnel were called to the prison.

39. Travis Magditch was transferred by emergency medical personnel from Lehigh County Prison to Sacred Heart Hospital.

40. Travis Magditch was pronounced dead at Sacred Heart Hospital at 7:56 a.m. on January 5, 2012.

41. An autopsy was completed by Samuel Land, M.D., a forensic pathologist. Dr. Land concluded that the cause of Travis Magditch's death was asthma.

42. The injuries and damages suffered by Travis Magditch and the Plaintiffs, including the death of Travis Magditch, were directly and proximately caused by the acts and/or omissions of all Defendants, jointly and severally, their agents, servants and/or employees, and were in no manner whatsoever due to any acts or omissions of Travis Magditch or Plaintiffs.

43. All Defendants, including their agents, servants and/or employees, acted in such a manner as to directly and proximately cause serious bodily injury to, and the death of Travis Magditch and damages to the Estate of Travis Magditch, deceased and the Wrongful Death Beneficiaries, as more fully set forth herein.

44. The acts and/or omissions of all Defendants, jointly and severally, directly and proximately caused, and/or increased the risk of harm, of the injuries and damages suffered by Travis Magditch as set forth herein.

42. As a direct and proximate result of the negligence of all Defendants, jointly and severally, as well as the negligence of their agents, servants and/or employees, Travis Magditch was caused to experience:

- a. pulmonary edema;
- b. severe asthma attack;
- c. pain and suffering;
- d. fear and fright;
- e. humiliation and embarrassment;
- f. economic loss; and,
- q. death.

WHEREFORE, Plaintiffs demand damages against Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000) Dollars, and in excess of local arbitration limits, exclusive of interests and costs.

**FIRST CAUSE OF ACTION - WRONGFUL DEATH**  
**Plaintiffs v. All Defendants**

43. The previous paragraphs are incorporated herein by reference as if set forth in full.

44. Plaintiffs, Edward and Rose Magditch, individually and as Co-Administrators of the Estate of Travis Magditch, deceased brings the action on behalf of the beneficiaries under and by virtue of the Wrongful Death Act, 42 Pa.C.S.A. §8301, and the applicable Rules of Civil Procedure.

45. Travis Magditch left surviving him, the following persons who are beneficiaries under the Wrongful Death Act:

- a. Edward Magditch (parent)
- b. Rose Magditch (parent)

46. As a result of the conduct of Defendants, as set forth herein, Travis Magditch, deceased, was caused grave injuries and death resulting in the entitlement to damages by the beneficiaries under the Wrongful Death Act.

47. Plaintiffs, Edward and Rose Magditch, individually and as Co-Administrators of the Estate of Travis Magditch, deceased, claim all expenses recoverable under the Wrongful Death Act, including but not limited to damages for medical, funeral and burial expenses and expenses of administration necessitated by reason of the injuries causing Travis Magditch's death.

48. On behalf of the Wrongful Death Act beneficiaries, the Co-Administrators claim damages for monetary support that decedent would have provided to the beneficiaries during his lifetime, including but not limited to, the support provided or which could have been expected to have been provided to the beneficiaries.

49. On behalf of the Wrongful Death Act beneficiaries, the Co-Administrators claim damages for services provided of which could have been expected to have been performed in the future.

50. On behalf of the Wrongful Death Act beneficiaries, the Co-Administrators claim damages for all pecuniary loss suffered by the beneficiaries.

51. On behalf of the Wrongful Death Act beneficiaries, the Co-Administrators claim damages for all loss of consortium, comfort, society, guidance, and tutelage that the beneficiaries may have received from the decedent by the beneficiaries as a result of decedent's untimely death.

52. On behalf of the Wrongful Death Act beneficiaries, the Co-Administrators claim damages for the full measure of damages allowed under the Wrongful Death Act of Pennsylvania and the decisional law interpreting said Act.

WHEREFORE, Plaintiffs demand damages against Defendants, jointly and severally, in excess of Fifty Thousand (\$50,000) Dollars, and in excess of local arbitration limits under the Wrongful Death Act, exclusive of interests and costs.

**SECOND CAUSE OF ACTION - SURVIVAL ACTION**  
**Plaintiffs v. All Defendants**

53. The previous paragraphs are incorporated herein by reference as if set forth in full.

54. Plaintiffs, Edward and Rose Magditch, individually and as Co-Administrators of the Estate of Travis Magditch, deceased, bring this Survival Action on behalf of the Estate of Travis Magditch under and by virtue of 42 Pa.C.S. §8302, and the applicable Rules of Civil Procedure and the decisional law interpreting said Act.

55. As a result of the negligence of all Defendants, set forth herein, Travis Magditch was caused grave injuries and death, resulting in the entitlement to damages by his Estate under the Survival Act.

56. As a result of the death of Travis Magditch, his Estate has been deprived of the economic value of his life expectancy, and Plaintiffs claim under the Survival Act, damages for all pecuniary losses suffered by the Estate as a result of her decedent's death, including all loss of income, earnings, retirement income, benefits and Social Security income.

57. Co-Administrators further claim, under the Survival Act, the total amount that the decedent would have earned in the future, minus the costs of personal maintenance.

58. Co-Administrators further claim, under the Survival Act, damages for the conscious pain and suffering endured by decedent prior to his death, including physical pain and suffering, and mental pain and suffering leading to decedent's death.

59. Co-Administrators further claim, under the Survival Act all damages recoverable pursuant to 42 Pa.C.S. §8302, and the decisional law interpreting said Act.

WHEREFORE, Plaintiffs demand damages against Defendants, jointly and severally, in excess of Fifty Thousand (\$50,000) Dollars, and in excess of local arbitration limits under the Wrongful Death Act, exclusive of interests and costs

**COUNT I – NEGLIGENCE**  
**Plaintiffs v. Defendants PrimeCare and Dr. Von Kiel**

60. The previous paragraphs are incorporated herein by reference as if set forth in full.

61. The negligent conduct of Megan Hughes PA-C, Dennis Von Kiel, D.O., Deborah Penn, L.P.N., Kathleen Geisel, R.N. and other physicians, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the

Plaintiffs, after reasonable investigation and in the absence of any discovery, and through them, PrimeCare Medical Incorporated and Dr. Von Kiel, during the medical evaluation, care and treatment of Travis Magditch consisted of the following:

- a. failure to properly evaluate and treat Travis Magditch's asthma;
- b. failure to provide proper treatment for Travis Magditch's asthma;
- c. failure to assure that Travis Magditch had adequate medical treatment for his known dangerous condition of asthma;
- d. failure to provide Travis Magditch with access to a rescue inhaler;
- e. failure to provide adequate treatment for Travis Magditch's severe asthma attack;
- f. failure to supervisor physicians, physician's assistants, nurses and other medical providers in giving care to Travis Magditch;
- g. failure to assure adequate medical policies and procedures for patient/inmates to assure that patient/inmates with asthma have access to needed medical treatment;
- h. failure to assure adequate medical policies and procedures for patient/inmates to assure that patient/inmates with asthma have access to needed a rescue inhaler;
- i. failure to identify the increased risk of a severe asthma attack in a patient undergoing opiate withdrawal;

- j. failure to provide needed medication and treatment to a patient with asthma who was at an increased risk of a severe asthma attack while undergoing opiate withdrawal;
- k. failure to prevent the death of Travis Magditch on January 5, 2012.

WHEREFORE, Plaintiffs demand damages against Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000) Dollars, and in excess of local arbitration limits, exclusive of interests and costs.

**COUNT II – NEGLIGENCE (VICARIOUS LIABILITY)**  
**Plaintiffs v. All Defendants**

62. The previous paragraphs are incorporated herein by reference as if set forth in full.

63. At all relevant times, Defendants had a duty to take reasonable measures to guarantee Travis Magditch's safety.

64. At all relevant times, Defendants were aware, or should have been aware, that a substantial risk of serious harm to Travis Magditch existed while an inmate at Lehigh County Prison.

65. The aforementioned conduct of defendants, acting under color of state law, was reckless and deliberately indifferent to the safety, bodily integrity, well-being, privacy and liberty of Travis Magditch, and was committed in conscious and willful disregard of the substantial and/or unjustifiable risk of causing harm to members of the public and to Travis Magditch, and was so egregious as to shock the conscience.



66. The aforementioned conduct of defendants, acting under color of state law, created a danger which resulted in the aforementioned severe physical and emotional harm.

67. At all relevant times, defendants had a policy or practice which created an unreasonable risk of harm and/or injury, and were aware that said unreasonable risk was created.

68. The severe physical and emotional harm caused to Travis Magditch was foreseeable and fairly direct to defendants, as well as the result of defendants' aforesaid policy or practice.

69. The aforementioned conduct of defendants, acting under color of state law, created an opportunity for danger which otherwise would not have existed.

70. The aforementioned conduct of defendants, acting under color of state law, constituted an affirmative act to restrain Travis Magditch's freedom, and thus triggered a special relationship with Travis Magditch under which defendants assumed a duty to ensure his safety and well-being.

71. The aforementioned conduct of defendants, acting under color of state law, constitutes a breach of defendants' duty and was in deliberate indifference to the danger and/or substantial risk of harm facing Travis Magditch so as to shock the conscience.

72. At all times relevant hereto, Defendants were aware of and recklessly and deliberately indifferent to the need for additional and/or different training, testing, rules, regulations, policies, procedures, guidelines, directives, investigation and/or discipline relating to: responding to inmate health concerns; proper treatment and/or handling of inmates; assuring inmates have access to life saving medical care; assuring that inmates have access to life saving

medications; and providing proper medical care to inmates, and maintained a custom, policy and/or practice of failing to discipline and/or encouraging the aforesaid unnecessary, negligent, irresponsible, vindictive and violent behavior.

73. Defendants failure to properly train their employees, agents, representatives, and/or brokers, including but not limited to the corrections officers in charge of monitoring Pod 2A on the evening of January 4, 2012, whose identities are known to the Defendants and not to the Plaintiffs in the absence of discovery, corrections officers in charge of monitoring Travis Magditch's condition on January 3 and 4, 2012, whose identities are known to the Defendants and not to the Plaintiffs in the absence of discovery, Megan Hughes PA-C, Dennis Von Kiel, D.O., Deborah Penn, L.P.N., Kathleen Geisel, R.N. and other physicians, nurses, therapists, technicians and/or medical practice personnel whose activities and conduct with regard to the medical care and treatment provided to Travis Magditch are presently known only to the Defendants, but not to the Plaintiffs, after reasonable investigation and in the absence of any discovery, amounted to a deliberate indifference to the rights of Travis Magditch.

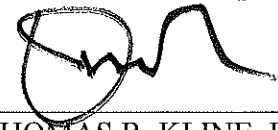
74. The aforementioned conduct of all defendants, acting under color of state law, violated Travis Magditch's constitutional rights to be free from unreasonable searches and seizures, rights to medical care in custody, rights to be free from cruel and unusual punishment, rights to privacy, right to bodily integrity, right to safety, and to substantive and procedural due process, as guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and as remediable pursuant to 42 U.S.C. §1983.

75. The conduct of all defendants as set forth above was the moving force behind the violation of and/or caused the violation of Travis Magditch's civil rights as set forth above.

76. As a direct and proximate result of the violations of Travis Magditch's civil rights, he was caused to suffer grievous physical and emotional injuries and losses as set forth above and herein.

WHEREFORE, Plaintiffs demand damages against Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000) Dollars, and in excess of local arbitration limits, exclusive of interests and costs.

Respectfully Submitted  
**KLINE & SPECTER,**  
A Professional Corporation



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THOMAS R. KLINE, ESQUIRE



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DAVID K. INSCHO, ESQUIRE  
*Attorneys for Plaintiffs*

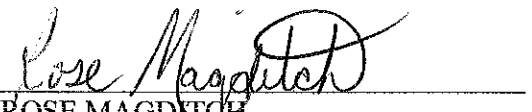
Date:

12/27/12

VERIFICATION

We, Edward Magditch and Rose Magditch, Co-Administrators of the Estate of Travis Magditch, deceased, hereby verify that we are the Plaintiffs in the foregoing action; that the attached Complaint is based upon information which we have furnished to our counsel and information which has been gathered by our counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and is not ours. I have read the Complaint and to the extent that the allegations therein are based upon information we have given counsel, they are true and correct to the best of our knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, we have relied upon counsel in making this Verification. We understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

  
EDWARD MAGDITCH,  
CO-ADMINISTRATOR OF THE ESTATE  
OF TRAVIS MAGDITCH, DECEASED

  
ROSE MAGDITCH,  
CO-ADMINISTRATOR OF THE ESTATE  
OF TRAVIS MAGDITCH, DECEASED

Date: 12/12/12

# EXHIBIT "A"

IN THE OFFICE OF THE CLERK OF JUDICIAL RECORDS OF LEHIGH COUNTY, PENNSYLVANIA  
REGISTER OF WILLS DIVISION

IN RE: ESTATE OF TRAVIS A MAGDITCH,  
DECEASED

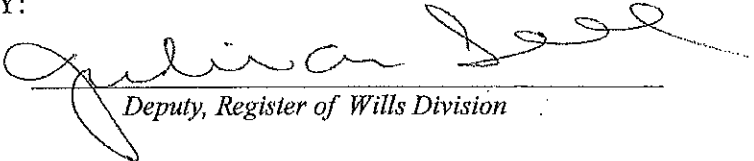
FILE No. 2012-0715

SHORT CERTIFICATE  
(Intestate)

I, Andrea E. Naugle, Clerk of Judicial Records, Register of Wills Division, in and for the County of Lehigh, Commonwealth of Pennsylvania, certify that on May 03, 2012, Letters of Administration were issued to Edward Stephen Magditch and Rose Marie Magditch, who had filed a petition for the grant of letters and appeared in this Office and took an oath to well and truly administer the Estate of Travis A Magditch, who died on January 05, 2012. I further certify that as of this date, said Letters of Administration have not been revoked.

Given under my hand and the seal of this Office, on this the 3rd day of May, 2012.

ANDREA E. NAUGLE, BY:

  
Deputy, Register of Wills Division

**DO NOT ACCEPT WITHOUT ORIGINAL SIGNATURE AND IMPRESSED SEAL**

# EXHIBIT "B"

KLINE & SPECTER  
A PROFESSIONAL CORPORATION  
BY: THOMAS R. KLINE, ESQUIRE  
DAVID K. INSCHO, ESQUIRE  
ID #: 28895/90267  
The Nineteenth Floor  
1525 Locust Street  
Philadelphia, PA 19102  
215-772-1000 telephone/215-772-1359 facsimile

Attorneys for Plaintiffs

Edward and Rose Magditch, Individually  
and as Co-Administrators of the  
Estate of Travis Magditch, Deceased  
826 Seneca Street  
Bethlehem, PA 18015

v.

Lehigh County  
Government Center  
17 South 7th Street  
Allentown, PA 18101

and

Edward Sweeney, in his individual  
Capacity and as Director of  
Corrections for Lehigh County  
38 North Fourth Street  
Allentown, PA 18102

and

Denis Erik VonKiel, D.O.,  
a/k/a Eric Von Kiel,  
a/k/a Dennis Fluck  
38 North Fourth Street  
Allentown, PA 18102

and

PrimeCare Medical Incorporated  
3940 Locust Lane  
Harrisburg, PA 17109

COURT OF COMMON PLEAS  
OF LEHIGH COUNTY

NO.

JURY TRIAL DEMANDED

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**CERTIFICATE OF MERIT AS TO DEFENDANT**  
**DENIS ERIK VONKIEL, D.O., A/K/A ERIC VON KIEL, A/K/A DENNIS FLUCK**



I, David K. Inscho, Esquire, hereby certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

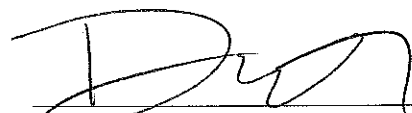
An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by other licensed professionals for whom this defendant is responsible in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

The claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

**KLINE & SPECTER**  
A Professional Corporation

By:

  
\_\_\_\_\_  
THOMAS R. KLINE, ESQUIRE  
DAVID K. INSCHO, ESQUIRE

Dated: 12/21/12

# EXHIBIT "C"

KLINE & SPECTER  
A PROFESSIONAL CORPORATION  
BY: THOMAS R. KLINE, ESQUIRE  
DAVID K. INSCHO, ESQUIRE  
ID #: 28895/90267  
The Nineteenth Floor  
1525 Locust Street  
Philadelphia, PA 19102  
215-772-1000 telephone/215-772-1359 facsimile

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and

PrimeCare Medical Incorporated  
3940 Locust Lane  
Harrisburg, PA 17109

COURT OF COMMON PLEAS  
OF LEHIGH COUNTY

NO.

JURY TRIAL DEMANDED

---

**CERTIFICATE OF MERIT AS TO DEFENDANT  
PRIMECARE MEDICAL INCORPORATED**

I, David K. Inscho, Esquire, hereby certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by other licensed professionals for whom this defendant is responsible in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

The claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

**KLINE & SPECTER**

A Professional Corporation

By:

  
THOMAS R. KLINE, ESQUIRE  
DAVID K. INSCHO, ESQUIRE

Dated: 12/21/12