

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

GREGG ALAN STONE, ESQ.  
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Attorneys for Plaintiff(s)

JOHNATHAN DAWKINS; SARA H.  
HUMPHREY, GUARDIAN AD LITEM OF  
JOHNATHAN DAWKINS, A MENTALLY  
INCAPACITATED PERSON; AND SARA  
H. HUMPHREY, INDIVIDUALLY

Plaintiff(s),

Vs.

COUNTY OF UNION; CORRECTIONAL  
HEALTH SERVICES, INC.; COUNTY OF  
ESSEX; VICTOR POZSONYI; STANLEY  
TERRELL; LEONARD MAYER; RICHARD  
TROWER; JOHN MANFRE; RICHARD  
GRISWOLD, JR.; ANTHONY BONITO;  
LT. CAFFREY; OFFICER CALAS;  
PASCAL TYRA; CHRISTOPHER SLOAN;  
KIMBERLY H. KEHL; LATRINA TENNET;  
DENISE ROBERSON; ERNESTINE  
BLAINE; BILLY PROSPERI (Essex  
County Medical Records Supervisor);  
FRANK M. CROSE (Director, Union  
County Corrections); JOHN DOE (a  
fictitious name); MANNY MOE (a fictitious  
name); ABC CORPORATION (a fictitious  
corporation),

Defendant(s).

CIVIL ACTION

CASE NO.

COMPLAINT  
AND  
JURY DEMAND

COMPLAINT PRELIMINARY STATEMENT

1. This is an action alleging a deprivation of civil rights resulting from the use of unlawful and excessive force by County of Union correction officers/employees. Money damages are sought.

2. This is an action alleging negligence resulting from the failure of plaintiff Johnathan Dawkins' medical records being timely transferred from Essex County Correction Facility to Union County Correction Facility in the time prescribed by State Regulation, policy and/or procedure, so that Union County Correction Facility personnel and/or employees could assess, diagnose and dispense appropriate psychiatric medication to control plaintiff Johnathan Dawkins' long standing psychiatric medical condition. This includes employees of the County of Union and/or employees of Corrections Health Services, Inc., requesting, obtaining, and reviewing the medical records of plaintiff Johnathan Dawkins, from the County of Essex, in the time prescribed by State Regulation, policy and/or procedure. Money damages are sought.
3. This is an action alleging nursing/medical negligence resulting from deviations in the standard of nursing and medical care in the timely assessment, diagnosis and treatment of plaintiff Johnathan Dawkins, including the accessibility and maintenance of emergency medical equipment. Money damages are sought.
4. Plaintiff Johnathan Dawkins remains profoundly brain damaged due to injuries sustained from the use of unlawful and excessive force by the defendant Union County correction officers/employees; and from deviation(s) from the standard of nursing and medical care in the assessment, diagnosis and medical treatment received by plaintiff Johnathan Dawkins from

Correctional Health Services, Inc., and its defendant nurse employees.

Money damages are sought.

### JURISDICTION

5. The jurisdiction of this Court of the within pleaded matter is brought pursuant to 42 U.S.C. Sections 1983, 1985(3), 1986 and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution. Pendant jurisdiction over state claims is also invoked.
6. Jurisdiction is founded on 28 U.S.C. Section 1331 and Section 1343 (1)(2)(3)(4) and the aforementioned statutory and constitutional provisions.

### PARTIES

7. Johnathan Dawkins is presently 37 years old and remains profoundly brain damaged at Pope John Pavilion, a long term medical facility located in Orange, New Jersey, following the facts giving rise to the within allegations. Sara H. Humphrey is the mother of Johnathan Dawkins and resides at 32 Bayard Place, Newark, New Jersey. She consents to act as Johnathan Dawkins' guardian ad litem due to his mental incapacity.
8. Defendant County of Union, is a public entity in the State of New Jersey, with offices for service of process located at Elizabethtown Plaza, Elizabeth, New Jersey, 07207, and with various departments under its direction, including the Union County Correction Facility and/or Jail, which employed the individually named defendants as correction officers/employees.

9. Defendants Victor Pozsonyi, Stanley Terrell, Leonard Mayer, Richard Trower, John Manfre, Richard Griswold, Jr., Anthony E. Bonito, Lt. Caffrey, Officer Calas, Pascal Tyra, and Christopher Sloan were and at all times relevant hereto, employed as Union County correction officers/employees at the County of Union and/or Union County Correction Facility/Jail, located at 15 Elizabethtown Plaza, Elizabeth, New Jersey 07207, and are being sued individually, and in their official capacity as agents, servants and/or employees of the County of Union acting within the scope of their authority.
10. Defendant Frank M. Crose was at all times relevant hereto the Director of Corrections for the County of Union, located at 15 Elizabethtown Plaza, Elizabeth, New Jersey 07207, and employed by the County of Union. As such, he was the commanding officer of the defendant correction officers/employees and was responsible for the training, supervision and conduct of said defendants. He is also required by law to enforce the regulations of the County of Union, State of New Jersey and of the United States of America. He is sued individually and in his official capacity as an agent, servant and/or employee of the County of Union acting within the scope of his authority.
11. Defendant Correctional Health Services, Inc., is a corporation registered to do business in the State of New Jersey, with offices located at Union County Jail, 15 Elizabethtown Plaza, Suite 2013, Elizabeth, New Jersey 07207, and maintains a contract with the County of Union and County of Essex to provide health/medical related services to the inmates at Union County and Essex

of the County of Union and/or County of Essex acting within the scope of their authority.

15. Defendant(s) ABC Corporation (a fictitious corporation), and its agents, servants, or employees, contracted by the County of Union and/or County of Essex and otherwise responsible to provide health related services and/or police/correction services to the County of Union and/or County of Essex, whose identity is yet not known to plaintiffs.

**FACTS COMMON TO ALL CAUSES  
OF ACTION AND ALL PARTIES**

16. Paragraphs 1 through 15 are incorporated herein as though fully set forth at length.
17. For approximately several months leading up to October 13, 2007, plaintiff Johnathan Dawkins was an inmate at the Essex County Correction Facility/Jail.
18. On or about October 1, 2007, plaintiff Johnathan Dawkins was transferred from Essex County Jail to Union County Jail.
19. Plaintiff Johnathan Dawkins is and has been diagnosed with long standing paranoid schizophrenia, whose psychologic condition is controlled through psychiatric medication.
20. While incarcerated at Essex County Jail, plaintiff Johnathan Dawkins was dispensed psychiatric medication to control his parancoid schizophrenia.

28. On October 13, 2007, plaintiff Johnathan Dawkins was clutching a pillow to his face and chest, as pepper spray was dispensed into his cell by the defendant Union County Correction officers/employees.
29. On October 13, 2007, the defendant County of Union and its defendant correction officers/employees entered the jail cell of plaintiff Johnathan Dawkins, and forcefully extracted him from his cell in full SWAT battle gear. Plaintiff Johnathan Dawkins was forcefully placed on the floor, face-down, by four (4) or more defendant Union County correction officers/employees.
30. The cell extraction was videotaped, with sound, by one of the defendant County of Union correction officers.
31. The videotaped cell extraction, with sound, shows one of the defendant County of Union correction officers forcefully cementing his knee into the back of plaintiff Johnathan Dawkins' head and neck, as plaintiff's mouth and nose smothered into the pillow he was holding, thereby blocking his airway and ability to breathe. Plaintiff Johnathan Dawkins was heard on the videotape gasping for breath, as he was asphyxiating.
32. The videotape shows that plaintiff Johnathan Dawkins' body remains motionless for numerous minutes while the defendant correction officers continue to apply restraints to plaintiff Johnathan Dawkins, while showing no appreciation or concern for his medical condition.
33. On October 13, 2007, the defendant Correctional Health Services, Inc., and their defendant nurse employees fail to observe, assess, diagnose and treat plaintiff Johnathan Dawkins' medical condition, before, during, and after the

cell extraction, including maintaining oxygen tubing and accessing appropriate and working oxygen masks in emergency situations.

34. On October 13, 2007, plaintiff Johnathan Dawkins was caused to asphyxiate and become profoundly and permanently brain dead.

35. Plaintiff Johnathan Dawkins remains hospitalized at Pope John Pavilion, a long term medical facility located in Orange, New Jersey.

#### COUNT ONE

#### **FEDERAL CIVIL RIGHTS CLAIM – EXCESSIVE FORCE**

36. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.

37. The actions of the defendant County of Union and its defendant correction officers/employees, acting individually, and in concert, were unjustified, unlawful, malicious, and intentional, and otherwise constituted an excessive use of force which deprived plaintiff Johnathan Dawkins of his civil rights, as secured by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, and by 42 U.S.C. Section 1983.

38. The actions of the defendant County of Union and its defendant correction officers/employees were undertaken without probable cause, and were accomplished through the use of excessive force. Further, such improper actions directly and proximately resulted in extreme physical, emotional, and cognitive injuries to plaintiff Johnathan Dawkins, and deprived him of his personal liberty in violation of the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. Section 1983.

39. As a direct and proximate result of the acts and misconduct described *aforesaid*, all committed under color of authority as County of Union correction officers/employees, and while acting within the scope of their employment, and pursuant to authority vested in them by the defendant County of Union, defendants caused plaintiff Johnathan Dawkins physical, emotional and cognitive pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.
40. The unnecessary and unprovoked excessive use of force by the defendants as *aforesaid*, did in fact result in physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

COUNT TWO

STATE CLAIM – WILLFUL, WANTON AND RECKLESS CONDUCT

41. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
42. The defendant County of Union and its defendant correction officers/employees failed to exercise due care and acted in a willful, wanton, and reckless manner while engaged in their functions as correction officers/employees, which culminated in the injuries and damages suffered by plaintiff Johnathan Dawkins.

43. Such reckless, wanton and willful conduct directly and proximately caused plaintiff Johnathan Dawkins physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

**COUNT THREE**

**STATE CLAIM – ASSAULT AND BATTERY**

44. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
45. The defendant County of Union and its defendant correction officers/employees use of excessive force, which was willful, intentional and unjustified, constituted an assault and battery in violation of New Jersey law.
46. Such reckless, wanton and willful conduct directly and proximately caused plaintiff Johnathan Dawkins physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

**COUNT FOUR**

**STATE CIVIL RIGHTS CLAIM – EXCESSIVE FORCE**

47. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
48. As a result of the illegal conduct of the defendants, one or more of them, the plaintiff Johnathan Dawkins' civil rights under the laws of the State of New

Jersey were violated, as were the rights and protections provided under the Constitution of the State of New Jersey, including but not limited to Article I, Sections 1, 2a, 5, 6, 7, 8, 10, 11, 12, as well as any and all other rights and protections afforded under all other laws of the State of New Jersey.

49. As a direct and proximate result of the negligence of the aforesaid defendants, plaintiff Johnathan Dawkins was caused physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

#### COUNT FIVE

##### **UNLAWFUL CUSTOM, PRACTICE, POLICY/INADEQUATE TRAINING/IMPROPER AND INADEQUATE SUPERVISION**

50. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
51. The defendant County of Union, Frank M. Crose (Director of Union County Corrections), and its defendant correction officers/employees, failed to formulate, implement and comply with generally accepted and established practice, policy, procedure, protocol and regulations in determining the need for a forced cell extraction, conducting the forced cell extraction, and assessing and appropriately treating the physical condition of plaintiff Johnathan Dawkins before, during, and following the cell extraction.
52. The defendant County of Union and its defendant correction officers/employees failed to provide adequate training and supervision to ensure that forced cell extractions were in compliance with generally

accepted and established practice, policy, procedure, protocol and regulations in determining the need for a forced cell extraction, conducting the forced cell extraction, and assessing and appropriately treating the physical condition of plaintiff Johnathan Dawkins before, during and following the cell extraction.

53. As a direct and proximate result of the negligence of the aforesaid defendants, plaintiff Johnathan Dawkins was caused physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

COUNT SIX

UNLAWFUL CUSTOM PRACTICE POLICY/INADEQUATE TRAINING/IMPROPER AND INADEQUATE SUPERVISION

54. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
55. The defendant County of Union, Frank M. Crose (Director of Union County Corrections), its defendant correction officers/employees, County of Essex, John Doe (a fictitious name), Billy Prosperi (Essex County Medical Records Supervisor), Correctional Health Services, Inc., its defendant nurse employees, ABC Corporation (a fictitious corporation) and Manny Moe (a fictitious name), failed to comply with established practice, policy, procedure, protocol and regulations in timely forwarding, requesting, obtaining and reviewing the medical records of plaintiff Johnathan Dawkins; assessing/diagnosing his worsening psychiatric medical condition; dispensing

appropriate psychiatric medication; maintaining medical equipment in working condition; and providing immediate accessibility to appropriate medical equipment in emergency situations.

56. As a direct and proximate result of the negligence of the aforesaid defendants, plaintiff Johnathan Dawkins was caused physical, emotional and cognitive injury, including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.

57. Defendants John Doe (a fictitious name), Many Moe (a fictitious name) and ABC Corporation (a fictitious Corporation), are named herein as representing any unknown potential defendant in this law-suit, whose identity might be revealed to the plaintiff during the course of this law-suit and so as to halt the running of the Statute of Limitations as to said presently unknown and unidentified defendants.

#### COUNT SEVEN

#### **NEGLIGENCE NURSING/MEDICAL**

58. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.

59. Defendants Correctional Health Services, Inc., its defendant nurse employees, ABC Corporation (a fictitious corporation) and Many Moe (a fictitious name), deviated from accepted standards of nursing and medical practice, and failed to comply with established policy, procedure, protocol and regulations in observing, assessing, diagnosing and providing timely medical

64. The conduct of the defendant County of Union correction officers/employees constituted deliberate acts, or omissions with knowledge, or a high degree of probability of harm to Johnathan Dawkins.
65. As a result of the conduct of the defendant County of Union correction officers/employees, plaintiff Johnathan Dawkins was caused physical, emotional and cognitive injury including pain and suffering; disability and impairment; loss of enjoyment of life; and caused expenditure of large sums of money for his medical care and treatment, past, present and future.
66. Plaintiff Johnathan Dawkins demands punitive damages against the defendant County of Union correction officers/employees.

COUNT NINE

GUARDIAN AD-LITEM

67. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 35, as if fully set forth at length herein.
68. At all times relevant hereto, plaintiff Johnathan Dawkins is profoundly brain damaged and lacks the mental capacity to bring the within lawsuit on his own behalf. He remains an inpatient at Pope John Pavilion, a long term medical facility, located in Orange, New Jersey.
69. As a result of the acts and negligence of the defendants, plaintiff Johnathan Dawkins incurred, and will incur, substantial medical expense associated with his medical care and treatment.