

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-cv-01571-MSK-BNB

ESTATE OF EMILY RICE, By SUSAN GARBER and ROY RICE as Co-Personal
Representatives;
SUSAN GARBER, as parent and Co-Personal Representative of the Estate of Emily Rice;
ROY RICE, as parent and Co-Personal Representative of the Estate of Emily Rice,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, COLORADO;
DENVER DEPARTMENT OF HEALTH AND HOSPITALS, D/B/A “DENVER HEALTH
MEDICAL CENTER” AND “DENVER HEALTH”;
JASON HAUKOOS, M.D., in his individual and official capacities;
LISA CHENG, M.D., in her individual and official capacities;
ROBERT KELLY COSTIN, R.N., in his individual and official capacities;
MARIA BOUZIANE, R.N., in her individual and official capacities;
MARY CLEARY, R.N., in her individual and official capacities;
NANCYE ZIMMER, R.N., in her individual and official capacities;
WENDY JO ANDERSON, R.N., in her individual and official capacities;
CAPTAIN JACOB KOPYLOV, in his individual and official capacities;
CAPTAIN JOHN RIORDON, in his individual and official capacities;
SERGEANT LOREN COLLIER, in his individual and official capacities;
SERGEANT HANS RASTEDE, in his individual and official capacities;
SERGEANT RICHARD ROBERSON, in his individual and official capacities;
SERGEANT KAROLINA SICH, in her individual and official capacities;
SERGEANT ANTHONY SULLIVAN, in his individual and official capacities;
DEPUTY KERI ADCOCK, in her individual and official capacities;
DEPUTY JULIANA BARRON, in her individual and official capacities;
DEPUTY SARAH BRIGHT, in her individual and official capacities;
DEPUTY LAKISHA MINTER, in her individual and official capacities;
DEPUTY FAUN GOMEZ, in her individual and official capacities;
DEPUTY SHERMAINE GUZMAN, in her individual and official capacities;
DEPUTY AMANDA LINE, in her individual and official capacities;
DEPUTY JULIE KIRKBRIDE, in her individual and official capacities;
DEPUTY MICHELLE SALEMI, in her individual and official capacities;
DEPUTY JESSICA WANROW, in her individual and official capacities; and
JOHN AND JANE DOES 1 THROUGH 20, DENVER CITY AND COUNTY SHERIFF'S
DEPUTIES AND MEDICAL PERSONNEL, in their official and individual capacities.

Defendants.

AMENDED COMPLAINT AND JURY DEMAND (CORRECTED)

Plaintiffs, Susan Garber, individually as Mother of the late Emily Rice and as Co-Personal representative of the Estate of Emily Rice; and Roy Rice, individually as Father of the late Emily Rice and as Co-Personal representative of the Estate of Emily Rice, by and through their attorneys, KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Amended Complaint and Jury Demand (Corrected) as follows:

I. INTRODUCTION

1. Emily Rice was a young woman with a warm and open personality and a bright future who suffered an agonizingly slow and painful death because Defendants simply did not care. Defendants violated the rights of Emily Rice, the daughter of the Plaintiffs, under the United States Constitution and the laws of the State of Colorado when knowingly and with deliberate indifference to her constitutional rights, they denied her necessary medical treatment for an obvious serious medical condition, thereby causing her extensive pain and suffering and ultimately death. Defendants' conduct under color of state law proximately caused the deprivation of Ms. Rice's federally protected rights. Defendants' conduct, done willfully and wantonly, also gives rise to supplemental state claims.

II. JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States and the State of Colorado, and is brought pursuant to Title 42 U.S.C. § 1983, C.R.S. § 13-21-202 and the common law of the State of Colorado.

3. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1367. Jurisdiction supporting Plaintiffs' claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado, and all of the parties were residents of the State at the time of the events giving rise to this litigation.

III. CERTIFICATE OF REVIEW

5. Pursuant to C.R.S. § 13-20-602(3)(a), counsel certifies as follows:
- a. Counsel has consulted with medical professionals with expertise in the areas of the alleged negligent conduct as set forth in Plaintiffs' Amended Complaint;
 - b. The medical professionals who have been consulted have reviewed all known facts relevant to the allegations of negligent conduct as complained of in Plaintiffs' Amended Complaint;
 - c. Based upon review of such facts, the medical professionals have concluded that the filing of the claims against the Defendants does not lack substantial justification within the meaning of C.R.S. § 13-17-102(4); and
 - d. The medical professionals who have reviewed all known facts relevant to the allegations of negligent conduct as contained in Plaintiffs' Amended Complaint meet the requirements set forth in C.R.S. § 13-64-401.

IV. PARTIES

Plaintiffs:

6. At all times pertinent hereto, the decedent, Emily Rice was a citizen of the United States of America and a resident of the State of Colorado.

7. At all times pertinent hereto, Plaintiffs Susan Garber and Roy Rice, parents of and co-personal representatives of the Estate of Emily Rice have been citizens of the United States of America and residents of the State of Colorado.

Defendants:

Denver Health Defendants:

8. Upon information and belief, Denver Department of Health and Hospitals, D/B/A “Denver Health Medical Center” and “Denver Health” (hereinafter “Denver Health”), is a political subdivision of the State of Colorado with its principal office address at 777 Bannock Street, Denver, Colorado 80204.

9. At all times relevant to this Amended Complaint, Denver Health and all of its agents and employees were acting under color of state law.

10. Upon information and belief, at all relevant times, Defendant Jason Haukoos, M.D., was a physician licensed to practice medicine in the State of Colorado, and was an Attending Physician at Denver Health.

11. Upon information and belief, at all relevant times, Defendant Lisa Cheng, M.D., was a physician licensed to practice medicine in the State of Colorado, and was working as a Resident at Denver Health.

12. Upon information and belief, at all relevant times, Defendant Robert Kelly Costin, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

13. Upon information and belief, at all relevant times, Defendant Maria Bouziane, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

14. Upon information and belief, at all relevant times, Defendant Mary Cleary, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

15. Upon information and belief, at all relevant times, Defendant Nancye Zimmer, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

16. Upon information and belief, at all relevant times, Defendant Wendy Jo Anderson, R.N., was a registered nurse with a principal place of business at Defendant Denver Health.

17. At all pertinent times mentioned herein, all of the Defendants sued in both their individual and official capacities were acting within the scope of their official duties and employment, under color of state law.

Jail Defendants:

18. Defendant City of and County of Denver is a Colorado municipal corporation.

19. At all times relevant to the subject matter of this litigation, Defendant Jacob Kopylov was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Captain at the Denver Jail, in Denver, Colorado.

20. At all times relevant to the subject matter of this litigation, Defendant John Riordon was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Captain at the Denver Jail, in Denver, Colorado.

21. At all times relevant to the subject matter of this litigation, Defendant Loren Collier was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

22. At all times relevant to the subject matter of this litigation, Defendant Hans Rastede was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

23. At all times relevant to the subject matter of this litigation, Defendant Richard Roberson was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

24. At all times relevant to the subject matter of this litigation, Defendant Karolina Sich was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

25. At all times relevant to the subject matter of this litigation, Defendant Anthony Sullivan was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

26. At all times relevant to the subject matter of this litigation, Defendant Keri Adcock was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

27. At all times relevant to the subject matter of this litigation, Defendant Juliana Barron was a citizen of the United States and a resident of Colorado and was acting under color

of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

28. At all times relevant to the subject matter of this litigation, Defendant Sarah Bright was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

29. At all times relevant to the subject matter of this litigation, Defendant Lakisha Minter (formerly known as Lakisha Forrest) was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

30. At all times relevant to the subject matter of this litigation, Defendant Faun Gomez was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

31. At all times relevant to the subject matter of this litigation, Defendant Shermaine Guzman was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

32. At all times relevant to the subject matter of this litigation, Defendant Amanda Line was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

33. At all times relevant to the subject matter of this litigation, Defendant Julie Kirkbride was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

34. At all times relevant to the subject matter of this litigation, Defendant Michelle Salemi (formerly known as Michelle Padilla) was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

35. At all times relevant to the subject matter of this litigation, Defendant Jessica Wanrow was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

36. At all times relevant to the subject matter of this litigation, Defendants John and Jane Does 1 through 20 were citizens of the United States and residents of Colorado and were acting under color of state law in their capacities as law enforcement officers employed at the Denver Jail, in Denver, Colorado.

37. At all times relevant to this complaint, the City and County of Denver and all of its agents and employees were acting within the scope of their official duties and employment, under color of state law.

V. FACTUAL ALLEGATIONS

38. Emily Rae Rice, age 24, died at the Denver Jail while in the custody of the Denver Sheriff's Department.

39. As an autopsy revealed, Ms. Rice suffered from an 18-centimeter gaping gash in her liver, a lacerated spleen, and three broken ribs.

40. Ms. Rice's death occurred as a direct result of the extreme and deliberate indifference to her serious medical condition and the reckless practices and procedures employed by the public officials in connection with her medical "treatment" and detention.

The Accident and Denver Health

41. At approximately 6:50 a.m. on February 18, 2006, Emily Rice was involved in a non-fatal car accident, in which her car was totally destroyed.

42. A vehicle traveling approximately 40 miles per hour struck the right front of the vehicle driven by Ms. Rice while she was turning left, destroying her vehicle and causing life-threatening injuries to Ms. Rice.

43. The accident was witnessed by a clerk in a nearby convenience store, who approached Ms. Rice's vehicle immediately after the accident to render assistance.

44. After concluding that Ms. Rice was unconscious, the clerk returned to the convenience store and placed a 911 call.

45. Denver Police officers who arrived at the scene summoned paramedics who were dispatched by Denver Health to the scene of the accident at approximately 6:53 a.m.

46. Paramedics arrived at approximately 7:00 a.m.

47. Paramedics, who recognized the potential severity of Ms. Rice's injuries, immobilized Ms. Rice and transported her to Denver Health.

48. The paramedics noted in a report that Ms. Rice's airbag had deployed, and that she was complaining of pain in her right shoulder. Records indicate that Ms. Rice lost consciousness while the paramedics were evaluating her.

49. The paramedics report also noted an odor of alcohol.

50. The paramedics further reported that they drew Ms. Rice's blood, and that they administered oxygen while transporting Ms. Rice to Denver Health.

51. Upon arrival at Denver Health, Ms. Rice was first booked, and then admitted as a detainee to the Emergency Department of Denver Medical at approximately 7:45 a.m.

52. Upon information and belief, Wendy Jo Anderson was the Charge Nurse assigned to Emily Rice while she was in the Emergency Department.

53. Upon information and belief, Ms. Rice was briefly examined by a resident, Defendant Lisa Cheng, M.D. who indicated on a Trauma Flow Sheet that Ms. Rice was experiencing pain in two trauma sites, her left shoulder and her left abdomen/side.

54. Although Ms. Rice's "pain score" was 7 out of 10 and it was reported that she had already lost consciousness, no diagnostic tests or lab work were ordered to determine the cause of her shoulder or abdominal/side pain.

55. Instead, the only lab work performed on Ms. Rice was a breathalyzer at 7:55 a.m., which indicated a blood alcohol level of .121.

56. The Colorado Department of Public Health and Environment conducted an investigation in which federal deficiencies were cited under the category of "Patient Dumping" for Denver Health medical personnel's failure to conduct an adequate medical screening of Ms. Rice.

57. While Ms. Rice was detained in the Denver Health Emergency Department she cried out and requested help from medical staff for pain in both her left abdomen/side and left shoulder.

58. Ms. Rice reported pain in her “right ribs” to a nurse who heard her cries for help. The nurse then “palpitated the area of the abdomen under the right and left ribs.”

59. The nurse reported the pain to the physician and the primary care nurse, Wendy Jo Anderson, and requested that the physician provide pain medication to Ms. Rice.

60. The nurse later repeated the abdominal exam and the findings remained the same.

61. The physician and the primary care nurse failed to follow-up on Ms. Rice’s report of side and abdominal pain before releasing Ms. Rice into the custody of the Denver Sheriff’s Department for transport to the Denver Jail.

62. The attending physician, Defendant Jason Haukoos, M.D. noted in Ms. Rice’s medical file that, after discussing the case with Dr. Cheng and reviewing the medical charts, it was his assessment that Ms. Rice was merely suffering from a shoulder contusion.

63. A physician noted that a “sober re-evaluation” of Ms. Rice was conducted.

64. The investigation performed by the Colorado Department of Public Health and Environment also cited federal deficiencies under the category of “Patient Dumping” for Denver Health medical personnel’s failure to provide adequate stabilizing treatment to Ms. Rice.

65. According to medical records, Ms. Rice was given ibuprofen for pain at 9:25 a.m., and then released into the custody of the Denver Sheriff’s Department at 10:00 a.m. for detention.

66. Medical personnel at Denver Health did not take Ms. Rice’s vital signs or re-examine and assess her abdomen before releasing her into the custody of the Denver Sheriff’s Department.

67. According to medical records, the “Final ED Assessment,” which was completed by Defendant Lisa Cheng, M.D. and was signed by Defendant Jason Haukoos, M.D., states “shoulder strain, Etoh intoxication.”

68. The written Emergency After Care Instructions indicate that Ms. Rice was to return to the Emergency Department for “new injury, worsening symptoms, other urgent concerns.”

69. As a detainee, Ms. Rice was not free to return to the Emergency Department at will, but rather could do so only with the express permission and assistance of personnel at the Denver Jail.

70. Denver Health released Ms. Rice into the custody of the Denver Sheriff’s Department at 10:00 a.m., despite the fact that she reported that she was in serious pain, and Denver Health had not taken reasonable steps to determine the cause of the pain.

71. The investigation performed by the Colorado Department of Public Health and Environment likewise cited federal deficiencies under the category of “Patient Dumping” for Denver Health’s having inappropriately transferred Ms. Rice into the custody of the Denver Sheriff’s Department.

Denver Jail

72. Ms. Rice arrived at the Denver Jail at approximately 10:50 a.m., where she was questioned and searched by Defendants Deputies, including Lakisha Minter and Julie Kirkbride. Ms. Rice was unable to stand when Deputy Minter attempted to search her.

73. According to deputy statements, Ms. Rice was very cooperative and polite to all of the jail staff with whom she interacted, was not hostile, belligerent or uncooperative in any way, and did not pose any safety risk to jail staff.

74. When an inmate arrives at the Pre-Arrestment Detention Facility from Denver Health Medical Center, the City and County of Denver's policy mandates that the inmate be taken directly to the nurse to be examined prior to any other booking procedures taking place. Although Denver Health had discharged Ms. Rice into the Denver Sheriff's Department's custody with instructions regarding her medical condition, Ms. Rice was not taken to the jail nurse for evaluation during the intake process or for hours thereafter.

75. Defendants did not follow the normal booking procedure. Instead, Defendants placed Ms. Rice in cell 2E-11, an isolation cell, for several hours prior to booking her.

76. According to deputy statements, Defendants placed Ms. Rice in the isolation cell because Ms. Rice was unable to stand up to complete the booking process. Without reviewing any part of the medical file that accompanied Ms. Rice from Denver Health or performing any medical evaluation of Ms. Rice, Defendants made the judgment that Ms. Rice was simply "drunk," and determined that she should be placed in an isolation cell rather than being taken to the nurse for medical evaluation.

77. Pursuant to Denver Jail policy, when an inmate is placed in an isolation cell, deputies are required to 1) create a "notable sheet" explaining the reason the inmate was placed in isolation; 2) make a notation in the Sergeant's office advising why the inmate could not be booked at that time; and 3) check on the inmate every 30 minutes. Defendants failed to take any of these steps, all in violation of jail policy.

78. Medical care at the Denver Jail is provided by nurses and other medical professionals employed by Denver Health, and stationed at the Denver Jail pursuant to a contract between the City and County of Denver and Denver Health.

79. The Denver Health nurses on duty during the period of time that Ms. Rice was detained in the Denver Jail were Defendant Costin, Defendant Bouziane, Defendant Cleary, and Defendant Zimmer.

80. At approximately 3:09 p.m., Ms. Rice, who was walking very unsteadily and holding the wall for assistance, was escorted to have her fingerprints and mug shots taken.

81. Ms. Rice complained to Deputy Jaquez that she was feeling very bad and she was then, finally, taken to speak with a nurse, Defendant Kelly Costin.

82. One of the deputies handed Defendant Nurse Costin an envelope from Denver Health containing Ms. Rice's medical records. Ms. Rice was physically unable to get up on the gurney for an evaluation and told the deputy in Defendant Nurse Costin's presence that she was feeling very bad. Unable to get up on the gurney, Ms. Rice rested her head in her arms on the gurney. All of this occurred in the presence of Defendant Nurse Costin.

83. Nurse Costin did nothing to evaluate Emily's medical condition. Defendant Nurse Costin did not take Ms. Rice's vital signs, blood pressure, pulse or even speak to Ms. Rice. Without asking Emily Rice a single question or doing anything to examine her, Defendant Nurse Costin stated, "She's drunk. Let her go sleep it off."

84. At this point, however, Ms. Rice had been in custody for over seven hours since her blood alcohol had been measured at .121, and thus she could not have been "drunk."

85. The nurses who work at the Pre-Arrestment Detention Facility are supposed to ask each inmate they evaluate a battery of questions prior to making any kind of determination regarding her medical condition. The nurses are required to complete paperwork, including the "infirmiry trip" form, specifying the inmate's responses to the questions, and the nurses are also required to enter this information into the hospital computer that is stationed in the infirmiry.

Defendant Nurse Costin did not follow any of these policies and procedures when he “evaluated” Emily Rice on this occasion.

86. After escorting Ms. Rice out of the infirmary, Deputy Minter then began entering Emily’s information into the computer for booking purposes. However, Ms. Rice had been “pre-booked” and her basic information had been entered into the computer already. This pre-booking procedure is outside of Defendants’ normal procedures.

87. At approximately 3:18 p.m., Deputy Minter attempted to take Ms. Rice’s mug shot, but before she was able to do so, Emily Rice slid down the wall and slumped over onto her side, and her eyes rolled into the back of her head. It was obvious to deputies who observed her that something was seriously wrong.

88. Deputy Jaquez then went back to the nurse’s station and informed Defendant Nurse Costin that the girl that he had just seen, Emily Rice, had just fallen at the booking station and he needed to come evaluate her. Defendant Nurse Costin replied, “Oh drama. I knew that was going to happen.” According to Deputy Jaquez, Defendant Nurse Costin’s demeanor was that of contempt and as if he was being burdened by having to attend to Emily. Deputy Jaquez reported that even before Defendant Costin saw Ms. Rice lying on the floor, he acted as though he already thought she was faking her symptoms. His demeanor was beyond unprofessional.

89. When Defendant Nurse Costin and Deputy Jaquez returned to the booking station where Ms. Rice was still lying on the ground, Defendant Nurse Costin did not touch Ms. Rice except to kick at her foot. In a very annoyed tone of voice, Nurse Costin yelled “Hey! Hey! Get up and go sleep this off.” Defendant Nurse Costin did not take Ms. Rice’s vital signs, blood pressure, pulse or ask her any questions. He then just turned and walked away.

90. Denver Jail staff did not take Ms. Rice back to Denver Health in keeping with the After Care Instructions, but instead pulled her to her feet, and continued the “check-in” process.

91. At some point during the afternoon of February 18, 2006, Deputy Jaquez, who happened to be a family friend of Ms. Rice, allowed Ms. Rice to call her mother, Plaintiff Susan Garber. Ms. Rice told her mother that she could not feel her feet, but that she had been told by a jail nurse that she just needed to “sleep it off.”

92. Ms. Rice’s mother, Susan Garber, tried unsuccessfully to bail Ms. Rice out of jail.

93. Ms. Garber also went to the jail at approximately 6:45 p.m., but was not allowed to see her daughter.

94. During that afternoon or the early evening of February 18th, Deputy Jaquez became increasingly concerned regarding Ms. Rice’s complaints of numbness in her feet, and her own observation that Ms. Rice’s feet were cold and grey.

95. According to at least one witness statement, Ms. Rice was asking to see a nurse when she was escorted to her cell by Deputy Jaquez.

96. Ms. Rice told Deputy Jaquez that she thought her “feet [were] broken.” Emily said, “my feet are really cold. I can’t feel my feet.” Upon inspection, Deputy Jaquez immediately noted that Ms. Rice’s feet were a very strange color and her skin was very pale.

97. Recognizing immediately that Emily was suffering from serious medical issues, Deputy Jaquez alerted a second jail nurse, Defendant Mary Cleary, that Ms. Rice was having medical problems, and that her feet were cold and grey. Defendant Cleary was aware that Ms. Rice had earlier fallen down during booking, as Cleary was in the nurses’ station when Deputy Jaquez spoke with Defendant Nurse Costin and asked him to come and tend to Ms. Rice.

98. Despite the fact that Ms. Rice had been released from Denver Health with a record that she had been in an automobile accident and instructions to return to the hospital if she had any “worsening symptoms” or “other urgent concerns”, Defendant Cleary refused to perform any medical evaluation or provide any medical care to Ms. Rice.

99. In response to Deputy Jaquez’s requests for help, Defendant Nurse Cleary responded by saying, “Oh hon, that’s not nothing. She’s drunk. She needs to hydrate and she needs to sleep it off. You can’t hurry it, only time will help. There is nothing we can do.” Nurse Cleary did not physically examine Ms. Rice or do anything further to assess Ms. Rice’s medical condition. Without ever even looking at Emily, Nurse Cleary simply repeated, “Just tell her to sleep it off and hydrate.”

100. Unfortunately for Ms. Rice, the one and only member of the jail staff who apparently cared one whit about her serious medical condition, Jessica Jaquez, went off duty in the early evening of February 28, 2006.

101. Throughout the course of the evening and through the night, Ms. Rice called out repeatedly for help.

102. Despite her cries for help, no nurse came to Ms. Rice’s cell from the time that she was placed in it, after booking, and before dinner that night.

103. Others confined in nearby cells recognized Ms. Rice’s obvious serious medical need and likewise pleaded with guards to render medical assistance to Ms. Rice. Deputies and nurses continued to state that Ms. Rice was just drunk.

104. At least one point during the night, Ms. Rice’s cries for help became so urgent that others in nearby cells began screaming and banging on the glass in order to get the attention of guards and to convince them to provide medical care to Ms. Rice.

105. Over and over, Ms. Rice alerted various guards regarding her serious medical condition, but her pleas for help were repeatedly ignored.

106. At approximately 10:30 p.m. one guard came around and told Ms. Rice that the nurse's rounds were around 11:00 and that they would come see her at that time.

107. The guards kept yelling at the inmates to be quiet and eventually closed the door so that they would not be disturbed by the inmates' cries for help for Emily Rice.

108. Ms. Rice told guards that she was unable to get up, that she was experiencing numbness in her legs and/or feet, and that she was very cold.

109. During one interaction with a guard, Ms. Rice's blanket fell off of her and to the floor, but Ms. Rice was too weak to cover herself back up.

110. Upon information and belief, some time before midnight on February 18th, at least one guard alerted jail nurse Defendant Maria Bouziane that Ms. Rice was experiencing these symptoms and needed medical help.

111. Defendant Zimmer was working the same shift as Defendant Nurse Bouziane. These were the only two medical personnel on staff during this shift. Neither took any action to address Ms. Rice's obvious, serious medical needs.

112. Defendant Zimmer was on duty at the Denver Jail from 6:00 p.m. on February 18, 2006 through 6:00 a.m. on February 19, 2006. This time frame includes the last twelve hours of Ms. Rice's life.

113. Defendant Zimmer and Defendant Bouziane knew that Ms. Rice was brought to the Denver Jail from Denver Health with after care instructions that stated she was to be returned to Denver Health for "new injury, worsening symptoms, other urgent concerns."

114. Defendant Zimmer learned that there was an inmate who was in need of medical attention and who had been in a car accident earlier that day. Nurse Zimmer refused to provide any treatment for Ms. Rice.

115. Defendant Nurse Bouziane stated that she was aware Ms. Rice had been released to the jail from Denver Health after being involved in a car accident, and that Nurse Zimmer would get to Ms. Rice later when she did nursing rounds.

116. Defendant Bouziane was the Charge Nurse and conducted the regularly scheduled “welfare check” that night.

117. When rounds were conducted, Ms. Rice told the nurse that she could not feel her legs and that she could not stand up. The nurse responded, “Get up and stop acting like that!” The nurse did not provide medical care to Ms. Rice. The nurse did not even examine Ms. Rice. The nurse just stated, “There’s nothing we can do. You need to sleep it off.”

118. Upon information and belief, Defendants Zimmer and Bouziane were able to hear the yelling and screaming of the detainees throughout the night from the nurse’s station where they worked and other locations.

119. Defendants Bouziane and Zimmer heard numerous detainees screaming and banging on the walls of their cells, calling for assistance for Ms. Rice. Both Defendants Bouziane and Zimmer ignored the pleas and cries of Ms. Rice and other detainees.

120. Throughout the rest of the night, Defendant Bouziane and Defendant Zimmer were informed by guards that Ms. Rice needed medical assistance, but refused to provide her with any care.

121. Defendants Zimmer and Bouziane both knew of, and were deliberately indifferent to, Ms. Rice’s obvious serious medical needs.

122. In failing to assess Ms. Rice's medical needs and/or allow a medical evaluation by a physician or other medical professional, Defendant Bouziane and Defendant Zimmer refused to perform their gate-keeping role and violated Ms. Rice's constitutional rights.

123. Defendant Bouziane's and Zimmer's deliberate indifference to Emily Rice's serious medical needs was, wholly or in part, the proximate cause of Emily Rice's death.

124. Even after Defendant Nurse Bouziane refused to provide medical care to Ms. Rice, none of the Defendant guards who had alerted Bouziane to her serious medical need took any further action to assist Ms. Rice or to secure medical care for her.

125. Later that night, Ms. Rice started screaming and crying. She was screaming, "I can't feel my legs!" and "I need help!" and "I'm really sick!" She was moaning and crying and screaming for help and she was "begging for her life" and was making so much noise that none of the other inmates could sleep, and all of the other inmates were very concerned. Some of the inmates tried to talk to Ms. Rice in an attempt to keep her calmed down because she was becoming hysterical.

126. Later in the night or very early morning, after approximately 20-30 minutes of several detainees screaming and banging on the glass, a male Sergeant, Anthony Sullivan, came in and asked Ms. Rice what she wanted.

127. Ms. Rice told Sergeant Sullivan that she could no longer feel her legs, and that she was very cold, and that she needed more blankets.

128. In deliberate indifference to Ms. Rice's obvious serious medical need, Defendant Sullivan did not provide her with any medical help. Instead, he told Ms. Rice that she was not allowed to have another blanket and left. He did not alert medical staff to Ms. Rice's obvious serious medical need.

129. Throughout the rest of the night and early morning, Ms. Rice and other detainees continued to beg for guards or other jail staff to help Ms. Rice, to no avail.

130. During the early morning of February 19, 2006, guards entered the cell area to let the detainees out for breakfast.

131. Ms. Rice did not leave her cell, and no guard provided any assistance to her.

132. Ms. Rice complained to another female guard that she was unable to feel her feet. The guard did nothing to address this serious medical condition, nor did she do anything to alert the jail nurse.

133. The guards steadfastly refused to provide any medical care to Ms. Rice or to provide her access to medical treatment, despite the repeated and vocal urgings of Ms. Rice and other detainees, who could hear and observe that Ms. Rice was seriously injured.

134. Instead, guards, nurses, and other public employees in the jail not only denied Ms. Rice access to medical treatment, but consciously disregarded her obvious serious medical need.

135. At approximately 5:15 on the morning of February 19, 2006, another young female detainee (referred to herein as "NC") was escorted by a guard to the cell occupied by Ms. Rice.

136. NC observed that Ms. Rice was moaning in pain.

137. When NC asked Ms. Rice if she was okay, Ms. Rice informed her that she could not move her legs. Ms. Rice also told NC that she could not sit up.

138. NC asked Ms. Rice if she should call for help, but Ms. Rice, who had been crying in vain for help throughout the night, told NC that calling for help was useless, as she and others had already told the guards and nurses, but nobody would listen.

139. Shortly thereafter, a guard asked NC if she would like to make a telephone call.

140. NC responded that she would, and also told the guard that she needed to help Ms. Rice because there was something wrong and she could not move.

141. The guard opened the cell door to allow NC to exit and use the phone, and then directed Ms. Rice to get up and asked her what was wrong with her. The guards and a nurse then went back to Emily's cell and the nurse yelled at Emily to "Get up! You're just playing with us – get up and walk!"

142. While NC was at the telephone, she heard the guard call for a nurse and then walk down the hall into an office.

143. A nurse appeared carrying an oxygen tank and a backpack, and went into Ms. Rice's cell along with a number of guards.

144. According to medical records, Ms. Rice was unresponsive and showed no vital signs by the time that emergency medical personnel finally arrived. Ms. Rice was transported by ambulance to Denver Health, whether she was pronounced dead.

145. According to the "Final ED Assessment" of Dr. Cheng and the "Assessment" of attending physician Dr. Pons, Ms. Rice died at 6:52 a.m. of cardiac arrest. Dr. Cheng's Assessment also noted a "suspected spleen injury" related to Ms. Rice's car accident.

146. According to autopsy reports, Ms. Rice died of injuries resulting from blunt force trauma to the abdomen, with an 18 cm gaping deep laceration in the liver and a laceration in the spleen.

147. The autopsy also revealed considerable internal bleeding and three fractured ribs.

148. Ms. Rice died of avoidable internal bleeding, alone in her cell, after many hours of excruciating pain.

149. Following Ms. Rice's death, the Office of the Independent Monitor attempted to conduct an investigation into the in-custody death of Ms. Rice.

150. This investigation was thwarted by Defendant Denver Health's and the medical Defendants' absolute refusal to cooperate.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (§ 1983 – Failure to Provide Medical Care and Treatment) (Against All Defendants)

151. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

152. At all times relevant to the allegations in this Amended Complaint, Defendants acted or failed to act under color of state law.

153. Defendants are persons under Title 42 U.S.C. § 1983.

154. At all times relevant to the allegations in this Amended Complaint, Defendants were acting pursuant to municipal custom, policy, or practice in their actions pertaining to Emily Rice.

155. Defendants knew or should have known of Ms. Rice's potentially life-threatening medical condition.

156. Nevertheless, with deliberate indifference to Ms. Rice's constitutional right not to be denied necessary medical care, protected by the Due Process Clause of the Fourteenth Amendment, Defendants failed to examine, treat and care for Ms. Rice's worsening condition and failed to send Ms. Rice for treatment. They did so despite their knowledge of her obvious serious medical needs, placing her at risk of substantial physical harm.

157. When Ms. Rice, and others on her behalf, called for medical assistance, Defendants acted with deliberate indifference to Ms. Rice's obviously serious medical need and constitutional rights in failing to obtain and provide medical treatment for her in a timely and appropriate fashion.

158. The Colorado Department of Public Health and Environment conducted an investigation in which federal deficiencies were cited under the category of "Patient Dumping" for Denver Health medical personnel's failure to provide adequate medical treatment to Ms. Rice, failure to conduct an adequate medical screening of Ms. Rice, and inappropriately transferring Ms. Rice into custody of the Denver Sheriff's Department.

159. The acts or omissions of all Defendants were conducted within the scope of their official duties and employment.

160. The acts or omissions of all Defendants were the legal and proximate cause of Ms. Rice's injuries and death.

161. Defendant City and County of Denver's unconstitutional policies, customs or practices, as described herein, were the legal and proximate cause of Ms. Rice's injuries and death.

162. The acts or omissions of each Defendant caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death, and ultimately caused Ms. Rice's death.

163. The actions and inactions of Defendants as described herein intentionally deprived Ms. Rice of due process and of rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

SECOND CLAIM FOR RELIEF
(§ 1983 – Municipal Liability for Failure to Train and Supervise)
(Against Defendants City and County of Denver and Denver Health)

164. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

165. Defendants City and County of Denver and Denver Health failed to properly train and supervise their employees to recognize and appropriately respond to medical emergencies.

166. Defendants City and County of Denver and Denver Health knew, or should have known, that its employees would fail to adequately identify and respond appropriately to medical emergencies, violating detainees' constitutional rights.

167. Defendants City and County of Denver and Denver Health were deliberately indifferent to the obvious serious medical needs of patients and jail detainees, knowing that potentially fatal consequences could be suffered by such individuals (including Ms. Rice) by failing to properly train and supervise their employees. Defendants City and County of Denver and Denver Health could have and should have pursued reasonable methods for the training and supervising of such employees, but failed to do so.

168. Defendants City and County of Denver's and Denver Health's policies, customs, or practices in failing to properly train and supervise their employees were the moving forces and proximate cause of the violation of Ms. Rice's constitutional rights.

169. The acts or omissions of Defendants City and County of Denver and Denver Health caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death and ultimately caused her death.

170. The actions and inactions of Defendants City and County of Denver and Denver Health as described herein deprived Ms. Rice of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

THIRD CLAIM FOR RELIEF

(§ 1983 – Supervisory Liability for Failure to Train and Supervise)

(Against Defendants Captain Jacob Kopylov, Captain John Riordon, Sergeant Loren Collier, Sergeant Hans Rastede, Sergeant Richard Roberson, Sergeant Karolina Sich, Sergeant Anthony Sullivan (referred to collectively herein as “Supervisory Jail Defendants”))

171. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

172. The Supervisory Jail Defendants each have duties to train and supervise deputy sheriffs, nurses and other jail personnel in order to ensure the safety and well-being of detainees in the jail facility.

173. Each of the Supervisory Jail Defendants failed to discharge these duties.

174. The Supervisory Jail Defendants acted intentionally in failing to adequately train and supervise deputy sheriffs, nurses and other jail personnel.

175. The Supervisory Jail Defendants’ failure to properly train and supervise their subordinate employees was the moving force and proximate cause of the violation of Ms. Rice’s constitutional rights.

176. The acts or omissions of the Supervisory Jail Defendants caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death and ultimately caused her death.

177. The actions and inactions of the Supervisory Jail Defendants as described herein deprived Ms. Rice of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

FOURTH CLAIM FOR RELIEF

**(§ 1983 – First and Fourteenth Amendments – Deprivation of Familial Association)
(On Behalf of Plaintiffs Susan Garber and Roy Rice, Against All Defendants)**

178. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

179. Plaintiffs Susan Garber and Roy Rice had a clearly established right to not be deprived of their liberty interest in their intimate familial association with their daughter, Emily Rice, at the time of the events described herein. The constitutional right to family integrity or association protects family relationships.

180. Plaintiffs' liberty interest and right of familial association outweighed any state interest in depriving them of such right of intimate association under the facts and circumstances of this case.

181. Defendants' conduct as described herein, in preventing Plaintiff Susan Garber from seeing Emily Rice at the jail and in intentionally engaging in the conduct that led to the death of Emily Rice, deprived Plaintiffs Susan Garber and Roy Rice of their liberty interest in their intimate association with Emily Rice, their daughter, as protected under the First and Fourteenth Amendments to the United States Constitution.

182. Defendants' conduct was engaged in maliciously or in reckless disregard of Plaintiffs' federally protected rights to intimate familial association.

183. Defendants' conduct proximately caused significant injuries, damages and losses to Plaintiffs Susan Garber and Roy Rice.

184. Defendants' conduct as described throughout this Amended Complaint deprived all Plaintiffs of their clearly established constitutional rights of which reasonable persons in Defendants' position knew or should have known.

FIFTH CLAIM FOR RELIEF

(State Law Claim for Negligent Training and Supervision)

(Against Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants)

185. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

186. Defendants City and County of Denver, Denver Health, and Supervisory Jail Defendants each had a duty to exercise reasonable care in the training and supervision of their employees in a manner that provided the detainees under their care with reasonable medical care and treatment.

187. Defendants' conduct as described herein breached their duty to exercise reasonable care in the training and supervision of their subordinate employees.

188. Defendants City and County of Denver, Denver Health, and Supervisory Jail Employees, because they knew or should have known of the lack of supervision, experience and training among their employees, also had reason to know that their employees were likely to harm Denver Jail detainees in need of medical care, including Ms. Rice.

189. In failing to exercise reasonable care in the training and supervision of their employees relative to their providing reasonable medical care and treatment, Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants were negligent.

190. The negligence of Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants proximately caused Ms. Rice significant physical and mental pain and suffering and other damages in the final approximately twenty-four hours of her life.

191. Defendants' conduct has proximately caused Susan Garber and Roy Rice significant pain, suffering, grief, loss of comfort and society, and other damages arising from the suffering and ultimate death of their daughter, Ms. Rice.

SIXTH CLAIM FOR RELIEF

(State Law Claim for Outrageous Conduct)

(Against Jail Defendants, Denver Health and Denver Health Nurses at the Jail)

192. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

193. Defendants' conduct as described herein, including their failure to provide reasonable medical care and treatment to Ms. Rice, constituted omissions or acts of extreme and outrageous conduct.

194. Defendants engaged in such outrageous conduct recklessly or with the intent of causing the Decedent, Ms. Rice, and Ms. Rice's parents, Plaintiffs Susan Garber and Roy Rice, severe emotional distress.

195. Defendants City and County of Denver and Denver Health are legally responsible to claimants for any harm caused by employees acting on their behalf.

196. Defendants' outrageous conduct caused Plaintiffs to suffer severe emotional distress.

SEVENTH CLAIM FOR RELIEF

(State Law Claim for Wrongful Death under C.R.S. § 13-21-202)

(Against Jail Defendants, Denver Health and Denver Health Nurses at the Jail)

197. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

198. The Jail Defendants, at all times relevant hereto, were employees of Defendants City and County of Denver. The nurses at the Denver Jail, at all times relevant hereto, were employees of Denver Health.

199. Defendant City and County of Denver and Denver Health are legally responsible to claimants for any harm caused by employees acting on their behalf.

200. Plaintiffs, as the parents of Ms. Rice, suffered and continue to suffer economic and non-economic damages due to Defendants' conduct toward their daughter, including but not limited to economic damages for funeral expenses and financial losses due to the financial benefits they would have reasonably expected to receive from their daughter had she lived, and non-economic damages for grief, loss of their daughter's companionship, impairment in the quality of their lives, inconvenience, pain and suffering, and extreme emotional stress.

201. Defendants' conduct was attended by circumstances of malice, or willful and wanton conduct, which Defendants must have realized was dangerous, and that was done heedlessly and recklessly, without regard to the consequences to Ms. Rice and her parents.

202. Defendants consciously disregarded a substantial and unjustifiable risk that they knew or should have known would cause the death of another.

203. Defendants' conduct constituted a felonious killing under C.R.S. §§ 13-21-203 and 15-11-803, such that there shall be no statutory limitation on damages available herein to Plaintiffs.

EIGHTH CLAIM FOR RELIEF
(Medical Negligence/ Negligent Medical Care and Treatment)
(Against all Denver Health Defendants)

204. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

205. At all times relevant to this action, Emily Rice was under the care and treatment of the Denver Health Defendants.

206. Defendants Cheng and Haukoos had a physician-patient relationship with Emily Rice at all times pertinent to this Amended Complaint.

207. Defendants Anderson, Costin, Bouziane, Cleary and Zimmer had a nurse-patient relationship with Emily Rice at all times pertinent to this Complaint.

208. During the course of this medical treatment, Denver Health Defendants were negligent in their care and treatment of Emily Rice.

209. Defendants had a duty to provide reasonable medical care and treatment to detainees at Denver Jail, including Ms. Rice.

210. Defendants breached their duty of care and were negligent when they failed to provide Ms. Rice with reasonably obtainable and necessary emergency medical treatment.

211. With respect to their care and treatment of Emily Rice, Denver Health Defendants owed Emily Rice a duty to exercise that degree of care, skill, caution, diligence and foresight exercised by and expected of physicians and nurses in similar situations. The Denver Health Defendants deviated from that standard of care and were negligent in failing to properly diagnose and treat Emily Rice.

212. The Denver Health Defendants were negligent in failing to properly diagnose and treat Emily Rice during the course of her detention at Denver Health and Denver Jail.

213. This is confirmed by the Colorado Department of Public Health and Environment investigation in which federal deficiencies were cited under the category of "Patient Dumping" for Denver Health medical personnel's failure to provide adequate medical treatment to Ms. Rice, failure to conduct an adequate medical screening of Ms. Rice, and inappropriate transfer of Ms. Rice into the custody of the Denver Sheriff's Department..

214. As a direct and proximate result of the conduct of the Denver Health Defendants, Emily Rice suffered significant physical and mental pain and suffering and other damages in the final approximately twenty-four hours of her life, and ultimately her death.

215. Plaintiffs Susan Garber and Roy Rice, as the parents of Ms. Rice, suffered and continue to suffer economic and non-economic damages due to Defendants' negligent conduct toward their daughter, including but not limited to economic damages for funeral expenses and financial losses due to the financial benefits they would have reasonably expected to receive from their daughter had she lived, and non-economic damages for grief, loss of their daughter's companionship, impairment in the quality of their lives, inconvenience, pain and suffering, and extreme emotional stress.

NINTH CLAIM FOR RELIEF
(Survival Action)
(Against All Defendants)

216. Plaintiffs hereby incorporate all other paragraphs of this Amended Complaint as if fully set forth herein.

217. Plaintiffs Susan Garber and Roy Rice are the heirs and personal representatives of the Estate of Emily Rice.

218. As a result of the deliberate indifference, reckless indifference and/or negligence of Defendants as more fully described above, the Estate of Emily Rice has suffered injuries and damages, including, but not limited to, hospital and medical expenses and funeral expenses, emotional distress and pain and suffering, and loss of enjoyment of life.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law, including but not limited to the following:

- (a) Appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims allowed by law;

- (d) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (f) Attorneys fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the highest lawful rate;
- (h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 25th day of March 2008.

KILLMER, LANE & NEWMAN, LLP

s/ Mari Newman

Darold W. Killmer
Mari Newman
Sara J. Rich
Althea S. Licht
1543 Champa St., Ste. 400
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(303) 571-1000

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2008, I electronically filed the foregoing **AMENDED COMPLAINT AND JURY DEMAND (CORRECTED)** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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ATTORNEYS FOR DEFENDANTS

I further certify that in accordance with D.C.COLO.LCivR 6.1(D) I have mailed or served the document or paper to the following non-CM/ECF participants in the manner indicated by the non-participant's name:

Susan Garber (via electronic mail); Roy Rice (via U.S. Mail)

PLAINTIFFS

s/ Sara J. Rich