

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

DIANE M. SCHNEE,	:	Civil Action No. 14-
As Administrator of the Estate of	:	Jury Trial Demanded
STEPHEN W. SCHNEE,	:	
and on behalf of decedent’s survivors,	:	
Plaintiff	:	
	:	
v.	:	
BERKS COUNTY,	:	
JOHN DOE(S),	:	
Individually as agents and employees of	:	
Berks County Prison,	:	
PRIME CARE MEDICAL, INC.,	:	
JOHN BAKEROFSKIE and	:	
RICHARD ROE(S),	:	
Individually as agents and employees of	:	
Prime Care, Inc.,	:	
Defendants	:	

**COMPLAINT
Introduction**

1. This is a civil rights wrongful death/survival action arising from the defendants’ failure to provide for the serious medical and mental health needs of Stephen Schnee, an inmate at Berks County Prison. Defendants knew that Mr. Schnee was actively suicidal, yet failed to: a) provide appropriate and ongoing medical and mental health care and attention; and b) undertake generally accepted measures to prevent suicidal or self-destructive behavior. As a result of the defendants’ deliberate indifference, Stephen Schnee committed suicide.

Jurisdiction

2. This action is brought pursuant to 42 U.S.C. §1983, the Fourteenth Amendment to the United States Constitution, the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§1231 et seq. and 12181 et seq., and the Rehabilitation Act (“RA”), 29 U.S.C. §794 et seq. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the supplemental jurisdiction of this court pursuant to 28 U.S.C. §1367 to hear and decide claims arising under state law.

Parties

3. Decedent, Stephen W. Schnee, resided at 1243 County Welfare Road, Leesport, Pennsylvania. The decedent's date of birth was June 26, 1960, and he died on September 13, 2013, at the age of fifty-three. Decedent was married to Diane M. Schnee and he had no children.

4. Plaintiff, Diane M. Schnee, is the Administrator of the Estate of Stephen W. Schnee.

5. On September 24, 2013, the Register of Wills for Berks County granted the plaintiff Letters of Administration at 0613-1304, naming her Administrator of the Estate of Stephen W. Schnee, Deceased.

6. Defendant Berks County is a political subdivision in the Commonwealth of Pennsylvania which manages and oversees Berks County Prison and Prime Care Medical, Inc.

7. Defendant Prime Care Medical, Inc. ("Prime Care") is a corporation which regularly conducts business in Pennsylvania, and which has a principal place of business in Harrisburg, Pennsylvania. Defendant Prime Care is the holder of a contract with defendant Berks County to provide all medical, mental health and social services to inmates in the Berks County Prison.

8. At all times relevant to this Complaint, defendant John Bakerofskie was employed by defendant Prime Care working as a Licensed Professional Counselor in Berks County Prison. He is being sued in his individual capacity.

9. At all times relevant to this Complaint, defendants John Doe(s) were employed by defendant Berks County working in Berks County Prison.

10. At all times relevant to this Complaint, defendants Richard Roe(s) were employed by defendant Prime Care working in Berks County Prison.

11. The full names and/or capacities of defendants John Doe(s) and Richard Roe(s) are currently unknown to the plaintiff. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities once the parties are identified in the course of discovery.

12. At all times relevant to the Complaint the individual defendants John Bakerofskie, John Doe(s) and Richard Roe(s) were acting as agents, servants, and/or employees of defendant Berks

County and/or defendant Prime Care, were acting within the scope and course of their employment, and under the direct control and supervision of defendant Berks County and/or defendant Prime Care.

13. At all times relevant to this Complaint, all defendants acted in concert and conspiracy and under color of state law, and their actions and inactions violated the constitutional and statutory rights of Stephen Schnee and the plaintiff.

Factual Allegations

14. Plaintiff incorporates by reference paragraphs 1-13 of the instant Complaint.

15. Decedent Stephen Schnee suffered for many years with alcohol abuse and depression. Mr. Schnee's mental health condition was serious but treatable. With appropriate medication and treatment, Mr. Schnee was capable of enjoying life's activities, maintaining gainful employment, and establishing healthy relationships with his family and friends.

16. In August, 2013, Mr. Schnee suffered a mental health crisis. He exhibited the readily apparent signs of his mental illness and attempted to commit suicide. At this time, Mr. Schnee was a disabled individual in need of medical and/or psychiatric care. Concerned for the safety of Mr. Schnee and herself, the plaintiff contacted the police who arrested Mr. Schnee on charges that he had violated a Court Order.

17. On August 28, 2013, Mr. Schnee was brought before a District Justice in Berks County who set bail pending a hearing on the charges. The District Justice was aware that Mr. Schnee had, two days earlier, attempted to commit suicide, and officials at Berks County Prison were advised to take appropriate precautionary measures.

18. On or about August 28, 2013, Mr. Schnee, who was unable to post bail, was transported to Berks County Prison. Defendants John Bakerofskie, John Doe(s) and Richard Roe(s) ("the individual defendants"), knew or should have known that Mr. Schnee suffered from a serious mental illness, had attempted to commit suicide days earlier, was suicidal and/or at serious risk for committing suicide at the time of his admission to the prison, and was in need of immediate medical

attention and careful monitoring of any self-destructive behavior.

19. All defendants were deliberately indifferent to Mr. Schnee's immediate and serious medical and mental health needs, including the risk of suicide.

20. All defendants failed to properly assess and classify Mr. Schnee's serious medical and psychiatric needs.

21. All defendants failed to properly and adequately monitor and care for Mr. Schnee.

22. All defendants failed to provide Mr. Schnee competent medical care and treatment, and failed to have Mr. Schnee placed on appropriate suicide watch protocol for a sufficient period of time.

23. All defendants were deliberately indifferent to Mr. Schnee's serious medical needs and risk of suicide, and failed to provide him appropriate treatment and medication throughout his incarceration.

24. All defendants failed to provide safe and adequate housing for Mr. Schnee, including placing him on suicide watch, in monitored safe room and/or safety cell.

25. On and before September 13, 2013, Mr. Schnee was housed in a prison cell without suicide precautions and appropriate monitoring.

26. On September 13, 2013, as a result of all defendants' deliberate indifference to Mr. Schnee's serious but treatable medical and mental health conditions and the defendants' other wrongful conduct, Stephen Schnee committed suicide.

27. At the time of his death, Mr. Schnee was not on suicide watch, no appropriate suicide precaution measures were in place, and he was not housed in a safety cell.

28. All defendants' wrongful conduct, including but not limited to the failure to provide Mr. Schnee necessary medical and psychiatric care, failure to provide competent medical and psychiatric care and treatment, failure to maintain Mr. Schnee on suicide watch and appropriate suicide precautions, failure to house him in a safety cell, and other actions and conduct under these

circumstances was contrary to generally accepted reasonable penal and medical procedures and standards, failed to comply with the appropriate standard of care, and caused the wrongful death of Stephen Schnee.

29. In light of their knowledge of Mr. Schnee's condition and the need for immediate medical and mental health intervention and treatment, and in accordance with generally accepted standards of medical care, all defendants should have taken steps to ensure that Mr. Schnee receive the necessary care and attention, including the appropriate treatment and medication.

30. At all times relevant to this Complaint, defendants Berks County and Prime Care, with deliberate indifference, failed to develop and implement policies, practices, and procedures to ensure that Mr. Schnee would receive proper medical care and attention for his serious risk of suicide or other self-destructive behavior.

31. At all times relevant to this Complaint, defendants Berks County and Prime Care, with deliberate indifference, failed to develop and implement policies, practices, and procedures to ensure that Mr. Schnee would be properly monitored and supervised and that security procedures were in place that would have safeguarded Mr. Schnee from harm, including suicidal actions.

32. The harms suffered by Mr. Schnee and the plaintiff are the direct and proximate result of the policy, practice, and custom of defendants Berks County and Prime Care, of refusing or delaying inmates' necessary medical treatment, particularly in connection with specialized medical care, or otherwise interfering with or improperly interrupting such treatment, and failing to properly monitor and supervise inmates who are suicidal.

33. Defendants Berks County and Prime Care failed to take steps to ensure that information regarding inmates such as Mr. Schnee – including but not limited to the inmates' reports of serious mental illness, suicide attempt, examinations and tests, and the diagnoses of disorders – were

promptly communicated to the inmates' other medical providers and others working in Berks County Prison and Prime Care so that medical and other appropriate services were coordinated in such a way as to have avoided the harms sustained by Mr. Schnee.

34. At all material times, the acts and omissions of all defendants were intentional, wanton, willful, conscience-shocking, reckless, malicious, deliberately indifferent, malicious, grossly negligent, negligent and/or objectively unreasonable, and both compensatory and punitive damages are appropriate.

35. All defendants' wrongful conduct was done at least in part because of Mr. Schnee's disability and/or psychiatric condition.

36. As a direct and proximate result of all defendants' acts or omissions as set forth above, Stephen Schnee experienced severe conscious pain and suffering, the loss of the enjoyment of life, and death, all to his great detriment and loss.

37. As a direct and proximate cause of all defendants' acts or omissions, the decedent suffered loss of income and deprivation of other liberty interests to his great financial detriment and loss.

38. Decedent is survived by his spouse, Diane Schnee, whom he helped to support by providing or contributing to her food, clothing, shelter, medical care, education, entertainment, recreation and/or gifts.

39. As a direct and proximate cause of all defendants' acts or omissions, Diane Schnee suffered, continues to suffer, and/or will suffer in the future mental anguish, humiliation, embarrassment, anxiety, fear and loss of familial companionship of her spouse.

40. Decedent, Stephen Schnee, did not bring an action against the defendants for damages for the injuries causing his death during his lifetime.

41. Plaintiff brings this action as Administrator of the Estate of Stephen W. Schnee, and on behalf of herself and all others entitled to recover under law, and under the Pennsylvania Wrongful Death Act.

42. Diane Schnee, by reason of the Stephen Schnee's injury and death, has suffered pecuniary loss, to her great detriment, and have or will incur expenses for:

- a. The costs of the decedent's medical, surgical, hospital and nursing bills;
- b. The costs of the decedent's funeral expenses; and
- c. The costs of administering the decedent's estate.

43. As a result of the death of Stephen Schnee, his spouse, Diane Schnee, has been deprived of the care, comfort, aid, society, affection, support, companionship, services, maintenance, and assistance of decedent for the remainder of her life, all to her great detriment and loss.

44. By reason of the death of the decedent, Stephen Schnee, his spouse has suffered pecuniary loss, to her great detriment, including contributions for:

- a. Food;
- b. Clothing;
- c. Shelter;
- d. Medical care;
- e. Education;
- f. Entertainment;
- g. Recreation; and
- h. Gifts.

45. Plaintiff also sues as Administrator of the Estate on behalf of the Estate of Stephen W. Schnee, under and by virtue of the provisions of 42. U.S.C. §§1983 and 1988, the Pennsylvania

Survival Statute, and claims damages suffered by the Estate by reason of the death of the decedent, as well as pain, suffering, and pecuniary loss the decedent underwent prior to his death.

46. Under 42 U.S.C. §1983 and 42 Pa.C.S. § 8302, all the claims Stephen Schnee would have been able to bring, had he survived his injuries, survive for the plaintiff to prosecute on behalf of decedent's Estate.

47. As a direct and proximate cause of all defendants' actions and inactions, the decedent, prior to his death, was rendered sick and disordered and was made to undergo great physical pain and mental anguish which resulted in his death, as well as loss of earning power and earning potential, loss of his investments, default on his financial obligations, total deprivation of the normal activities, pursuits and pleasures of life, and loss of life.

COUNT 1
Plaintiff v. Individual Defendants
Federal Constitutional Claims

48. Plaintiff incorporates by reference paragraphs 1-47 of the instant Complaint.

49. Defendants John Bakerofskie, John Doe(s) and Richard Roe(s) were deliberately indifferent to Mr. Schnee's serious medical and mental health needs and thereby violated Mr. Schnee's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution and/or Mr. Schnee's right to due process of law under the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983.

50. As a direct result of the actions and inactions of these defendants, Mr. Schnee and the plaintiff suffered substantial harms as more fully set forth above.

COUNT 2
Plaintiff v. Defendants Berks County and Prime Care
Federal Constitutional Claims

51. Plaintiff incorporates by reference paragraphs 1-50 of the instant Complaint.

52. As a direct and proximate result of the conduct of defendants Berks County and Prime Care, committed under color of state law, and the deliberate indifference of defendants Berks County and Prime Care to Mr. Schnee's serious medical and mental health needs, Mr. Schnee was denied the right to be free from cruel and unusual punishment under the Eighth Amendment and/or to due process of law under the Fourteenth Amendment to the United States Constitution. As a result, Mr. Schnee and the plaintiff suffered harm in violation of the Eighth and Fourteenth Amendments, and 42 U.S.C. §1983.

53. The violations of Mr. Schnee's constitutional rights, the damages, and the conduct of the individual defendants were directly and proximately caused by the deliberate indifference of defendants Berks County and Prime Care to the need for training, supervision, investigation, monitoring, or discipline with respect to the provision of medical and mental health care to inmates.

54. The violations of Mr. Schnee's constitutional rights, the damages, and the conduct of the individual defendants were directly and proximately caused by the encouragement, tolerance, ratification, and/or deliberate indifference of defendants Berks County and Prime Care to policies, practices, and/or customs of refusing, delaying, failing to coordinate, or otherwise interfering with inmates' necessary medical and mental health treatment.

55. The violations of Mr. Schnee's constitutional rights, the damages, and the conduct of the individual defendants were directly and proximately caused by the failure of defendants Berks County and Prime Care, with deliberate indifference, to develop and implement policies, practices, and procedures to ensure that inmates receive proper follow-up medical and mental health care and

attention.

56. Defendant Berks County and Prime Care have encouraged, tolerated, ratified and have been deliberately indifferent to the following patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

a. The failure to use appropriate and generally accepted procedures in handling emotionally disturbed and/or mentally ill persons;

b. The denial of inmates at Berks County Prison access to appropriate, competent and necessary care for serious medical and psychiatric needs;

c. The failure to properly classify, house and/or monitor inmates suffering from mental health disabilities, including placement on suicide watch with proper suicide precautions for appropriate periods of time;

d. Inadequately trained and/or inadequately supervised staff to make decisions to place jail inmates on, and remove inmates from, suicide watch and suicide precautions;

e. The failure to institute proper procedures to coordinate inmate assessment, placement, suicide watch decisions, suicide precautions and care with medical and mental health services, jail physicians, jail psychiatrists and jail corrections staff;

f. The failure to provide medical and psychiatric care for inmates with serious medical and mental health needs;

g. The failure to use appropriate and generally accepted jail procedures for handling and housing suicidal, mentally ill and/or emotionally disturbed persons, including but not limited to proper security and regular cell checks;

h. The failure to institute, require and enforce proper and adequate training, supervision, policies and procedures concerning handling mentally ill and/or emotionally disturbed inmates at

Berks County Prison; and

i. The failure to properly investigate and/or evaluate complaints or incidents related to the customs, policies, practices and procedures described above in subparagraphs (a) through (h).

57. The aforementioned customs, policies, practices and procedures; the failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate, investigate and discipline; and the unconstitutional orders, approvals, ratification and toleration of wrongful conduct of defendants Berks County and Prime Care were a proximate cause of the deprivations of Stephen Schnee's clearly established and well-settled constitutional rights in violation of 42 U.S.C. §1983.

58. As a result of the unconstitutional actions, omissions, customs, policies, practices and procedures of defendants Berks County and Prime Care, Stephen Schnee lost his life.

COUNT 3
VIOLATION OF ADA (TITLE II) AND REHABILITATION ACT
PLAINTIFF AGAINST DEFENDANTS BERKS COUNTY AND PRIME CARE

59. Plaintiff incorporates by reference paragraphs 1-58 of the instant Complaint.

60. Decedent Stephen Schnee was a "qualified individual" with a mental illness, disability and medical impairments that limited and/or substantially limited his ability to care for himself and control his mental, medical or physical health condition as defined under the ADA, 42 U.S.C. § 12131(2), and Section 504 of the Rehabilitation Act ("RA") of 1973, 29 U.S.C. § 794, 28 C.F.R. 42.540(k); qualified as an individual with a mental and physical disability under Pennsylvania law; and met the essential eligibility requirements of Berks County programs to provide access to medical and mental health care services for its detainee/inmate patients in Berks County Prison while in custody.

61. Defendant Berks County's jails and mental health services are places of public accommodation and covered entities for purposes of enforcement of the ADA, 42 U.S.C.

§ 12181(7)(F), and the Rehabilitation Act, 29 U.S.C. § 794, as explicated by the regulations promulgated under each of these laws. Further, on information and belief, defendant Berks County and its jails receive federal assistance and funds.

62. Defendant Berks County's jails and mental health services are places of public accommodation and are covered entities for purposes of enforcement of the ADA, 42 U.S.C. §12181(7)(F), and the Rehabilitation Act, 29 U.S.C. §794, as explicated by the regulations promulgated under each of these laws.

63. Defendant Berks County's jails and mental health services, as a local government and/or departments or agencies thereof, fall within the definition of "program or activity" covered by the RA, 29 U.S.C. § 794(b). Berks County is also within the mandate of the RA that no person with a disability may be "excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity." 29 U.S.C. §794.

64. Under the ADA, Berks County is mandated to "develop an effective, integrated, comprehensive system for the delivery of all services to persons with mental disabilities and developmental disabilities . . ." and to ensure "that the personal and civil rights" of persons who are receiving services under its aegis are protected.

65. Defendants Berks County and Prime Care are mandated under the ADA not to discriminate against any qualified individual "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a).

66. Defendants Berks County and Prime Care violated the ADA and RA and discriminated against Stephen Schnee concerning his ADA and RA rights by: (a) failing to provide services or accommodate Mr. Schnee with access to the programs and services of Berks County's mental

health hospitals and facilities for persons who qualify for access and services; (b) failing to provide services or accommodate Mr. Schnee as indicated and with appropriate classification, housing and monitoring for a person in its sole and exclusive custody who they knew was mentally disabled and at risk for suicide; (c) failing to provide reasonable accommodations to people with mental disabilities in custody at its jails, and providing instead a quality of care and service that was different, separate and worse than the service provided to other individuals with the same disabilities; (d) failing to accommodate Mr. Schnee's disability(ies) by providing necessary and proper care for his serious medical needs while in jail custody and unable to provide for those needs himself; (e) failing to accommodate Mr. Schnee's disability(ies), including his medical needs and suicide risk, failing to take proper and appropriate measures to assess his suicide risk, place him on proper suicide precautions, and protect him from self-harm due to his mental and psychiatric disabilities.

67. Decedent Stephen Schnee was denied the benefits of the services, programs and activities of Berks County and was denied accommodation for his disabilities, which deprived him of safety, necessary care, and medical and mental health programs and services that would have provided planning and delivery of treatment, follow-up and supervision. This denial of accommodation, programs and services was the result of Mr. Schnee's disability in that he was discriminated against because he was mentally ill, at risk for suicide and gravely disabled in that he suffered from conditions in which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing or shelter and unable to advocate for himself.

68. As a result of the acts and misconduct of all defendants, Stephen Schnee and the plaintiff have suffered, are now suffering and will continue to suffer damages and injuries as more fully described above.

COUNT 4
STATE LAW CLAIMS
PLAINTIFF V. DEFENDANTS PRIMECARE, BAKEROFSKIE AND ROE(S)

69. Plaintiff incorporates by reference paragraphs 1-68 of the instant Complaint.

70. Defendants Prime Care, John Bakerofskie and Richard Roe(s) had a duty to comply with generally accepted medical and mental health standards of care in their treatment of Stephen Schnee.

71. Defendants Prime Care, John Bakerofskie and Richard Roe(s) violated their duty of care to Mr. Schnee.

72. These defendants' violations of their duty of care to Mr. Schnee was a direct and proximate cause and a substantial factor in bringing about Mr. Schnee's damages outlined above, and, as a result, these defendants are liable to the plaintiff.

73. As defendants John Bakerofskie and Richard Roe(s) were acting as agents, servants, and/or employees of defendant Prime Care, and were acting within the scope and course of their employment, and under the direct control and supervision of defendant Prime Care, defendant Prime Care is liable on the basis of *respondeat superior* liability.

REQUESTED RELIEF

Wherefore, the plaintiff respectfully requests:

1. Compensatory damages against all defendants;
2. Punitive damages against the individual defendants and defendant Prime Care;
3. Reasonable attorneys' fees and costs;
4. Such other and further relief as may appear just and appropriate.
5. Plaintiff hereby demands a jury trial as to each count and each defendant.

S/ Paul Messing
Paul Messing
I.D. No. 17749
KAIRYS, RUDOVSKY,
MESSING & FEINBERG
718 ARCH Street, Ste. 501S
Philadelphia, PA 19106
215-925-4400
215-925-5365 (fax)
Counsel for Plaintiff