

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

ALBERTO ARANZOLA,

Plaintiff,

Case assigned to Mathew, Francis J.

v.

Cause No. D-101-CV-2020-02548

**CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC;
D. DEMING, M.D.; MURRAY YOUNG M.D.;
MHM HEALTH PROFESSIONALS, LLC;
WEXFORD HEALTH SOURCES, INC;
STATE OF NEW MEXICO, NEW MEXICO CORRECTIONS DEPARTMENT;
DAVID JABLONSKI; ANTHONY ROMERO; DAVID SELVAGE; ORION
STRADFORD; STEVE MADRID;
WEXFORD HEALTH SOURCES, INC.;
CORECIVIC OF TENNESSEE, LLC, WARDEN BETTY J. JUDD;
and JOHN DOES 1-20, (employees, staff, agents of Centurion Correctional Healthcare of
New Mexico, LLC, MHM Health Professionals, LLC, Wexford Health Sources, Inc., State
of New Mexico, New Mexico Correctional Department, Northwest New Mexico
Correctional Center, CoreCivic of Tennessee, LLC, respectively),**

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

COMES NOW, the PLAINTIFF by and through his attorneys Collins & Collins, P.C.
(Parrish Collins) and Guebert Gentile & Piazza P.C. (Terry R. Guebert, Robert F. Gentile, David
S. Ketai), and for his cause of action states as follows:

I. PARTIES

A. PLAINTIFF

1. PLAINTIFF, Alberto Aranzola (“PLAINTIFF”), is and was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.
2. PLAINTIFF, at the time of the original incident as set forth below, was a

resident of Northwest New Mexico Correctional Center (“NNMCC”), a NMCD facility.

3. PLAINTIFF is no longer in custody and is currently residing in Albuquerque, Bernalillo County, New Mexico.

B. NEW MEXICO CORRECTIONS DEPARTMENT

4. Defendants NEW MEXICO CORRECTIONS DEPARTMENT (NMCD) and NWNMCF are entities of the State of New Mexico.

5. Northwest New Mexico Correctional Facility (NWNMCF) is operated by NMCD.

6. NMCD retains ultimate authority and responsibility over NWNMCF, and NWNMCF is operated in accordance with NMCD rules, policies and procedures.

7. NMCD is responsible for contracting of medical services for all NMCD facilities including NWNMCF.

8. Defendant State of New Mexico by contract authorized CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (CCH) to provide medical care to inmates housed at NWNMCF for the period of June 2016 to November 2019.

9. At all material times, NMCD, CCH, MHM and WHS acted through their respective owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency and/or apparent agency.

10. Upon information and belief, David Jablonski was serving as the Secretary of Corrections at times relevant to this Complaint.

11. Upon information and belief, Alisha Tafoya Lucero served as Interim Secretary of Corrections in May 2019 and was appointed as Secretary of Corrections in June 2019 and serves

to the present.

12. As the Secretary of Corrections, Mr. Jablonski oversaw prison operations, including NMCD's duty to provide a safe environment at NWNMCF, and to ensure that inmates have access to adequate medical care.

13. Upon information and belief, Anthony Romero was serving as Deputy Secretary of Corrections at times relevant to the Complaint and served as Acting Secretary of Corrections after David Jablonski vacated that position prior to the appointment of current Secretary of Corrections appointment.

14. Upon information and belief, the following individual NMCD employees and/or agents of NMCD are currently serving as Deputy Secretaries of Corrections:

- a. John Gay – Director of Adult Prisons Division
- b. Gary Maciel – Deputy Director of Adult Prisons Division
- c. Anthony Romero – Deputy Director of Adult Prisons Division

15. Serving Deputy Secretaries of Corrections oversee prison operations, including NMCD's duty to provide a safe environment at NWNMCF, and to ensure that inmates have access to adequate medical care.

16. David Selvage is, and was at times relevant to this Complaint, serving as the Health Services Administrator ("HSA") for NMCD.

17. Serving HSAs maintain direct clinical oversight of independent contractors, ensuring that contractors are providing adequate care to NMCD inmates including those at NWNMCF.

18. Orion Stradford is, and was at times relevant to this Complaint, serving as the NMCD Bureau Chief.

19. The NMCD Bureau Chiefs are responsible for monitoring the work of independent contractors, including CCH, MHM and WHS and acts as NMCD's supervisor of these independent contractors.

20. Steve Madrid was at times relevant to this Complaint, the individual acting on behalf of NMCD in charge of the NMCD Grievance Process, including the appellate process.

21. Individuals in charge of NMCD's Grievance Process serve as the "gatekeeper" between inmates and their access to adequate healthcare.

22. As gatekeeper, if Mr. Madrid, or others overseeing the NMCD grievance process, does not responsibly manage the grievance process, inmates have no way of accessing necessary, proper and competent medical care from NMCD, CCH, MHM and WHS.

23. The State of New Mexico, NMCD and their John Doe employees, staff and agents, including David Jablonski, Anthony Romero, David Selvage, Orion Stradford, Steve Madrid, and Betty J. Judd, Warden will be referred to herein collectively as "NMCD DEFENDANTS."

24. NMCD DEFENDANTS have a duty to provide for the safety and security for those it incarcerates.

25. NMCD governs NWNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

26. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within NWNMCF.

27. NMCD maintained authority over its contractors, including those named in this COMPLAINT.

28. NMCD has the authority to terminate contracts with independent contractors with

or without cause.

29. Any of the named NMCD Defendants can intercede on behalf of NMCD if independent contractors are not appropriately caring for NMCD inmates.

30. Any of the named NMCD Defendants can intercede on behalf of an inmate to act on a medical grievance.

31. None of the above named NMCD Defendants interceded to protect inmates from gross and reckless medical negligence at NWNMCF.

C. CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC

32. CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (hereinafter “CCH”) entered a contract, General Services Contract #16-770-1300-0097 (GSC), with the State of New Mexico that commenced on June 1, 2016 and ended on or about November 2019.

33. CCH is a domestic limited liability company registered to do business in New Mexico, whose registered agent for service of process is CT Corporation System, 206 S. Coronado Avenue, Espanola, New Mexico, 87532-2792.

34. CCH and its John Doe employees, staff and agents will be referred to herein collectively as “CCH DEFENDANTS.”

35. At all times material to this COMPLAINT, CCH acted through its owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency and/or apparent agency.

36. CCH provides a “comprehensive health care delivery system” to NMCD, which

includes billing services, utilization management, general health care services administration, and on-site medical staff provided through an independent contractor, MHM Health Professionals, LLC. (MHM).

37. Upon information and belief, D. DEMING, M.D., and MURRAY YOUNG, M.D. were the authorized medical authorities in the medical care of PLAINTIFF at all times relevant to this complaint.

38. D. DEMING, M.D., and MURRAY YOUNG, M.D. were at times relevant to this complaint employees of CCH.

39. CCH was not and is not a public body as evidenced their repeated assertions to that fact.

40. CCH is neither a local public body nor a state employee under NMSA §41-4-7(F).

41. CCH is not entitled to protections under the New Mexico Tort Claims Act.

42. CCH was not at times relevant to this Complaint licensed to practice medicine in New Mexico.

D. MHM HEALTH PROFESSIONALS, LLC.

43. MHM HEALTH PROFESSIONALS, LLC. (hereinafter “MHM”) is under contract with CCH to provide medical providers to CCH.

44. MHM is a Delaware for profit corporation licensed to do business in New Mexico.

45. MHM provides medical personnel to CCH, including those medical personnel providing medical services at NWNMCF during the term of the GSC.

46. MHM employed D. DEMING, M.D., and MURRAY YOUNG, M.D. who were loaned to CCH.

47. MHM employees and staff provided on-site healthcare services to NMCD inmates pursuant to contract with CCH.

48. MHM was not a party to the GSC.

49. MHM is a third-party to the GSC.

50. MHM had no direct contractual relations with NMCD, the State of New Mexico or NWNMCF for the provision of medical services during the term of the GSC

51. MHM had no direct contractual relations with NMCD, the State of New Mexico or NWNMCF for the provision of medical services from June 2016 to November 2019.

52. At all material times, MHM acted through its owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency and/or apparent agency.

53. MHM carried medical malpractice insurance for itself and the employees loaned to Centurion for the provision of medical care in NMCD facilities.

54. MHM is neither a local public body nor a state employee under NMSA §41-4-7(F).

55. MHM is not entitled to protections under the New Mexico Tort Claims Act.

56. MHM and its John Doe employees, staff and agents will be referred to herein collectively as MHM Defendants.

E. CCH and MHM PART OF INTEGRATED ENTERPRISE CENTENE CORPORATION

57. Upon information and belief, Centene Corporation has annual revenues of over \$70 billion.

58. Upon information and belief, in 2011, Centene Corporation formed a wholly

owned subsidiary Centurion Group, Inc. for the sole purpose of forming a joint venture with MHM Services, Inc.

59. Upon information and belief, the joint venture was formed in anticipation of Centene Corporation acquiring MHM Services, Inc. which occurred in April 2018.

60. Upon information and belief, MHM Services, Inc. operates in 16 states, over 300 facilities with over 9000 employees.

61. Upon information and belief, the joint venture partners, Centurion Group, Inc. and MHM Services, Inc., formed a joint venture called Centurion, LLC.

62. Upon information and belief, upon formation, the board of directors of Centurion, LLC consisted of seven individuals; three board of directors from Centene Corporation and four board of directors from MHM Services, Inc.

63. Upon information and belief, the purpose of Centurion, LLC was to form wholly owned subsidiaries in different states for the sole purpose of holding and bidding on state-specific contracts.

64. Upon information and belief, to this end in July 2015, Centurion, LLC formed a wholly owned subsidiary called Centurion Correctional Healthcare of New Mexico, LLC (“CCH”) to bid on the correctional health care contract with the New Mexico Corrections Department.

65. Upon information and belief, at all material times hereto, CCH was a wholly owned subsidiary of Centurion, LLC, which was a joint venture between Centurion Group, Inc. and MHM Services, Inc.

66. Upon information and belief, the seven board of directors of Centurion, LLC oversaw the operations of CCH.

67. Upon information and belief, MHM Health Professionals, LLC (MHM) is a wholly owned subsidiary of MHM Services, Inc.

68. Upon information and belief, at all material times, the health care providers and the managerial staff working in NMCD facilities under CCH were employed by MHM.

69. Upon information and belief, health care providers at NWNMCF, including individually named Defendants D. DEMING, M.D., and MURRAY YOUNG, M.D. were employed by MHM and then loaned to CCH at times relevant to this complaint.

70. Upon information and belief, at all materials times, personnel that provided human resources, payroll, financial and legal support for CCH were employed by MHM Services, Inc.

71. Upon information and belief, prior to the acquisition, and at all material times hereto, Centene Corporation, through CCH, was a 51 percent owner in the joint venture and was responsible for providing corporate support to CCH, including tax filings, claims processing for “outside the walls” claims and network contract negotiations.

72. Upon information and belief, prior to the acquisition, and at all material times hereto, MHM Services, Inc. was a 49 percent owner in the joint venture and was responsible for providing CCH with legal support, human resources, credentialing, payroll, benefit plans, finance, IT and office services, including marketing, proposal writing and pricing of requests for proposals.

73. Upon information and belief, at all materials times, the salaries of the individually and John Doe named CCH Defendants, including individually named defendants, were funded 51 percent by Centene Corporation, through Centurion Group, Inc. and/or Centurion, LLC, and 49 percent by MHM Services, Inc.

74. Upon information and belief, expenses and losses of CCH were funded 51 percent by Centene Corporation, through Centurion Group, Inc and/or Centurion, LLC., and 49 percent by MHM Services, Inc.

75. Upon information and belief, at all materials times, Centene Corporation, MHM Services, Inc. and Centurion, LLC had access to CCH's financial books and records.

76. Upon information and belief, all MHM employees serving under CCH are insured through MHM.

77. Upon information and belief, CCH and Centene Corporation are identified as "additional named insured" on insurance policies issued to MHM.

78. In its February 18, 2016 Technical Response to NMCD's request for proposals, CCH publicized their corporate structure with statements such as:

"Centurion is a partnership between Centene Corporation, a Fortune 500 Medicaid managed care company with 32 years of managed care experience, and MHM Services, Inc., a national leader in providing healthcare services to correctional systems. Centurion brings together the ideal mix of MHM 's long history of unparalleled client satisfaction and management expertise in the correctional environment with Centene's Medicaid managed care prowess, to provide a level of innovative service approaches never before seen in correctional healthcare.

Centurion, LLC was formed as a joint venture created and co-owned by two mature, strong parent companies that after each being in business over 30 years are experienced in maintaining a solid corporate structure most beneficial to their industries; MHM in correctional healthcare, and Centene in Medicaid managed care services. Centurion's corporate organization was strategically planned to meet the challenges and support the needs of statewide inmate healthcare delivery system like the NMCD."

79. In support of its "financial stability," CCH stated in its TechResponse:

MHM generated \$293 million in revenue in fiscal year 2015, while Centene generated revenues of over \$16 billion for the first three quarters of 2015. The combined revenues of MHM and Centene are nearly 20 times the amount of the largest correctional healthcare company.

80. The CCH, MHM, Centene Corporation, MHM Services, Inc. and Centurion, LLC are an integrated enterprise, agents of one another, alter egos of one another, and instrumentalities of one another.

F. WEXFORD HEALTH SOURCES, INC's

81. The contract for prison medical services between WHS and the State of New Mexico, Professional Services Contract (“WPSC”) # 20-770-1200-0043, was, upon information and belief, executed in Santa Fe, New Mexico.

82. WEXFORD HEALTH SOURCES, INC's (WHS) is foreign profit corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico.

83. D. DEMING, M.D., and MURRAY YOUNG, M.D. continued as the authorized medical authorities in the medical care of PLAINTIFF with WHS at NWNMCF in November 2019.

84. WHS is neither a local public body nor a state employee under NMSA §41-4-7(F).

85. WHS is not entitled to protections under the New Mexico Tort Claims Act.

G. CORE CIVIC OF TENNESSEE, LLC (CCT)

86. CCT OF TENNESSEE, LLC (CCT) is under contract to manage and operate NWNMCF.

87. CCT is a Foreign Limited Liability Company registered to do business in New Mexico and whose registered agent is in Albuquerque, New Mexico.

88. Betty J. Judd was at all times relevant to this Complaint an employee of CCT and serving as the Warden at NWNMCF.

89. Upon information and belief, Betty Judd was at all times relevant to this

Complaint an employee of CCT.

90. Upon information and belief, Betty Judd is a resident of Grants, Cibola County, State of New Mexico.

91. CCT is neither a local public body nor a state employee under NMSA §41-4-7(F).

92. CCT is not entitled to protections under the New Mexico Tort Claims Act.

II. JURISDICTION AND VENUE

93. All acts complained of herein occurred in Grants, Cibola County, State of New Mexico.

94. PLAINTIFF asserts that he exhausted all available administrative remedies.

95. PLAINTIFF is not in custody at the time of filing this complaint and therefore NMSA § 33-2-11 and 42 U.S.C.A. § 1997e are inapplicable.

96. Jurisdiction and venue are proper over CCH and its John Doe employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A).

97. Jurisdiction over MHM is proper in New Mexico State District Court due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

98. Jurisdiction and venue are proper over MHM 's John Doe employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A) or due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

99. This Court has jurisdiction over the subject matter of PLAINTIFF's New Mexico Tort Claims Act claims against the State of New Mexico and New Mexico Corrections Department and John Doe employees, staff and agents under NMSA § 41-4-18 and NMSA § 38-3-1 (A).

100. Jurisdiction over all parties and claims are proper under Article II, § 10 of the New Mexico Constitution and the law of negligence under New Mexico law.

III. STATEMENT OF FACTS

101. At the time relevant to this Complaint, Norman DeHerrera was a 57-year old male incarcerated at New Mexico Department of Corrections.

A. MEDICAL FACTS

102. On September 13, 2012, while in the custody of the New Mexico Corrections Department (NMCD), PLAINTIFF tested positive for Hepatitis C antibody. Testing completed by Bio-Reference Labs.

103. On September 14, 2012, PLAINTIFF was diagnosed with Hepatitis C 1A.

104. In patient was noted to be positive for Hepatitis C antibody, a qualitative HCV RNA testing should have been ordered to detect reinfection after previous spontaneous or treatment-related viral clearance.

105. In this case of Mr. Aranzola, even though patient was noted to be positive for Hepatitis C antibody in September 2012, he was not evaluated with qualitative measurement of HCV RNA till March 2018.

106. D. DEMING, M.D., and MURRAY YOUNG, M.D. were grossly negligent, reckless and deliberately indifferent to PLAINTIFF's HCV in their failure to order qualitative HCV RNA testing.

107. On September 26, 2014, correctional health records listed Hepatitis C and GERD as chief complaints.

108. On January 20, 2016, records listed PLAINTIFF's condition as chronic for Hepatitis C (HCV).

109. Lab readings were at AST 33 with a Platelet Count of 156 HA1C. AST to Platelet Ratio Index (APRI): 0.5

110. On February 4, 2016, PLAINTIFF was referred to the Chronic Disease Clinic for a follow-up visit.

111. On February 9, 2016, PLAINTIFF presented with flu-like symptoms, complaints of headache, running nose and generally not feeling well. He was given throat lozenges, lay-on CTM #24 given.

112. On August 9, 2016, during an intra-facility medical receiving screening at the Reception and Diagnostic Center (RDC) at the Central New Mexico Correctional Facility (CNMCF) his condition was listed as Chronic for Hepatitis C (HCV) and it was further noted that he had been given a Hepatitis B vaccination on August 20, 2014.

113. On November 23, 2016, during a Pre-Lock Down evaluation again listed for chronic clinic for Hepatitis C (HCV) and GERD, noted that no medications were being taken at that time by PLAINTIFF.

114. On November 26, 2016, APRI was listed at 0.5 with no cirrhosis noted.

115. On April 20, 2017, PLAINTIFF again reported to medical complaining of diarrhea, vomiting 3 times in the preceding 3 hours after consuming meat in the facility kitchen.

116. Medical staff again entered corresponding interdisciplinary progress notes that Bowel Sounds (BS) x 4. Abdomen soft, non-tender, no guarding. Mucus membranes moist. Skin turgor good.

117. On May 27, 2017, PLAINTIFF reported to medical staff that he was experiencing stomach and back pain. On August 1, 2017, PLAINTIFF reported to medical staff but notes on visit are illegible. However, a note reflected that he had been diagnosed with HCV and that this

derived from a tattoo from seven years prior. Requested treatment for HCV after discharge.

118. On August 4, 2017, PLAINTIFF again requested treatment for HCV. A follow-up visit was noted for six months after visit.

119. On October 28, 2017, PLAINTIFF reported for an emergent medical visit for abdominal pain. He reported that he was experiencing, “Hernia, pain, sticking out” His condition was further described as being burning and intermittent and was accompanied by a fever.

120. On December 8, 2017, PLAINTIFF reported to on-site clinic with abdominal pain which was subsequently diagnosed as attributable to a hernia. Labs were also ordered.

121. On December 11, 2017, labs were returned: AST 29, ALT 47, platelets 170 with Lymphocytes at 53.9.

122. On January 11, 2018, PLAINTIFF reported to chronic disease clinic for a follow-up visit. It was noted that he had three years left to serve on sentence and that his last drug use had occurred seven years prior. Abdominal pain and swelling with APRI: 0.426. HCV noted.

123. On March 25, 2018, PLAINTIFF’s labs returned as High for HCV: AST 72, ALT 47 with lymphocyte count at 59.4.

124. The result was:

Test Date	AST to Platelet Ratio Index (APRI)
03/25/2018	1.31
04/09/2018	1.139

125. Mr. Aranzola was noted to have APRI value greater than 1 as noted above. APRI values greater than 1.0 are 89% sensitive and 75% specific for a diagnosis of Cirrhosis in chronic hepatitis C patients.

126. In March 2018, Mr. Aranzola was noted to have Hepatitis C RNA of 3710000, Type 1a Hepatitis C genotype and AST to Platelet Ratio Index (APRI) of 1.31.

127. Mr. Aranzola should have been started on antiviral therapy for HCV infection in April 2018.

128. It was noted that Mr. Aranzola was taken off list for Project Echo due to unlawful disciplinary action for speaking his native Spanish with a fellow inmate in the presence of a guard in April 2018 and recommended to start treatment in April 2019 when he meets criteria again.

129. PLAINTIFF's English is poor.

130. On March 29, 2018, labs returned as follows: Hepatitis C RNA, (IU) (Log -10) 6.57.

131. On March 30, 2018, Medical note reflects diagnosis of Hepatitis C Genotype 1A.

132. On April 9, 2018, abdominal diastasis recti noted and Hepatitis C with APRI of 1.139 recorded. Medical file notes that treatment plan for HCV was to be continued.

133. On April 23, 2018, file confirms diagnosis in 2012 and notes that HCV was contracted by a non-professionally administered tattoo and further notes vaccination against Hepatitis B and C.

134. On July 24, 2018, PLAINTIFF again inquired about HCV treatment and was advised that due to a correctional incident which occurred on April 20, 2018 treatment would be postponed for one year without any further occurrence of incident or of drug use.

135. On August 14, 2018, PLAINTIFF's labs recorded APRI of 1.139 and it was noted that he was eligible for HCV treatment but barred due to disciplinary action.

136. On December 3, 2018, PLAINTIFF made a medical visit and expressed concern

about the delay in treatment for HCV and had requested help since April for help as soon as possible (ASAP), “but no help”.

137. On January 7, 2019, PLAINTIFF had chronic disease clinic follow-up visit. It was noted that he had been removed from Project Echo due to disciplinary action in April 2018 and would not be eligible for HCV treatment again until April 2019.

138. On April 28, 2019, PLAINTIFF had chronic disease clinic visit and was scheduled for re-evaluation on April 30, 2019. At re-evaluation it was noted that he would have another follow-up visit in 90 days.

139. On August 7, 2019, work-up initiated for HCV treatment and referral to Project ECHO noted as platelet count was nearing 150.

140. On August 13, 2019, PLAINTIFF was noted to have platelet count 134.

141. Ultrasound done on August 14, 2019 revealed apparent focus of calcification in the right hepatic lobe, which may be due to old granulomatous disease and mild splenomegaly.

142. On August 15, 2019, PLAINTIFF was noted to have Hepatitis C RNA, (IU) 2710000.

143. On August 18, 2019, PLAINTIFF was noted to have Hepatitis C genotype: Type 1a.

144. On September 9, 2019, PLAINTIFF was noted to have cirrhosis and was prescribed project echo initial packet.

145. Medical providers failed to start antiviral treatment between April 2018 to August 2019 due to unlawful disciplinary action in April 2018 which upon information and belief was used as a pretext for the denial of HCV treatment.

146. Failure to treat PLAINTIFF’s HCV resulted in cirrhosis of the liver. 2019

147. Throughout his incarceration by NMCD, PLAINTIFF filed numerous medical grievances seeking HCV treatment.

148. PLAINTIFF's medical grievances were ignored, and some were possibly destroyed.

149. PLAINTIFF never received appropriate responses to his medical grievances.

150. PLAINTIFF never received treatment as a result of his medical grievances.

151. PLAINTIFF was finally released from NMCD without having ever received HCV treatment.

152. NMCD, CCH and WHS have received millions of dollars in funding for the specific purpose of treating HCV inmates.

153. Very few inmates have been treated for HCV.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

154. NMCD is solely responsible for the medical grievance process.

155. NMCD is supposed to work with its CCH, MHM and WHS in addressing and/or resolving inmate medical grievances.

156. NMCD routinely ignores medical grievances.

157. NMCD routinely destroys medical grievances.

158. NMCD routinely fails to process medical grievances correctly.

159. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances.

160. Upon information and belief, no medical grievances were found in favor of an inmate from June 2016 to November 2019.

161. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at NWNMCF.

162. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at NWNMCF.

163. No inmate grievance was found in favor of an inmate at NWNMCF during the entire term of the GSC between NMCD and Centurion.

164. NMCD does not consult with objective medical experts in the review of medical grievances.

165. The decision of whether to substantiate a medical grievance is made by non-medical NMCD personnel.

166. DEFENDANT STEVE MADRID is instrumental in the denial of medical grievances.

167. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including PLAINTIFF.

168. NMCD's medical grievance abuses outlined above are a proximate cause of injuries related thereto.

169. NMCD's medical grievance abuses create an unsafe environment at NMCD facilities including NWNMCF under NMSA §41-4-6 and constitutes negligent operation of a medical facility under NMSA §41-4-9.

170. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances, ignored his emergent medical condition, failed to take action within its authority to protect the health of PLAINTIFF.

171. STEVE MADRID knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances.

172. BETTY JUDD knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances.

173. CCH DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of emergent cirrhosis of the liver.

174. MHM DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of emergent cirrhosis of the liver.

175. DEFENDANT DOCTORS knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

176. ALL DEFENDANTS collectively knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

177. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of PLAINTIFF's history of emergent cirrhosis of the liver and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

178. NMCD understands and recognizes that failure to treat emergent cirrhosis of the liver constitutes recklessness under New Mexico law.

179. NMCD understands and recognizes that failure to treat emergent cirrhosis of the liver constitutes deliberate indifference under federal law.

180. NMCD had full authority to enforce the GSC.

181. NMCD had at all times relevant to this COMPLAINT the authority to compel its CCH, MHM and WHS to treat emergent cirrhosis of the liver.

182. NMCD has obtained substantial budgets for treatment of infectious disease in NMCD facilities.

183. NMCD had full authority over the medical grievance process.

184. NMCD through the grievance process can control the manner in which its CCH, MHM and WHS can perform their duties.

185. NMCD through the terms of the GSC can control the manner in which its CCH, MHM and WHS can perform their duties.

186. NMCD through NMCD policies and regulations can control the manner in which its CCH, MHM and WHS can perform their duties.

187. NMCD had the authority to terminate the GSC at will as indicated by the GSC:

“6. Termination.” A. Grounds. The Agency may terminate this Agreement for convenience or cause”.

188. NMCD recklessly chose not to exercise any control over the manner in which its CCH, MHM and WHS performed their duties in the treatment of PLAINTIFF’s cirrhosis of the liver leading to cirrhosis of the liver.

189. NMCD through the terms of the GSC can control the manner in which its contractors can perform their duties.

190. NMCD through NMCD policies and regulations can control the manner in which its contractors can perform their duties.

191. NMCD recklessly chose not to exercise any control over the manner in which its CCH, MHM and WHS performed in the treatment of PLAINTIFF’s cirrhosis of the liver which lead to cirrhosis of the liver.

192. Notwithstanding the above, PLAINTIFF exhausted his administrative remedies prior to filing this Complaint.

193. There is a pattern of missing medical records in the weeks leading up to hospitalization including in this case where records were missing for 49 days leading up to PLAINTIFF's hospitalization at UNMH.

194. This pattern suggests concealment or destruction of medical records.

195. The pattern also suggests conspiracy between NMCD and Centurion in the denial of inmates, including PLAINTIFF, the legal rights to their medical records under state and federal law.

C. FACTS SPECIFIC TO CCH DEFENDANTS

196. General Services Contract (GSC) #16-770-1300-0097 was executed by NMCD and CCH on or about June 2016.

197. CCH submitted its Technical Response to Request for Proposal No. 60-770-15-05163 (CCH TechResponse) for Inmate Medical Services dated February 18, 2016.

198. CCH Tech Response was over 1200 pages long.

199. CCH's Tech Response did not mention the Tort Claims Act.

200. CCH's Tech Response did not mention the word "tort".

201. CCH's Tech Response did not mention punitive damages.

202. CCH's Tech Response did not mention or request Tort Claims Act protection for CCH, MHM or their respective employees, staff and agents.

203. The GSC was 80 pages in length.

204. The GSC did not mention the Tort Claims Act.

205. The GSC did not mention the word "tort".

206. The GSC did not mention punitive damages.
207. The GSC did not provide for Tort Claims Act protection for CCH or its respective employees, staff, agents, staffing agencies or other vendors.
208. Tort Claims Act protection for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
209. Protection from punitive damages for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
210. The GSC was freely entered into by CCH on or about June 2016.
211. The GSC was in effect from June 2016 to November 2019.
212. CCH had the legal capacity to enter the GSC.
213. CCH was legally competent to enter the GSC.
214. There was mutual assent on the part of CCH and NMCD in the negotiation and execution of the GSC.
215. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the GSC.
216. The GSC was not vague.
217. The GSC was not oppressive to CCH.
218. The GSC was not void as a matter of public policy.
219. CCH is and was at all relevant times bound by the terms of the GSC.
220. The GSC is fully enforceable against CCH as written.
221. The GSC states:

“8. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing general services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave,

retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.”

222. By the terms of the GSC, CCH is an independent contractor performing general services for the Agency.

223. By the terms of Paragraph 8 of the Paragraph 8 above of the GSC, CCH and is not an employee of the State of New Mexico.

224. By the terms of Paragraph 8 of the GSC, CCH employees and agents are independent contractors.

225. By the terms of the Paragraph 8 of the GSC, CCH employees and agents are not employees of the State of New Mexico.

226. CCH has repeatedly taken the position as recently as March 6, 2020 and March 9, 2020 that it is not a public entity subject to IPRA.

227. CCH has claimed that it is a public body to gain New Mexico Tort Claims Act protection.

228. In CCH’s TechResponse, the proposed contract for New Mexico Department of Corrections would be part of the insurance program that is currently in place for CCH.”

229. CCH medical staff working in NMCD under the GSC were provided malpractice and general liability insurance through MHM.

230. CCH was a named insured on the insurance policy in place for MHM and MHM employees, staff and agents.

231. Upon information and belief, CCH also carried its own private medical malpractice insurance during the term of the GSC.

232. As part of its CCH TechResponse, CCH provided audits and proof of its “financial stability.”

233. In support of its “financial stability,” CCH stated in its TechResponse:

MHM generated \$293 million in revenue in fiscal year 2015, while Centene generated revenues of over \$16 billion for the first three quarters of 2015. The combined revenues of MHM and Centene are nearly 20 times the amount of the largest correctional healthcare company.

234. The GSC states:

“22. Indemnification. The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.”

235. The GSC expressly states that there shall be no third-party beneficiary status for any other individuals or entities not parties to the GSC stating:

D. No Third-Party Beneficiaries. The Parties do not intend to create in any other individual or entity, including but not limited to any inmate or patient, the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of such Parties....”

236. CCH was not licensed to practice medicine in New Mexico during the term of the GSC.

237. NWNMCF is not now and was not during times relevant to this COMPLAINT covered by the New Mexico Public Liability Fund.

238. Centurion was the medical provider at NWNMCF during the term of the GSC.

239. CCH was not covered by the New Mexico Public Liability Fund during the term of the GSC for medical care provided at NWNMCF.

240. The employees and staff of CCH were not covered by the New Mexico Public Liability Fund during the term of the GSC.

241. Under the terms of the CCH contract, CCH was required to pay a penalty to New Mexico for non-performance, including filling vacancies in healthcare staffing needs.

242. As of November 2019, CCH had accumulated approximately \$3,880,719.60 in staffing penalties owed to the State of New Mexico for failure to meet healthcare staffing requirements of the New Mexico prison facilities.

243. Upon information and belief, upon transfer of an NMCD inmate during the term of the GSC, Medicaid paid for all inmate hospital bills for inmates that were hospitalized for 24 hours or more.

244. Upon information and belief, upon transfer of an NMCD inmate during the term of the GSC, CCH paid no inmate hospital medical bills for inmate hospital stays over 24 hours.

245. There is a pattern of missing medical records in the weeks leading up to hospitalization including in this case where records were missing for 49 days leading up to PLAINTIFF's hospitalization at UNMH.

246. This pattern suggests concealment or destruction of medical records.

247. The pattern also suggests conspiracy between NMCD and Centurion in the denial of inmates, including PLAINTIFF, the legal rights to their medical records under state and federal law.

D. FACTS SPECIFIC TO MHM DEFENDANTS

248. MHM provides malpractice and general liability insurance to its medical practitioner employees working in NMCD facilities under CCH during the term of the GSC.

249. MHM was not licensed to practice medicine in New Mexico during the term of

the GSC.

250. NWNMCF is not now and was not during times relevant to this COMPLAINT covered by the New Mexico Public Liability Fund.

251. MHM provided medical personnel for the provision of medical services at NWNMCF via Centurion during the term of the GSC.

252. MHM was not covered by the New Mexico Public Liability Fund during the term of the GSC for medical care provided at NWNMCF.

253. The employees and staff of MHM were not covered by the New Mexico Public Liability Fund during the term of the GSC.

254. MHM was not a party to the GSC.

255. MHM is a third party to the GSC.

E. FACTS SPECIFIC TO WHS DEFENDANTS

256. WEXFORD HEALTH SOURCES, INC. (herein after “WHS”) submitted a TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 (WHS TechProp) for Inmate Medical Services dated August 21, 2019.

257. WHS TechProp was over 830 pages long.

258. WHS TechProp did not mention the Tort Claims Act.

259. WHS TechProp did not mention the word “tort”.

260. WHS TechProp did not mention punitive damages.

261. WHS TechProp did not mention or request Tort Claims Act protection for WEXFORD or its employees, staff and agents.

262. Professional Services Contract (“WPSC”) # 20-770-1200-0043 was executed by NMCD and WEXFORD on or about October 18, 2019.

263. The WPSC was 65 pages in length.
264. The WPSC did not mention the Tort Claims Act.
265. The WPSC did not mention the word “tort”.
266. The WPSC did not mention punitive damages.
267. The WPSC did not provide for Tort Claims Act protection for WEXFORD, MHM or their respective employees, staff and agents.
268. Tort Claims Act protection for WEXFORD and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
269. Protection from punitive damages for WEXFORD, and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
270. The WPSC was entered freely by WHS on or about October 18, 2019.
271. The WPSC was in effect at times relevant to this Complaint.
272. WHS had the legal capacity to enter the WPSC.
273. WHS was legally competent to enter the WPSC.
274. There was mutual assent on the part of WHS and NMCD in the negotiation and execution of the WPSC.
275. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the WPSC.
276. The WPSC was not vague.
277. The WPSC was not oppressive to WHS.
278. The WPSC was not void as a matter of public policy.
279. WHS is and was at all relevant times bound by the terms of the WPSC.
280. The WPSC is fully enforceable against WHS as written and executed.

281. By the terms of the WPSC, WHS is an independent contractor performing professional services for the Agency.

282. By the terms of the WPSC, Wexford, its employees and agents, are not employees of the state of New Mexico:

“9. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico.”

283. By the terms of Paragraph 9 of the WPSC, WHS is an independent contractor performing general services for the Agency.

284. By the terms of Paragraph 9 of the WPSC, WHS is not an employee of the State of New Mexico.

285. By the terms of Paragraph 9 of the WPSC, WHS employees and agents are independent contractors.

286. By the terms of Paragraph 9 of the WPSC, WHS employees and agents are not employees of the State of New Mexico.

287. In its WEXFORD TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 (WHS TechProp), which culminated in the WPSC, WHS stated:

E.A.I.G. Insurance and Taxes

Wexford Health agrees to act as an Independent Contractor in our performance of the services required by the Agreement. Upon contract award, we will comply with all of the following insurance and tax requirements.

- **Professional Liability insurance:** As shown by our COI, we carry professional liability (medical malpractice) insurance on all Wexford Health-employed medical professionals. Our policy not only meets, but also exceeds the RFP-required minimums of \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually. Our standards for independently contracted firms and clinicians require them to maintain similar insurance coverage.

288. The WPSC states the same insurance coverage for WHS:

Professional Liability - "Occurrence" type, if available; if not "Claims Made" type with an acceptable "tail"; Medicare malpractice covering professional staff - \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually.

289. The WPSC requires WHS to indemnify NMCD and the State of New Mexico as follows:

"23. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

290. Upon information and belief, WHS is not licensed and was not licensed at times relevant to this COMPLAINT to practice medicine in New Mexico.

291. Upon information and belief, WHS is not and was not at times relevant to this COMPLAINT covered by the New Mexico Public Liability Fund.

292. Upon information and belief, the employees and staff of WHS were not covered by the New Mexico Public Liability Fund during the term of the GSC.

293. WHS was paid over fifty-eight million dollars \$58,000,000.00 in the first year of the WPSC.

294. The WPSC as executed called for payments of \$60,768,709.90 in the second year and \$62,591,771.20 for the third year.

F. FACTS COMMON TO ALL DEFENDANTS

295. ALL DEFENDANTS knew that PLAINTIFF was in need of immediate treatment to control his emergent cirrhosis of the liver.

296. ALL DEFENDANTS knew that PLAINTIFF's emergent cirrhosis of the liver was worsening.

297. ALL DEFENDANTS knew that untreated emergent cirrhosis of the liver could lead to severe and permanent injuries including cirrhosis of the liver.

298. ALL DEFENDANTS knew that the failure to treat emergent cirrhosis of the liver constitutes recklessness under New Mexico law.

299. ALL DEFENDANTS knew that the failure to treat emergent cirrhosis of the liver constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

300. ALL DEFENDANTS knew that the failure to treat emergent cirrhosis of the liver constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

301. ALL DEFENDANTS were complicit and acquiesced in the denial of proper medical care to PLAINTIFF.

302. ALL DEFENDANTS conspired together to deny PLAINTIFF necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, severe and permanent physical injuries from complications from untreated and improperly treated PLAINTIFF's emergent cirrhosis of the liver which resulted in severe cirrhosis of the liver and likely eventual below the knee left leg cirrhosis of the liver.

**COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE
(CCH, MHM and WHS DEFENDANTS)**

303. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

304. In undertaking the diagnosis, care and treatment of PLAINTIFF, CCH, MHM and WHS, its employees, staff and agents were under a duty to possess and apply the knowledge,

skill, and care that is used by reasonably well-qualified healthcare providers in the local community.

305. CCH, MHM and WHS, their employees, staff and agents breached their duties and were negligent in the management of PLAINTIFF's health and well-being.

306. The negligence, errors, acts and omissions of CCH, MHM and WHS, include, but are not limited to:

- a. Failure to establish, maintain and enforce evaluation, diagnosis and treatment guidelines and standards;
- b. Failure to evaluate, treat and manage PLAINTIFF's medical condition;
- c. Failure to take the reasonable steps to acquire proper treatment of PLAINTIFF;
- d. Failure to refer PLAINTIFF to appropriate specialists;
- e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of emergent cirrhosis of the liver;
- f. Failure to provide PLAINTIFF with necessary and proper pain management;
- g. Failure to protect and preserve the health of PLAINTIFF.

298. As a direct and proximate result of the negligent acts and omissions CCH, MHM and WHS, their employees, staff and agents, PLAINTIFF suffered a rapid and significant deterioration in his health, along with physical, emotional, and psychological pain and suffering not presently determinable, but to be proven at the time of trial.

299. CCH, MHM and WHS, its employees, staff and agent's failures to assess, treat and manage PLAINTIFF's medical condition was reckless and wanton with utter disregard for the safety and welfare of PLAINTIFF, for which PLAINTIFF is entitled to punitive damages.

**COUNT II: NEGLIGENCE
(NMCD DEFENDANTS)**

300. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

301. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

302. NMCD is solely responsible for the medical grievance process.

303. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

304. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

305. NMCD is in charge of enforcement of the terms of the GSC which creates standards and obligations for CCH's delivery of medical services.

306. NMCD has failed to enforce important provisions of the GSC which led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to PLAINTIFF.

307. NMCD is solely responsible for the administration and enforcement of medical care standards in NMCD facilities.

308. NMCD determined not to enforce the NCCHC standards.

309. NMCD determined not to seek NCCHC accreditation for its facilities while CCH was the medical provider.

310. NMCD determined not to enforce the ACA standards.

311. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of CCH.

312. NMCD's indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD's allowance of CCH to provide services far below constitutional standards led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to PLAINTIFF.

313. NMCD is responsible for providing adequate health care to those it incarcerates, and to protect those inmates from risks associated with increased risks of infection or other medical emergencies.

314. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates.

315. NMCD maintains clinical oversight of its contractor's medical decision-making and health services operation.

316. NMCD must enforce the GSC and/or terminate independent contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

317. NMCD did not enforce the GSC or take proper enforcement actions against CCH, resulting in inadequate healthcare to its inmates.

318. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages.

**COUNT III: NEGLIGENCE
(All Defendants)**

319. PLAINTIFF incorporates by reference as if fully set forth herein, each and every

allegation contained in the paragraphs above.

320. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

321. NMCD DEFENDANTS negligently failed to oversee CCH in the provision of medical care to NMCD inmates, which contributed to PLAINTIFF's injuries.

322. NMCD DEFENDANTS failed to take corrective action against CCH in clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates, which contributed to PLAINTIFF's injuries.

323. NMCD and CCH are entrusted with the medical care of New Mexico inmates who have no other source of medical care.

324. CCH's medical staff at NWNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

325. CCH has a duty under the GSC, ACA and NCCHC to properly refer PLAINTIFF to be seen by a physician who could effectively treat him.

326. NMCD DEFENDANTS negligently failed to enforce critical terms of the GSC, including but not limited to, failure to compel NWNMCF and/or CCH to obtain accreditation by the ACA and NCCHC which contributed to PLAINTIFF's injuries.

327. NMCD DEFENDANTS negligently failed to ensure that CCH hire, train and supervise its medical providers, staff, employees and agents.

328. NMCD DEFENDANTS negligently failed to ensure that CCH hire competent medical providers, employees, staff and agents.

329. NMCD DEFENDANTS negligently, intentionally and knowingly interfered in the inmate grievance process with a pattern and practice of routine denial of medical grievances without due consideration of the facts and circumstances of the grievances, which contributed to

PLAINTIFF's injuries.

330. NMCD DEFENDANTS negligently failed to hold CCH to standards and guidelines of the ACA or NCCHC.

331. NMCD DEFENDANTS negligently failed to hold CCH to the medical standard of care established under New Mexico law, which contributed to PLAINTIFF's injuries.

332. NMCD DEFENDANTS negligently failed to establish or enforce any standards at all for CCH's provision of proper, necessary and competent medical care to NMCD inmates.

333. NMCD has a duty to operate NWNMCF in a safe and reasonably prudent manner.

334. This duty includes following and enforcing NMCD procedures in place to protect inmates' health and their access to healthcare.

335. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates.

336. NMCD has not addressed this increased risk of harm, even though NMCD policies and procedures explicitly provide for the care of inmates in need of medical treatment.

337. As such, NMCD has negligently operated NWNMCF, a public facility in which it incarcerated New Mexicans.

338. NMCD has created a risk to all inmates at NWNMCF, as all inmates are owed adequate healthcare.

339. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages.

**COUNT IV: NEGLIGENT OPERATION OF A MEDICAL FACILITY
(CCH AND WHS DEFENDANTS)**

340. PLAINTIFF incorporates by reference as if fully set forth herein, each and every

allegation contained in the paragraphs above.

341. CCH and WHS were entrusted with the medical care of inmates who have no other source of medical care by contract with the State of New Mexico and NMCD.

342. CCH and WHS employees, staff and agents were unqualified to care for PLAINTIFF, and yet refused to refer PLAINTIFF to specialists.

343. CCH and WHS DEFENDANTS were negligent in failing to properly assess, treat and manage PLAINTIFF's emergent cirrhosis of the liver and related health conditions.

344. CCH and WHS DEFENDANTS were negligent in failing to properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF.

345. By failing to either: (1) properly treat PLAINTIFF's medical conditions, or (2) properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF, CCH and WHS DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

346. CCH and WHS DEFENDANTS failed to properly address PLAINTIFF's medical condition.

347. Such conduct amounts to negligence in running a prison medical facility.

348. Such conduct amounts to negligence in the treatment of PLAINTIFF.

349. CCH and WHS had a duty to properly screen, supervise, educate, and train its employees regarding PLAINTIFF and inmates with similar health conditions within the facility.

350. CCH and WHS had a duty to properly screen, supervise, educate, and train its employees regarding proper diagnosis and treatment of inmates with cirrhosis of the liver.

351. On information and belief, CCH and WHS failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat

and manage PLAINTIFF's multiple medical conditions, including the emergent cirrhosis of the liver and related health conditions.

352. CCH and WHS are bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCH AND WHS C) accreditation under the terms of the GSC.

353. CCH and WHS do not comply with ACA, NCCH AND WHS C or New Mexico standards of healthcare.

354. As a result of the foregoing, PLAINTIFF has suffered damages and injuries including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress, for which he is entitled to damages.

355. The actions of CCH and WHS DEFENDANTS were negligent, willful, wanton, and in gross and reckless disregard for PLAINTIFF's well-being entitling PLAINTIFF to punitive damages thereon.

**COUNT V: NEGLIGENT OPERATION OF A MEDICAL FACILITY
(NMCD DEFENDANTS)**

356. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

357. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

358. NMCD has authority over all NMCD correctional facilities, including NWNMCF.

359. NMCD has authority and control over the operation of all medical facilities within NMCD correctional facilities, including those within NWNMCF.

360. NMCD is the contracting party to the GSC entered into between NMCD and CCH on June 1, 2016.

361. NMCD has sole authority, control and responsibility over the execution, implementation and enforcement of the GSC.

362. NMCD has allowed numerous serious breaches and violations of the GSC, ACA and NCCHC that led to the medical neglect of PLAINTIFF.

363. NMCD and CCH are entrusted with the medical care of New Mexico inmates who have no other source of medical care.

364. CCH's medical staff at NWNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

365. CCH has a duty under the GSC, ACA and NCCHC to properly refer PLAINTIFF to be seen by a physician who could effectively treat him.

366. NMCD DEFENDANTS refused or otherwise failed to enforce these provisions of the GSC, ACA and NCCHC.

367. NMCD DEFENDANTS knew that CCH was not abiding by the terms of the GSC, ACA and NCCHC.

367. NMCD DEFENDANTS knew that CCH was not properly and adequately treating PLAINTIFF's medical condition.

368. NMCD DEFENDANTS knew that CCH was not referring PLAINTIFF to outside medical healthcare providers who could effectively and prudently treat him.

369. Such conduct amounts to negligence in running a medical facility.

370. Such conduct amounts to negligence in the treatment of PLAINTIFF.

371. The actions of NMCD were negligent, willful, wanton, and in gross and reckless disregard for PLAINTIFF's well-being.

372. NMCD DEFENDANTS have knowingly allowed, aided and abetted in CCH's failure to obtain and maintain ACA and NCCHC accreditation.

373. CCH has violated numerous provisions of ACA and NCCHC.

374. NMCD DEFENDANTS have taken no action to correct these violations or otherwise hold CCH to ACA, NCCHC or New Mexico medical standards of care.

375. NMCD DEFENDANTS have been complicit in the failure to adhere to the basic constitutional correctional health care set forth by the NCCHC through NMCD's failure to enforce the GSC.

376. NMCD DEFENDANTS have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

377. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the GSC.

378. NMCD DEFENDANTS have failed to enforce the following provisions of the GSC:

- a. The establishment of an electronic medical records system which is in fact required by both the contract and is in fact required under federal law; and
- b. All provisions related to ACA and NCCHC accreditation and compliance.

379. NMCD is solely responsible for providing adequate health care to those it incarcerates, and to protect those inmates from risks associated with increased risks of infection or other medical emergencies.

380. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates.

381. NMCD has clinical oversight of its contractor's medical decision-making and health services operation.

382. NMCD must enforce contracts with its independent medical contractors and/or terminate independent medical contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

383. NMCD did not enforce the GSC or take proper enforcement actions against CCH, MHM and WHS, resulting in inadequate healthcare to its inmates.

384. The failures of NMCD DEFENDANTS led to serious and permanent harm to PLAINTIFF.

385. As a result of the foregoing, PLAINTIFF suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress for which PLAINTIFF is entitled to damages.

**COUNT VI: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(CCH, MHM and WHS)**

386. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

387. CCH, MHM and WHS had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with cirrhosis of the liver.

388. On information and belief, CCH, MHM and WHS failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's emergent cirrhosis of the liver and related health conditions.

389. CCH, MHM and WHS had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with cirrhosis of the liver.

390. CCH, MHM and WHS are bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation under the terms of the GSC.

391. CCH, MHM and WHS have not established any standards for medical care.

392. CCH, MHM and WHS have not trained or supervised its employees, staff and agents in any standards of medical care.

393. CCH, MHM and WHS negligent hiring, training and supervision were the proximate cause of PLAINTIFF's injuries and damages for which PLAINTIFF is entitled to injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

394. CCH, MHM and WHS negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of PLAINTIFF.

395. PLAINTIFF is entitled to recovery for his injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

396. PLAINTIFF is entitled to punitive damages against CCH, MHM and WHS.

397. Waivers of immunity apply to this Count under NMSA 41-4-6, NMSA 41-4-9 and NMSA 41-4-10

**COUNT VII: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(NMCD DEFENDANTS)**

398. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

399. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

400. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of emergent cirrhosis of the liver.

401. On information and belief, NMCD failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's emergent cirrhosis of the liver and related health conditions.

402. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of emergent cirrhosis of the liver.

403. Waivers of immunity apply to this Count under NMSA 41-4-6, NMSA 41-4-9 and NMSA 41-4-10.

404. NMCD established but failed to enforce any standards for medical care.

405. NMCD failed to enforce the MEDICAL SERVICES CONTRACT.

406. NMCD failed to exercise supervisory authority inherent in the grievance system.

407. NMCD has not trained or supervised its employees, staff and agents in any standards of medical care.

408. NMCD's negligent hiring, training and supervision were the proximate cause of PLAINTIFF's injuries and damages for which PLAINTIFF is entitled to injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

409. NMCD's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of PLAINTIFF.

410. PLAINTIFF is entitled to recovery for his injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

**COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CCH, MHM AND WHS DEFENDANTS)**

411. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

412. CCH, MHM, WHS and CCT DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his emergent cirrhosis of the liver.

413. CCH, MHM, WHS and CCT DEFENDANTS failed to take action to provide proper medical care despite numerous sick calls and/or grievances thereon.

414. The conduct of CCH, MHM, WHS and CCT DEFENDANTS was extreme, outrageous and intentional.

415. PLAINTIFF suffered severe emotional distress as a result of the conduct of Defendants.

416. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages, including punitive damages.

**COUNT IX: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE
(CCH, MHM, WHS and CCT DEFENDANTS)**

417. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

418. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS, CCH, MHM, WHS and CCT DEFENDANTS to deny PLAINTIFF necessary, proper and constitutionally minimal medical care.

419. As a result of said conspiracy, PLAINTIFF suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, CCH, MHM, WHS and CCT DEFENDANTS.

420. PLAINTIFF is entitled to recovery for his injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

421. PLAINTIFF is entitled to damages, including punitive damages, against CCH, MHM, WHS and CCT DEFENDANTS.

422. There is no Tort Claims Act waiver for civil conspiracy for NMCD.

423. There is a pattern of missing medical records in the weeks leading up to hospitalization including in this case where records were missing for 49 days leading up to PLAINTIFF's hospitalization at UNMH.

424. This pattern suggests concealment or destruction of medical records.

425. The pattern also suggests conspiracy between NMCD and Centurion in the denial of inmates, including PLAINTIFF, the legal rights to their medical records under state and federal law.

426. PLAINTIFF is entitled to punitive damages against CCH, MHM, WHS and CCT DEFENDANTS.

**COUNT X: RESPONDEAT SUPERIOR AND AGENCY
(CCH, MHM and WHS)**

427. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

428. CCH, MHM and WHS is responsible to PLAINTIFF under the doctrine of respondeat superior for the conduct of its employees, staff and agents.

429. CCH, MHM and WHS is responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

**COUNT XI: RESPONDEAT SUPERIOR AND AGENCY
(NMCD)**

430. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

431. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

432. NMCD is responsible to PLAINTIFF under the doctrine of respondeat superior for the conduct of its employees, staff and agents.

433. NMCD is responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

**COUNT XII: RES IPSA LOQUITUR
(ALL DEFENDANTS)**

434. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

435. The injuries and damages suffered by PLAINTIFF were proximately caused by wanton, willful and reckless actions and inactions ALL DEFENDANTS.

436. It was CCH, MHM and WHS responsibility to manage and control their medical staff and the care and treatment of PLAINTIFF.

437. The events causing the injuries and damages to PLAINTIFF were of a kind which would not ordinarily occur in the absence of negligence on the part of CCH, MHM, WHS and CCT DEFENDANTS.

438. The doctrine of res ipsa loquitur is applicable as a theory of negligence, causation and damages in this case and appropriately pled herein.

439. PLAINTIFF is entitled to recovery for his injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

440. PLAINTIFF is entitled to punitive damages against CCH, MHM, WHS and CCT DEFENDANTS.

COUNT XIII: PUNITIVE DAMAGES
(CCH, MHM, WHS and CCT DEFENDANTS)

441. PLAINTIFF incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

442. The acts and omissions complained of in the causes of action stated above, upon information and belief, are believed to be of such an egregious nature, in reckless, wanton, willful and total disregard to the rights of PLAINTIFF, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future, may well be appropriate.

WHEREFORE, PLAINTIFF requests judgment as follows:

A. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to PLAINTIFF;

B. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for MHM and CCH DEFENDANTS' intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against CCH, MHM, WHS and CCT DEFENDANTS;

D. Costs incurred by PLAINTIFF, including pre-judgment and post-judgment interest; and

E. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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-and-

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