

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

JONATHAN AYALA,

Plaintiff,

v.

No. D-101-CV-2021-02307

WEXFORD HEALTH SOURCES, INC.; NEW MEXICO CORRECTIONS DEPARTMENT; and JOHN DOES 1-10 in their individual and official capacities, (employees, staff, agents of Wexford Health Sources, Inc., and New Mexico Corrections Department, respectively).

Case assigned to Mathew, Francis J.

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

COMES NOW, the Plaintiff, JONATHAN AYALA, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and GUEBERT GENTILE & PIAZZA, P.C. (Terry R. Guebert, Robert F. Gentile and Elizabeth Piazza), and for his cause of action states as follows:

I. PARTIES

A. PLAINTIFF

1. JONATHAN AYALA (“Mr. Ayala”) was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.

2. Mr. Ayala, at the time of the original incident as set forth below, was an inmate at Guadalupe County Correctional Facility (“GCCF”), Central New Mexico Correctional Facility (“CNMCF”) and Northwest New Mexico Correctional Facility (“NWNMCF”), all of which are NMCD prison facilities.

3. Mr. Ayala is no longer in the custody of NMCD and is currently residing in Santa Fe, New Mexico.

B. NEW MEXICO CORRECTIONS DEPARTMENT

4. DEFENDANT NMCD, GCCF, CNMCF and NWNMCF are entities of the State of New Mexico.

5. GCCF at times relevant to this Complaint was operated by The Geo Group, Inc. (“GEO”).

6. CNMCF is operated by NMCD.

7. NWNMCF at times relevant to this Complaint was operated by CoreCivic of Tennessee, Inc.

8. NMCD retains ultimate authority and responsibility over GCCF all NMCD correctional facilities which are operated in accordance with NMCD rules, policies and procedures.

9. NMCD is responsible for contracting of medical services for all NMCD facilities including GCCF, CNMCF and NWNMCF.

10. At all material times, NMCD acted through its employees, staff and agents.

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

12. NMCD governs GCCF, CNMCF and NWNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

C. WEXFORD HEALTH SOURCES, INC.

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

14. Wexford is foreign profit corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico.

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

16. John Doe named employees, staff and agents will be collectively referred to as Wexford DEFENDANTS.

II. JURISDICTION AND VENUE

17. All acts complained of herein occurred in Guadalupe and Grants Counties, New Mexico.

18. A Tort Claims Notice was timely sent on 3/17/21 and 7/7/21, respectively. **PEX 1 & 2.**

19. Mr. Ayala is not imprisoned at the time of filing of this Complaint so 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11 do not apply.

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

21. Jurisdiction and venue are proper over Wexford’s 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.

22. This Court has jurisdiction over the subject matter of Mr. Ayala'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, NMSA § 38-3-1 (A) and NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

23. 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

A. *MEDICAL FACTS*

24. Jonathan Ayala was at the time relevant to this complaint a 26-year-old male NMCD inmate.

25. Mr. Ayala had a significant history of intravenous drug abuse with suboxone.

26. As of 01/26/2021, Mr. Ayala reported fever which was at that time 3 days in duration. Mr. Ayala was noted to have tachycardia, tachypnea and a lab investigation done revealed leukocytosis.

27. All Persons who inject drugs exhibiting signs of systemic infection including fever, tachycardia, tachypnea, hypotension, and leukocytosis, should be referred to an emergency department or admitted to an acute care hospital for blood cultures and a full history and physical examination to determine the source of potential infections including infective endocarditis.

28. Wexford medical providers failed to refer Mr. Ayala for further evaluation of fever with signs of systemic infection like tachycardia, tachypnea, leukocytosis in the setting of intravenous drug usage on 01/26/2021.

29. Mr. Ayala also had signs and symptoms that necessitated further evaluation during his subsequent visits from 01/27/2021 to 02/02/2021 as noted below. However, Mr. Ayala

was not appropriately referred for further evaluation during the period from 01/27/2021 to 02/02/2021.

a) On 01/27/2021, Mr. Ayala had a welfare check at which time he stated that he was unable to the bathroom for several days. Vitals were noted as BP 116/57, pulse 117, respiratory rate 20, SpO2 99%. Physical exam was positive for macular erythema in bilateral upper extremities. He was diagnosed with viral infection, urinary tract infection and drug reaction – rash and was ordered TMP SMZ DS twice daily for 3 days.

b) On 01/28/2021, Mr. Ayala had a progress visit at which time he reported body aches, nausea, and headache.

c) Lab investigation done on 01/29/2021 revealed elevated levels of WBC 12.12 and decreased levels of platelets 99.

d) On 01/31/2021, Mr. Ayala complained of weakness. He also complained of diarrhea, vomiting, pain to mid spine on palpation and sharp neck pain.

e) On 01/31/2021 at 1440 hours, vitals were noted as BP 131/79, heart rate 140 and temperature 99.0.

f) On 02/01/2021, Mr. Ayala had an interdisciplinary progress visit/ follow up secondary to IVDU with report of infection initially at the left side of his neck. Vitals were noted as BP 117/80, pulse rate 124, respiratory rate 22, temperature 99.8 F, SpO2 93% on room air. He was assessed with IVDU/ related acute hepatitis and was advised Doxycycline 100 mg per oral twice daily for 10 days; Rocephin 1 gram IM x 7 days and APAP 325 mg per oral every 6 hours x 3 days.

g) On 02/02/2021, Mr. Ayala had an interdisciplinary progress visit as he was unable to ambulate for IM injection. He was wheeled down to medical by a nurse. He was alert, awake and oriented x 3, ambulated with decreased movement bilaterally to lower extremity. Mr. Ayala reported extreme pain bilaterally in his lower extremities.

30. Mr. Ayala was finally transferred to UNMH emergency department on 02/03/2021.

31. The following medical providers (hereinafter “DEFENDANT MEDICAL PROVIDERS”) failed to conduct proper diagnostics, failed to conduct a differential diagnosis, and failed properly refer Mr. Ayala out for proper diagnostics despite clear signs of a serious emergent infection and the risks of endocarditis under the circumstances:

a)

Noted by
J. Neisander
1-26-21 @ 1830

b)

4/27/20 e bis

c)

STATION 104A

d)

ABAC

e)

Provider's Signature [Signature] Date/Time 1-26-2020
Noted by J. Misanin Date/Time 1-26-20 @ 1830

f)

Provider's Signature [Signature] Date/Time 1-26-21
Noted by J. Misanin Date/Time 1-26-21 @ 1800

g)

Provider's Signature [Signature] Date/Time 1-26-21
Noted by K. Burtram LN Date/Time 1/26/21 @ 2200

h)

Provider's Signature [Signature] Date/Time 1-27-21
Noted by J. Misanin Date/Time 1-27-21 @ 1045

i)

Provider's Signature [Signature] Date/Time ~~2-1-21~~ ^{clear} 2-1-21
Noted by [Signature] Date/Time 1/31/21 1405

j)

Provider's Signature [Signature] Date/Time 2-1-21
Noted by [Signature] Date/Time 2-2-21 11:30 am

Allergies: [Signature]

k)

[Signature] 2-1-21
note 2-2-21

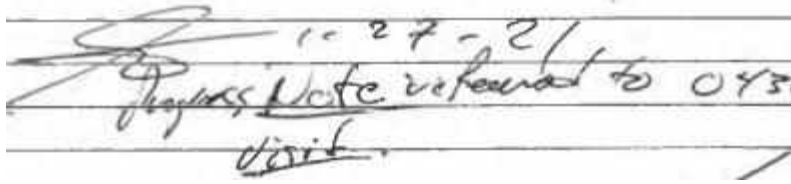
l)

2/2/21 [Signature]
2/3/21 [Signature]

m)

[Signature] 2-3-21

n)



10-27-21
Tort Claims Notice referred to OYS
visit.

32. The failure to conduct proper diagnostics or refer Mr. Ayala out for diagnostics was grossly negligent, reckless, and deliberately indifferent to the health and safety of Mr. Ayala.

33. The result was an easily avoidable delay in diagnosis of infective endocarditis resulted in severe sepsis secondary to presumed bacteremia, multiple pulmonary septic emboli, splenic infarct and multiorgan failure - acute heart failure & acute kidney injury.

34. Mr. Ayala was hospitalized at the University of New Mexico Hospital (UNMH) from 02/03/2021-04/13/2021.

35. Following release from UNMH, Mr. Ayala was transferred to the Long-Term Care Unit at CNMCF where he remained until his transfer to NWNMCF.

36. Mr. Ayala has suffered severe and permanent damage to his heart and other organs.

37. Mr. Ayala suffered extreme pain, which was deliberately and callously ignored by Wexford acting through its employees, staff and agents.

38. Since his transfer to NWNMCF, Mr. Ayala's medical condition had been neglected further necessitating an additional Tort Claims Notice. **PEX 2.**

B. FACTS SPECIFIC TO NMCD DEFENDANTS

39. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within GCCF.

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

41. NMCD has the authority to terminate contracts with independent contractors with or without cause.

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

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

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

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

46. NMCD is supposed to work with Wexford in addressing and/or resolving inmate medical grievances.

47. NMCD routinely ignores medical grievances.

48. NMCD routinely destroys medical grievances.

49. NMCD routinely fails to process medical grievances correctly.

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

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

52. During the term of the PSC, NMCD did not find in favor of a single NMCD inmate housed at GCCF.

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

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

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

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

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

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

59. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis and with wanton, willful and deliberate indifference ignored

60. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of PLAINTIFF's medical history, IVDU history and consequent risks of infection and endocarditis and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

61. NMCD understands and recognizes that failure to treat a patient with Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis constitutes recklessness under New Mexico law.

62. NMCD understands and recognizes that failure to treat a patient with Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis constitutes deliberate indifference under federal law.

63. NMCD had full authority to enforce the PSC.

64. NMCD had at all times relevant to this COMPLAINT the authority to compel its Wexford to treat patient with Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis.

65. NMCD has obtained substantial budgets for treatment of inmates with Mr. Ayala's medical history medical history, IVDU history and consequent risks of infection and endocarditis.

66. NMCD pays millions of dollars to its Wexford for treatment of inmates with Mr. Ayala's medical history medical history, IVDU history and consequent risks of infection and endocarditis.

67. NMCD recklessly chose not to exercise any control over the manner in which Wexford, acting by and through its employees, staff and agents, performed its duties leading to the uncontrolled a virtual epidemic of out-of-control infections leading to untold hospitalizations, amputations, spinal osteomyelitis and sepsis, brain infections and heart infections including endocarditis. Many of these cases have resulted in the easily avoidable deaths of inmates. At best, these cases have resulted in weeks or months of avoidable hospitalizations for each inmate the costs for which are paid by Medicaid.

68. NMCD recklessly chose not to exercise any control over the manner in which its Wexford performed their duties leading to Mr. Ayala's infective endocarditis, sepsis secondary to presumed bacteremia, multiple pulmonary septic emboli and multiorgan failure - acute heart failure & acute kidney injury.

69. As a result of the gross neglect, reckless disregard and deliberate indifference to Mr. Ayala's emergent infection and risks of severe complications, Mr. Ayala spent 69 days at UNM Hospital (UNMH).

C. *FACTS SPECIFIC TO WEXFORD HEALTH SOURCES, INC. DEFENDANTS*

70. The facts set forth above illustrate gross negligence and a reckless disregard for the health and safety of Mr. Ayala by Wexford, acting through its employees, staff and agents.

71. The gross negligence and recklessness of Wexford, acting through its employees, staff and agents led to severe and permanent injuries to Mr. Ayala.

72. Wexford submitted a TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 ("Wexford TechProp") for Inmate Medical Services dated August 21, 2019.

73. Wexford TechProp was over 830 pages long.

74. Wexford TechProp did not mention the Tort Claims Act.

75. Wexford TechProp did not mention the word "tort."

76. Wexford TechProp did not mention punitive damages.

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

78. Professional Services Contract ("PSC") # 20-770-1200-0043 was executed by NMCD and Wexford on or about October 18, 2019.

79. The PSC was 65 pages in length.

80. The PSC did not mention the Tort Claims Act.
81. The PSC did not mention the word “tort.”
82. The PSC did not mention punitive damages.
83. The PSC did not provide for Tort Claims Act protection for Wexford, MHM or their respective employees, staff, and agents.
84. Tort Claims Act protection for Wexford and/or their respective employees, staff and agents was not negotiated, bargained for, or agreed upon.
85. Protection from punitive damages for Wexford, and/or their respective employees, staff and agents was not negotiated, bargained for, or agreed upon.
86. The PSC was entered freely by Wexford on or about October 18, 2019.
87. The PSC was in effect at times relevant to this Complaint.
88. Wexford had the legal capacity to enter the PSC.
89. Wexford was legally competent to enter the PSC.
90. There was mutual assent on the part of Wexford and NMCD in the negotiation and execution of the PSC.
91. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.
92. The PSC was not vague.
93. The PSC was not oppressive to Wexford.
94. The PSC was not void as a matter of public policy.
95. Wexford is and was at all relevant times bound by the terms of the PSC.
96. The PSC is fully enforceable against Wexford as written and executed.

97. By the terms of the PSC, Wexford is an independent contractor performing professional services for the Agency.

98. By the terms of the PSC, 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.

99. By the terms of Paragraph 9 of the PSC, Wexford is an independent contractor performing general services for the Agency.

100. By the terms of Paragraph 9 of the PSC, Wexford is not an employee of the State of New Mexico.

101. By the terms of Paragraph 9 of the PSC, Wexford employees and agents are independent contractors.

102. By the terms of Paragraph 9 of the PSC, Wexford employees and agents are not employees of the State of New Mexico.

103. In its Wexford TechProp, which culminated in the PSC, Wexford 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.

104. The PSC states the same insurance coverage for Wexford:

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.

105. The PSC requires Wexford 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.

106. Upon information and belief, Wexford is not licensed and was not licensed at times relevant to this Complaint to practice medicine in New Mexico.

107. Upon information and belief, Wexford is not and was not at times relevant to this Complaint covered by the New Mexico Public Liability Fund.

108. Upon information and belief, the employees and staff of Wexford were not covered by the New Mexico Public Liability Fund during the term of the PSC.

109. Wexford was paid over fifty-eight million dollars \$58,000,000.00 in the first year of the PSC.

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

111. Wexford DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis and failed to provide necessary and proper medical care to protect Mr. Ayala's health and safety.

D. FACTS COMMON TO ALL DEFENDANTS

112. DEFENDANT MEDICAL PROVIDERS knew of Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis and with wanton, willful and deliberate indifference ignored Mr. Ayala's medical grievances and deliberately refused to provide necessary and proper medical care.

113. ALL DEFENDANTS collectively knew of Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis and with wanton, willful and deliberate indifference ignored Mr. Ayala's medical grievances and deliberately refused to provide necessary and proper medical care.

114. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis and with wanton, willful and deliberate indifference ignored Mr. Ayala's medical grievances and deliberately refused to provide necessary and proper medical care.

115. ALL DEFENDANTS knew that Mr. Ayala was in need of immediate treatment to control Mr. Ayala's chronic medical history, IVDU history and consequent risks of infection and endocarditis.

116. ALL DEFENDANTS knew that Mr. Ayala's chronic medical history, IVDU history and consequent risks of infection and endocarditis was worsening.

117. ALL DEFENDANTS knew that the failure to treat chronic medical history, IVDU history and consequent risks of infection and endocarditis constitutes recklessness under New Mexico law.

118. ALL DEFENDANTS knew that the failure to treat chronic medical history, IVDU history and consequent risks of infection and endocarditis constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

119. ALL DEFENDANTS knew that the failure to treat chronic medical history, IVDU history and consequent risks of infection and endocarditis constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

120. ALL DEFENDANTS were complicit and acquiesced in the denial of proper medical care to Mr. Ayala.

121. ALL DEFENDANTS conspired together to deny Mr. Ayala 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 Mr. Ayala's chronic medical history, IVDU history and consequent risks of infection and endocarditis which resulted in infective endocarditis, sepsis secondary to presumed bacteremia, multiple pulmonary septic emboli and multiorgan failure - acute heart failure & acute kidney injury

COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE (Wexford)

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

123. In undertaking the diagnosis, care and treatment of Mr. Ayala, DEFENDANT MEDICAL PROVIDERS, 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.

124. Wexford, their employees, staff and agents breached their duties and were negligent in the management of Mr. Ayala's health and well-being.

125. The negligence, deliberate acts, errors and other acts and omissions of Wexford 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 Mr. Ayala's medical condition;

c. Failure to take the reasonable steps to acquire proper treatment of Mr. Ayala;

d. Failure to refer Mr. Ayala to appropriate specialists;

e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of medical history, IVDU history and consequent risks of infection and endocarditis;

f. Failure to provide Mr. Ayala with necessary and proper pain management;
and

g. Failure to protect and preserve the health of Mr. Ayala.

126. As a direct and proximate result of the negligent acts and omissions Wexford, their employees, staff and agents, Mr. Ayala suffered a rapid and significant deterioration in Mr. Ayala's health, along with physical, emotional, and psychological pain and suffering not presently determinable, but to be proven at the time of trial.

127. Wexford, its employees, staff and agent's failures to assess, treat and manage Mr. Ayala's medical condition was reckless and wanton with utter disregard for and deliberate indifference to the safety and welfare of Mr. Ayala for which Mr. Ayala is entitled to punitive damages.

COUNT II: NEGLIGENCE (NMCD DEFENDANTS)

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

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

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

131. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to Mr. Ayala.

132. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to Mr. Ayala.

133. NMCD is in charge of enforcement of the terms of the PSC which creates standards and obligations for Wexford's delivery of medical services.

134. NMCD has failed to enforce important provisions of the PSC which led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to Mr. Ayala.

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

136. NMCD determined not to enforce the NCCHC standards.

137. NMCD determined not to enforce the American Correctional Association ("ACA") standards.

138. NMCD's indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD's allowance of Wexford 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 Mr. Ayala.

139. 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.

140. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates, including Mr. Ayala.

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

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

143. NMCD did not enforce the PSC or take proper enforcement actions against Wexford, resulting in inadequate healthcare to its inmates.

144. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Mr. Ayala.

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

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

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

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

148. NMCD has authority over all NMCD correctional facilities, including GCCF.

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

150. NMCD is the contracting party to the PSC entered into between NMCD and Wexford on June 1, 2016.

151. NMCD has sole authority, control and responsibility over the execution, implementation, and enforcement of the PSC.

152. NMCD has allowed numerous serious breaches and violations of the PSC, NCCHC that led to the medical neglect of Mr. Ayala.

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

154. Wexford's medical staff at GCCF lacked sufficient expertise to assess, treat and manage Mr. Ayala's health conditions.

155. Wexford has a duty under the PSC, NCCHC to properly refer Mr. Ayala to be seen by a physician who could effectively treat Mr. Ayala.

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

157. NMCD DEFENDANTS knew that Wexford was not abiding by the terms of the PSC, ACA and NCCHC.

158. NMCD DEFENDANTS knew that Wexford was not properly and adequately treating Mr. Ayala's medical condition.

159. NMCD DEFENDANTS knew that Wexford was not referring Mr. Ayala to outside medical healthcare providers who could effectively and prudently treat Mr. Ayala.

160. NMCD knew that Wexford corporate administrators were making costs rather than medically based decisions on referrals of inmates, including Mr. Ayala, to proper specialists.

161. NMCD knew that Wexford corporate administrators were routinely denying referrals of inmates to specialists on costs rather than medical grounds.

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

163. Such conduct amounts to negligence in the treatment of Mr. Ayala.

164. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of Mr. Ayala.

165. Wexford has violated numerous provisions of ACA and NCCHC.

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

167. NMCD DEFENDANTS have been complicit in the failure to adhere to the basic constitutional correctional healthcare set forth by the NCCHC through NMCD's failure to enforce the PSC.

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

169. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the PSC.

170. NMCD DEFENDANTS have failed to enforce the following provisions of the PSC:

- 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;
- b. All provisions related to NCCHC accreditation and compliance; and
- c. Referral of inmates to specialists when necessary for inmate health.

171. NMCD is ultimately 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.

172. Due to the epidemic of MRSA, osteomyelitis, and other infection disease in NMCD facilities state-wide, including GCCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of Mr. Ayala.

173. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including Mr. Ayala.

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

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

176. NMCD did not enforce the PSC or take proper enforcement actions against Wexford, resulting in inadequate healthcare to its inmates, including Mr. Ayala.

177. The failures of NMCD DEFENDANTS led to serious and permanent harm to Mr. Ayala.

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

COUNT IV: NEGLIGENT HIRING, TRAINING AND SUPERVISION (Wexford)

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

180. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering medical history, IVDU history and consequent risks of infection and endocarditis.

181. On information and belief, Wexford failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage Mr. Ayala's medical history, IVDU history and consequent risks of infection and endocarditis.

182. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of diabetic patients.

183. Wexford are bound by the PSC to obtain and maintain NCCHC accreditation under the terms of the PSC.

184. Wexford have not established any standards for medical care.

185. NMCD routinely violates NMCD and the PSC medical treatment and care policies and provisions.

186. Wexford have not trained or supervised its employees, staff and agents in any standards of medical care.

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

188. Wexford 's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of Mr. Ayala.

189. Wexford had a duty to allow Mr. Ayala's medical providers to make referrals to specialist.

190. Wexford breached this duty with decisions for referral of inmates made by Wexford corporate administrators rather than inmate medical providers.

191. No referral to a specialist may be made without first gaining approval from Wexford corporate administrators.

192. On-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of Wexford corporate administrators.

193. Approval of referrals by Wexford corporate administrators are made on costs rather than medical grounds.

194. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by Wexford administrators to approve referrals to specialists.

195. Mr. Ayala is entitled to recovery for Mr. Ayala's injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

196. Mr. Ayala is entitled to punitive damages against Wexford.

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

COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Wexford)

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

199. Wexford DEFENDANTS intentionally denied Mr. Ayala proper and necessary medical care for Mr. Ayala’s medical history, IVDU history and consequent risks of infection and endocarditis.

200. Wexford DEFENDANTS failed to take action to provide proper medical care despite numerous sick calls and/or grievances thereon.

201. Wexford DEFENDANTS retaliated against Mr. Ayala by taking away Mr. Ayala’s admission in the Echo Project for treatment of Mr. Ayala’s medical history, IVDU history and consequent risks of infection and endocarditis knowing Mr. Ayala’s medical history, IVDU history and consequent risks of infection and endocarditis was worsening Mr. Ayala’s health conditions, because of a disciplinary action.

202. The conduct of Wexford DEFENDANTS was extreme, outrageous, and intentional and in deliberate disregard for Mr. Ayala’s mental health.

203. Mr. Ayala suffered severe emotional distress as a result of the conduct of DEFENDANTS.

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

COUNT VI: CIVIL CONSPIRACY TO DENY MEDICAL CARE (Wexford)

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

206. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS, Wexford to deny Mr. Ayala necessary, proper and constitutionally minimal medical care.

207. As a result of said conspiracy, Mr. Ayala suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, Wexford.

208. Mr. Ayala is entitled to recovery for Mr. Ayala's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

209. PLAINTIFF is entitled to damages, including punitive damages, against Wexford.

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

211. Mr. Ayala is entitled to punitive damages against Wexford DEFENDANTS.

COUNT VII: RESPONDEAT SUPERIOR AND AGENCY (Wexford)

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

213. Wexford are responsible to Mr. Ayala under the doctrine of *respondeat superior* for the conduct of its employees, staff, and agents.

214. Wexford are responsible to Mr. Ayala under the doctrine of agency for the conduct of its employees, staff, and agents.

COUNT VIII: RES IPSA LOQUITUR (ALL DEFENDANTS)

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

216. The injuries and damages suffered by Mr. Ayala were proximately caused by wanton, willful and reckless actions, and inactions ALL DEFENDANTS.

217. It was the responsibility of Wexford to manage and control their medical staff and the care and treatment of Mr. Ayala.

218. The events causing the injuries and damages to Mr. Ayala were of a kind which would not ordinarily occur in the absence of negligence on the part of Wexford DEFENDANTS.

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

220. Mr. Ayala is entitled to recovery for Mr. Ayala's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

221. Mr. Ayala is entitled to punitive damages against Wexford DEFENDANTS.

COUNT IX: PUNITIVE DAMAGES (Wexford)

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

223. 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, deliberate and total disregard to the health of Mr. Ayala, 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, Mr. Ayala 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 Mr. Ayala;

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

C. Punitive damages in an undetermined amount against Wexford;

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

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

Respectfully Submitted:

COLLINS & COLLINS, P.C.

/s/ Parrish Collins

Parrish Collins
P. O. Box 506
Albuquerque, NM 87103
505-242-5958
parrish@collinsattorneys.com

-and-

GUEBERT GENTILE & PIAZZA, P.C.

/s/ Elizabeth Piazza

Terry R. Guebert

Robert Gentile

Elizabeth Piazza

P.O. Box 93880

Albuquerque, NM 87109

(505) 823-2300

tguebert@guebertlaw.com

rgentile@guebertlaw.com

epiazza@guebertlaw.com

Attorneys for Plaintiff

COLLINS & COLLINS, P.C.

Attorneys at Law
P. O. Box 506
Albuquerque, NM 87103
Telephone: (505) 242-5958 Fax (505) 242-5968

March 17, 2021

Via Fax only to (505) 827-8533

Mr. Brian Fitzgerald
General Counsel
New Mexico Corrections Department
P. O. Box 27116
Santa Fe, NM 87502-0116

Via Fax only to (505) 827-2969

Risk Management Claims Bureau
P.O. Box 6850
Santa Fe, NM 87502

Re: **Subject:** Jonathan Ayala (NMCD 83504)
 Date of Incident: On or about January 7, 2021
 Location: Guadalupe County Correctional Facility (GCCF)
 Violations of Law: Deliberate Indifference to the Health and Safety of Subject

Gentlemen\Mesdames:

This letter is intended to provide written notice to the above captioned parties under the Tort Claims Act, NMSA 1978, §§ 41-4-1 to -4-27 regarding the actions and inactions of the Guadalupe County Correctional Facility (GCCF) its employees, staff contractors and other agents in their negligence and deliberate indifference to the health of Jonathan Ayala.

Please accept this of Notice of Claims for medical malpractice and related claims against both NMCD and its medical provider, Wexford.

Facts:

The facts as we understand them now are as follows. Mr. Jonathan Ayala is currently in the Intensive Care Unit (ICU) at the University of New Mexico Hospital in Albuquerque upon transfer from the Guadalupe County Correctional Facility. He was apparently admitted on or about January 7, 2021 with a massive level of infection. Mr. Ayala's mother, Jackline Ortiz, was not notified by prison administrative personnel and was unaware that her son had been admitted to the hospital until a physician from UNMH contacted her on or about March 3, 2021 to seek her consent to heart surgery for Mr. Ayala. Ms. Ortiz reports that the physician advised her that he was suffering from severe infection and organ failure related thereto. Mr. Ayala remains in the ICU at UNMH.

Preservation of Evidence:

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Jonathan Ayala including:

1. All medical records, sick call slips, medical grievances, photographs, videos, investigative files, communications, audit trails, audit log files, reports or any other documents and evidence.
2. All communications of whatsoever kind related to Mr. Ayala the #1 above and his medical care generally to include mail, emails, text, electronic messaging, voicemails, memoranda, or other communications related to the medical care of Mr. Ayala.
3. His complete, unredacted inmate file including all disciplinary records and a full location history.
4. All recorded phone calls, incoming or outgoing, to which Mr. Jonathan Ayala was a party made at any time prior to today's date.

Please also preserve all of the items in #1 and #2 above in the original electronic format in which they are entered, created, stored, maintained and archived.

Thank you for your consideration of this matter.

Sincerely,

COLLINS & COLLINS, P.C.

/s/Parrish Collins

Parrish Collins

PC/gtg

cc: Robert Gentile
David Ketai
Julia Purdy

-----Original Message-----

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, March 17, 2021 12:48 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 015261
Result: OK
End Time: Wed 17 Mar 2021 12:48:15
File Name: 3.17.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058272969

Thanks,

-----Original Message-----

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, March 17, 2021 12:47 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 015260
Result: OK
End Time: Wed 17 Mar 2021 12:47:02
File Name: 3.17.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,

COLLINS & COLLINS, P.C.

Attorneys at Law
P. O. Box 506
Albuquerque, NM 87103
Telephone: (505) 242-5958 Fax (505) 242-5968

July 7, 2021

Via Fax only to (505)-827-8533

Mr. Brian Fitzgerald
General Counsel
New Mexico Corrections Department
P. O. Box 27116
Santa Fe, NM 87502-0116

Via Fax only to (505)-827-2969

Risk Management Claims Bureau
P.O. Box 6850
Santa Fe, NM 87502

Via Fax only to (505)-827-8533

Secretary Alisha Tafoya-Lucero
P.O. Box 27116
Santa Fe NM 87502-0116

Via Fax only to (505)-476-2226

Governor Michelle Lujan-Grisham
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501

Re: **Subject:** Jonathan Ayala (NMCD 83504)
Date of Incident: July 6, 2021 and on-going
Location: Northwest New Mexico Correctional Facility (NWNMCF)
Violations of Law: Deliberate Indifference to the Health and Safety of Subject

Gentlemen\Mesdames:

This letter is intended to provide written notice to the above captioned parties under the Tort Claims Act, NMSA 1978, §§ 41-4-1 to -4-27 regarding the actions and inactions of the Guadalupe County Correctional Facility (GCCF) its employees, staff contractors and other agents in their negligence and deliberate indifference to the health of Jonathan Ayala.

Please accept this of Notice of Claims for medical malpractice and related claims against both NMCD and its medical provider, Wexford.

Facts:

Mr. Ayala recently suffered life-threatening endocarditis which resulted in a coma and many weeks of hospitalization. He was housed at the LTCU since release from the hospital until his recent transfer to NWNMCF. Since his transfer to NWNMCF, he has been experiencing severe chest pain. He has submitted numerous sick calls requesting a referral to a heart specialist which has been repeatedly denied. Failure to refer him to heart specialist is deliberate indifference to his serious medical needs. It is particularly egregious, in light of the fact that the recklessness and

deliberate indifference of Wexford and NMCD is what led to his endocarditis and hospitalization in the first place. He filed an informal yesterday upon my instruction.

Preservation of Evidence:

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Jonathan Ayala including:

1. Any and all log files for the duration of Mr. Ayala's incarceration at the NWNMCF.
2. The full and complete inmate file for Mr. Ayala.
3. All booking and intake documents for Mr. Ayala.
4. All medical records obtained or otherwise received for Mr. Ayala.
5. All requests by NWNMCF its staff, agents, or contractors, for Mr. Ayala's medical records from any outside medical providers.
6. All correctional officer daily logs for the duration of Mr. Ayala's incarceration at the NWNMCF.
7. All cell check logs for checks on Mr. Ayala for the duration of incarceration at the NWNMCF.
8. All other video and audio recordings related to the subject:
9. All recorded calls involving Mr. Ayala as a party to the call.
10. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
 - a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
 - b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
 - c. "photograph" means a photographic image or its equivalent stored in any form.
11. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic

July 7, 2021
Jonathan Ayala
Page 3

records must be maintained and preserved even if there are hard copy printouts of said records.

12. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with Mr. Ayala.

Please, also preserve all of the items in #1 and #2 above in the original electronic format in which they are entered, created, stored, maintained and archived.

Thank you for your consideration of this matter.

Sincerely,

COLLINS & COLLINS, P.C.

/s/Parrish Collins

Parrish Collins

PC/gtg

cc: Jim Reinhart, Wexford Health Sources

-----Original Message-----

From: ccapscans@gmail.com <ccapscans@gmail.com>
Sent: Wednesday, July 7, 2021 4:13 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 017368
Result: OK
End Time: Wed 07 Jul 2021 16:12:35
File Name: 7.7.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,

-----Original Message-----

From: ccapscans@gmail.com <ccapscans@gmail.com>
Sent: Wednesday, July 7, 2021 4:12 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 017367
Result: OK
End Time: Wed 07 Jul 2021 16:11:31
File Name: 7.7.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5054762226

Thanks,

-----Original Message-----

From: ccapscans@gmail.com <ccapscans@gmail.com>
Sent: Wednesday, July 7, 2021 4:10 PM

To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 017366
Result: OK
End Time: Wed 07 Jul 2021 16:09:29
File Name: 7.7.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058272969

Thanks,

-----Original Message-----

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, July 7, 2021 4:08 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 017365
Result: OK
End Time: Wed 07 Jul 2021 16:07:58
File Name: 7.7.21 - TCN with Spoliation and DIL.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,