

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

**NORMAN DEHERRERA,**

**PLAINTIFF,**

v.

Case assigned to Biedscheid, Bryan

Cause No. D-101-CV-2020-02549

**CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC;  
BARRY BEAVEN, MD, EDUARDO CASTREJON, MD,  
MHM HEALTH PROFESSIONALS, LLC;  
STATE OF NEW MEXICO, NEW MEXICO CORRECTIONS DEPARTMENT;  
DAVID JABLONSKI; ANTHONY ROMERO; DAVID SELVAGE; ORION  
STRADFORD; STEVE MADRID; BETTY JUDD  
and JOHN DOES 1-10, (employees, staff, agents of CENTURION Correctional Healthcare  
of New Mexico, LLC, MHM Health Professionals, LLC, CoreCivic of Tennessee, Inc., State  
of New Mexico, New Mexico Correctional Department and Central New Mexico  
Correctional Facility 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. Norman Deherrera (“PLAINTIFF”), 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 an inmate at Central New Mexico Correctional Facility (NWNMCF), a NMCD facility.

3. PLAINTIFF is currently residing in Sapello, San Miguel 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. Northwestern 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 and MHM 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 and MHM 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 and MHM.

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 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, BARRY BEAVEN, MD, and EDUARDO CASTREJON, MD, were the authorized medical authorities in the medical care of PLAINTIFF at all times relevant to this complaint.

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

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

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

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

***D. MHM HEALTH PROFESSIONALS, LLC.***

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

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

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

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

46. MHM was not a party to the GSC.

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

48. 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

49. 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.

50. 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.

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

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

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

54. 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***

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

56. 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.

57. Upon information and belief, the joint venture was formed in anticipation of

Centene Corporation acquiring MHM Services, Inc. which occurred in April 2018.

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

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

60. 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.

61. 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.

62. 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.

63. 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.

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

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

66. 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.

67. Upon information and belief, health care providers at NWNMCF, including individually named Defendants Dr. Barry Beaven and Dr. Eduardo Castrejon, were employed by MHM.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

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

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

76. 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.”

77. 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. SUMMIT FOOD SERVICES, INC.***

78. Summit Food Services, Inc. (hereinafter “SFS”) is under contract with NMCD to provide food and nutrition services to all facilities run by NMCD in the State of New Mexico.

79. SFS is a South Dakota for profit corporation licensed to do business in New Mexico.

80. SFS provides food and nutrition services, at NWNMCF during the term of the GSC.

81. SFS employees and staff provided on-site food and nutrition services to NMCD inmates pursuant to contract with NMCD.

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

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

84. SFS is not entitled to protections under the New Mexico Tort Claims Act.

85. SFS and it's John Doe employees, staff and agents will be referred to herein collectively as SFS Defendants.

#### **G. CORECIVIC OF TENNESSEE**

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

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

87. Betty Judd was at all times relevant to this Complaint, serving as the Warden at NWNMCF.

88. Upon information and belief, Betty Judd was at all times relevant to this Complaint an employee of CCT.

89. Upon information and belief, Betty Judd is a resident of Grants, Cibola County,

New Mexico.

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

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

## **II. JURISDICTION AND VENUE**

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

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

94. 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.

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

96. 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.

97. 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.

98. 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).

99. 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

100. 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*

101. PLAINTIFF was known by DEFENDANTS to have chronic insulin dependent diabetes mellitus and was receiving treatment with insulin and oral hypoglycemic drugs.

102. PLAINTIFF's diabetes was poorly controlled as indicated by his readings on the following dates:

- a) 07/31/2017 - Glucose: 545 (High), HbA1C – 11.3.
- b) 08/31/2017 - Last HbA1C was noted as 11.8
- c) 09/25/2017 - 09/26/2017, 09/28/2017 – Accucheck blood glucose – High
- d) 10/19/2017 - Accucheck blood glucose - High
- e) 11/08/2017 - Glucose: 574 (High), HbA1C: 15.1 (High)
- f) 11/28/2017 - Accucheck blood glucose - High
- g) 12/14/2017 - HbA1C – 15.6.
- h) 12/09/2017, 12/11/2017, 12/12/2017, 12/14/2017, 12/15/2017, 12/18/2017:  
Accucheck blood glucose – High
- i) 12/20/2017 – Glucose: 455, 12/27/2017- Glucose: 374
- j) 01/19/2018 - Glucose: 390 (High)
- k) 01/27/2018 - HbA1C - 15.6.
- l) 02/05/2018 - HbA1C -15
- m) 02/09/2018 - HbA1C -14.4.
- n) 01/11/2019 - HbA1C -9.5.

103. Due to poorly controlled chronic diabetes, the medical providers employed by MHM and hired out to CCH should have taken the following actions to protect PLAINTIFF's health:

a) Rapid addition of medications and transition to new insulin regimens when target glycemic goals are not achieved

b) Dose modification of Lantus & Levemir insulin and addition of rapid acting Insulin injection to basal regimen should have been done to control high blood glucose values.

104. The following medical providers Medical providers failed to take the actions outlined in ¶103 above:



Beaven



ZINK, ROSEMARY

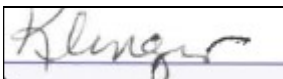
WISE, KONTASHA

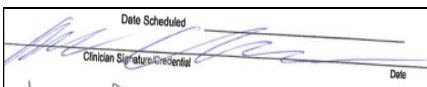
Berry

Chumbain

MANRIQUE, EUGENIA

CASTREJON, EDUARDO





105. The failure to take the actions set forth in ¶103 was grossly negligent, reckless and deliberately indifferent to the medical needs of PLAINTIFF.

106. As a result of the gross negligence, recklessness and deliberate indifference to PLAINTIFF's medical needs, PLAINTIFF's glycemic status was not controlled as evidenced by raised HbA1C and high blood glucose values.

107. Rather than taking the steps in ¶103 to protect the health of PLAINTIFF, the employees of MHM providing medical care to PLAINTIFF through CCH took the following actions that led to the worsening of PLAINTIFF's chronic insulin dependent diabetes mellitus:

a) PLAINTIFF was treated with Lantus Insulin 20 units SC BID from 07/29/2017 to 09/14/2017, single dose of Levemir Insulin at bedtime from 09/15/2017 to 12/11/2017 and Levemir Insulin twice daily from 12/11/2017 till 12/31/2017.

b) PLAINTIFF was treated with oral hypoglycemic agents – Tab. Glipizide 5 mg once daily and Tab. Metformin 500 mg twice daily.

108. As a result of the above-stated grossly negligent, reckless and deliberately indifferent actions and inactions on the part of the employees of MHM providing medical care to PLAINTIFF through CCH, PLAINTIFF suffered the following harm:

a) Diabetic peripheral neuropathy

b) Chronic erosive Gastroesophageal reflux disease (GERD)

109. Despite the onset of diabetic peripheral neuropathy and chronic erosive gastroesophageal reflux disease (GERD), the medical providers employed by MHM providing medical services through CCH to PLAINTIFF still failed to take the clearly called for medical actions outlined in ¶103.

110. Moreover, due to the onset of diabetic peripheral neuropathy and chronic erosive gastroesophageal reflux disease, the medical providers employed by MHM providing medical services through CCH to PLAINTIFF should have immediately modified PLAINTIFF's medications including a new insulin regime due to the failure to reach safe glycemic levels.

111. DEFENDANTS failed to take these steps subjecting PLAINTIFF to further, more serious and permanent harm.

112. The failure to take the medically indicated action in ¶103 and ¶110 was grossly negligent, reckless and deliberately indifferent to the very serious medical needs of PLAINTIFF.

113. The failure to take the medically indicated action in ¶103 and ¶110 led to the following additional injuries and harm to PLAINTIFF:

- a) Right great toe infection
- b) Right 2<sup>nd</sup> toe - hammer toe
- c) Left foot toe - Deformities
- d) Diabetic left great toe non healing ulcer that progressed to left foot osteomyelitis, infected myositis.
- e) Recurrent episodes of chronic erosive Gastroesophageal reflux disease with hematemesis and melena.

114. On 03/01/2019, PLAINTIFF suffered the amputation of his left big toe with removal of distal metatarsal.

115. The injuries suffered by PLAINTIFF were wholly avoidable with proper medical care.

116. The grossly negligent, reckless and deliberately indifferent failures to provide PLAINTIFF with proper medical care led to PLAINTIFF's injuries.



117. There are significant gaps in the medical records provided to PLAINTIFF via HITECH ACT and HIPPA requests for medical records for the periods 07/29/2017 to 03/31/2018, 01/04/2018 to 10/01/2018, 12/14/2018 to 02/28/2019.

118. The 76-day gap in medical records from 12/14/2018 to 02/28/2019 gap immediately preceded the suffered amputation on 03/01/2019.

119. The 76-day gap in medical records suggests not medical care was provided for the 76 days leading up to PLAINTIFF's amputation.

120. The failure to provide medical care for 76 days for a patient suffering chronic insulin dependent diabetes mellitus with the onset of diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations was grossly negligent, reckless and deliberately indifferent to the medical needs of PLAINTIFF.

121. The grossly negligent, reckless and deliberately indifferent medical care provided by the employees of MHM providing medical care to PLAINTIFF through CCH caused extreme physical and emotional pain.

122. PLAINTIFF's physical and emotional pain was completely ignored by DEFENDANTS.

123. PLAINTIFF's physical and emotional pain was deliberately ignored by DEFENDANTS for the purpose of causing unnecessary physical and emotional pain to PLAINTIFF.

#### **B. FACTS SPECIFIC TO NMCD DEFENDANTS**

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

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

126. NMCD routinely ignores medical grievances.
127. NMCD routinely destroys medical grievances.
128. NMCD routinely fails to process medical grievances correctly.
129. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances.
130. Upon information and belief, no medical grievances were found in favor of an inmate from June 2016 to November 2019.
131. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at NWNMCF.
132. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at NWNMCF.
133. NMCD does not consult with objective medical experts in the review of medical grievances.
134. The decision of whether to substantiate a medical grievance is made by non-medical NMCD personnel.
135. DEFENDANT STEVE MADRID is instrumental in the denial of medical grievances.
136. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including PLAINTIFF.
137. NMCD's medical grievance abuses outlined above are a proximate cause of injuries related thereto.

138. 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.

139. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus 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.

140. STEVE MADRID knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus and with wanton, willful and deliberate indifference ignored his medical grievances.

141. BETTY JUDD knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus and with wanton, willful and deliberate indifference ignored his medical grievances.

142. CCH DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus.

143. MHM DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus.

144. DEFENDANT DOCTORS knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

145. ALL DEFENDANTS collectively knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

146. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of PLAINTIFF's history of chronic insulin dependent diabetes mellitus and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

147. NMCD understands and recognizes that failure to treat chronic insulin dependent diabetes mellitus constitutes recklessness under New Mexico law.

148. NMCD understands and recognizes that failure to treat chronic insulin dependent diabetes mellitus constitutes deliberate indifference under federal law.

149. NMCD had full authority to enforce the GSC.

150. NMCD had at all times relevant to this COMPLAINT the authority to compel its CCH and MHM to treat chronic insulin dependent diabetes mellitus.

151. NMCD has obtained substantial budgets for treatment of chronic insulin dependent diabetes mellitus.

152. NMCD pays millions of dollars to its CCH and MHM for treatment of chronic insulin dependent diabetes mellitus.

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

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

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

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

157. 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”.

158. NMCD recklessly chose not to exercise any control over the manner in which its CCH and MHM performed their duties leading to the uncontrolled chronic insulin dependent diabetes mellitus, diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations and amputation.

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

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

161. NMCD recklessly chose not to exercise any control over the manner in which its CCH and MHM performed their duties leading to the uncontrolled chronic insulin dependent diabetes mellitus, diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations and amputation.

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

***C. FACTS SPECIFIC TO CCH DEFENDANTS***

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

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

165. CCH Tech Response was over 1200 pages long.

166. CCH’s Tech Response did not mention the Tort Claims Act.

167. CCH’s Tech Response did not mention the word “tort”.

168. CCH's Tech Response did not mention punitive damages.
169. CCH's Tech Response did not mention or request Tort Claims Act protection for CCH, MHM or their respective employees, staff and agents.
170. The GSC was 80 pages in length.
171. The GSC did not mention the Tort Claims Act.
172. The GSC did not mention the word "tort".
173. The GSC did not mention punitive damages.
174. The GSC did not provide for Tort Claims Act protection for CCH or its respective employees, staff, agents, staffing agencies or other vendors.
175. Tort Claims Act protection for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
176. Protection from punitive damages for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
177. The GSC was freely entered into by CCH on or about June 2016.
178. The GSC was in effect from June 2016 to November 2019.
179. CCH had the legal capacity to enter the GSC.
180. CCH was legally competent to enter the GSC.
181. There was mutual assent on the part of CCH and NMCD in the negotiation and execution of the GSC.
182. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the GSC.
183. The GSC was not vague.
184. The GSC was not oppressive to CCH.

- 185. The GSC was not void as a matter of public policy.
- 186. CCH is and was at all relevant times bound by the terms of the GSC.
- 187. The GSC is fully enforceable against CCH as written.
- 188. 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.”

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

190. 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.

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

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

193. 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.

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

195. 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.”

196. CCH medical staff working in NMCD under the GSC were provided malpractice

and general liability insurance through MHM.

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

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

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

200. 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.

201. 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.”

202. 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....”

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



GSC.

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

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

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

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

208. 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.

209. 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.

210. 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.

211. 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.

***D. FACTS SPECIFIC TO MHM DEFENDANTS***

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

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

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

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

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

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

218. MHM was not a party to the GSC.

219. MHM is a third party to the GSC.

***E. FACTS SPECIFIC TO SFS DEFENDANTS***

220. SFS was contractually bound to provide diabetic menus.

221. The diabetic menus were required to meet both the terms of the contract and NMCD policies and regulations regarding diabetic inmate nutritional needs.

222. Nutritional diabetic menus that meet the health needs of diabetic inmates are critical to meet the needs health needs of those inmates.

223. The menus provided by SFS are not fit for diabetic inmate consumption in violation of the contract and policy.

224. The menus provided by SFS serve to aggravate existing diabetes of inmates.

225. The menus are in fact heavily carbohydrate based which are both dangerous to diabetic inmates and healthy inmates alike.

226. In fact, the food actually provided by SFS does not even match the alleged “diabetic menu”.

227. The food actually served to diabetic inmates, including Plaintiff, are a toxic mix of carbohydrates and sugar.

228. The food served to Plaintiff contributed to her out of control diabetes and consequent diabetic retinopathy and other complications of chronic insulin dependent diabetes mellitus.

***F. FACTS SPECIFIC TO CCT DEFENDANTS***

229. Plaintiff has filed numerous grievances related to a lack of appropriate medical care.

230. Plaintiff has filed multiple grievances related to grossly deficient diabetic food trays.

231. The ongoing lack of medical care and toxic food trays led directly to Plaintiff's diabetic retinopathy and worsening chronic insulin dependent diabetes mellitus

232. CCT Defendants have failed to take any action to protect the health and safety of Plaintiff

233. The ongoing lack of medical care and toxic food trays led directly to Plaintiff's diabetic retinopathy and worsening chronic insulin dependent diabetes mellitus.

***G. FACTS COMMON TO ALL DEFENDANTS***

234. ALL DEFENDANTS knew that PLAINTIFF was in need of immediate treatment to control his chronic insulin dependent diabetes mellitus.

235. ALL DEFENDANTS knew that PLAINTIFF's chronic insulin dependent diabetes mellitus was worsening.

236. ALL DEFENDANTS knew that untreated chronic insulin dependent diabetes mellitus could lead to diabetic peripheral neuropathy, GERD, foot infections, deformities, ulcerations and amputation.

237. ALL DEFENDANTS knew that the failure to treat chronic insulin dependent diabetes mellitus constitutes recklessness under New Mexico law.

238. ALL DEFENDANTS knew that the failure to treat chronic insulin dependent diabetes mellitus constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

239. ALL DEFENDANTS knew that the failure to treat chronic insulin dependent diabetes mellitus constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

241. 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 chronic insulin dependent diabetes mellitus which resulted in Diabetic peripheral neuropathy, GERD, foot infections, deformities, ulcerations and amputation.

## **COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE**

### **(CCH and MHM DEFENDANTS)**

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

243. In undertaking the diagnosis, care and treatment of PLAINTIFF, CCH and MHM, 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.

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

245. The negligence, errors, acts and omissions of CCH and MHM, 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 chronic insulin dependent Diabetes Mellitus;
- f. Failure to provide PLAINTIFF with necessary and proper pain management;
- g. Failure to protect and preserve the health of PLAINTIFF.

246. As a direct and proximate result of the negligent acts and omissions CCH and MHM, 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.

247. CCH and MHM, 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)**

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

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

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

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

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

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

254. 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.

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

256. NMCD determined not to enforce the NCCHC standards.

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

258. NMCD determined not to enforce the ACA standards.

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

260. 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.

261. 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.

262. As evidenced by the hundreds of inmates positive for chronic insulin dependent diabetes mellitus while incarcerated in the NMCD system, but only a small fraction receives medical care and face harm from untreated chronic insulin dependent diabetes mellitus resulting in liver disease.

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

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

265. 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.

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

267. 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)**

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

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

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

271. 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.

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

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

274. 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.

275. 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.

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



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

278. 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.

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

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

281. 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.

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

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

284. As evidenced by the hundreds of inmates positive for chronic insulin dependent diabetes mellitus while incarcerated in the NMCD system, but only a small fraction receives medical care and face harm from untreated chronic insulin dependent diabetes mellitus resulting in liver disease.

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

286. 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.

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

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

289. 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 DEFENDANTS)**

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

291. CCH is 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.

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

293. CCH DEFENDANTS were negligent in failing to properly assess, treat and manage PLAINTIFF's chronic insulin dependent diabetes mellitus and related health conditions.

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

295. 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 DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

296. CCH DEFENDANTS failed to properly address PLAINTIFF's medical condition.

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

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

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

300. CCH had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of diabetic patients/inmates.

301. On information and belief, CCH 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 chronic insulin dependent diabetes mellitus and related health conditions.

302. CCH is 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.

303. CCH does not comply with ACA, NCCHC or New Mexico standards of healthcare.

304. 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.

305. The actions of CCH 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)**

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

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

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

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

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

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

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

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

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

315. 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.

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

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

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

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

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

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

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

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

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

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

326. 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.

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

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

329. 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.

330. 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.

331. As evidenced by the hundreds of inmates positive for chronic insulin dependent diabetes mellitus while incarcerated in the NMCD system, but only a small fraction receives medical care and face harm from untreated chronic insulin dependent diabetes mellitus resulting in liver disease.

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

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

334. 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.

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

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

337. 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 and MHM)

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

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

340. On information and belief, CCH and MHM 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 chronic insulin dependent diabetes mellitus and related health conditions

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

342. CCH and MHM 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.

343. CCH and MHM have not established any standards for medical care.

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

345. CCH and MHM 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.

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

347. 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.

348. PLAINTIFF is entitled to punitive damages against CCH and MHM.

349. 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)**

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

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

352. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of chronic insulin dependent diabetes mellitus.

353. 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 chronic insulin dependent diabetes mellitus and related health conditions

354. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of chronic insulin dependent diabetes mellitus.

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

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



357. NMCD failed to enforce the MEDICAL SERVICES CONTRACT.

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

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

360. 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.

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

362. 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 AND MHM DEFENDANTS)**

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

364. ALL CONTRACTORS DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his chronic insulin dependent diabetes mellitus.

365. ALL CONTRACTORS DEFENDANTS failed to take action to provide proper medical care despite numerous sick calls and/or grievances thereon.

366. ALL CONTRACTORS DEFENDANTS retaliated against PLAINTIFF for taking away his admission in the Echo Project for treatment of his chronic insulin dependent diabetes mellitus knowing his chronic insulin dependent diabetes mellitus was worsening his health conditions because of a disciplinary action.

367. The conduct of ALL CONTRACTORS DEFENDANTS was extreme, outrageous and intentional.

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

369. 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 AND MHM DEFENDANTS)**

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

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

372. 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 DEFENDANTS and MHM DEFENDANTS.

373. 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.

374. PLAINTIFF is entitled to damages, including punitive damages, against CCH and MHM DEFENDANTS.

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

376. PLAINTIFF is entitled to punitive damages against CCH and MHM

DEFENDANTS.

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

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

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

379. CCH and MHM 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)**

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

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

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

383. 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)**

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

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

386. It was CCH and MHM responsibility to manage and control their medical staff

and the care and treatment of PLAINTIFF.

387. 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 and MHM DEFENDANTS.

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

389. 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.

390. PLAINTIFF is entitled to punitive damages against CCH and MHM DEFENDANTS.

**COUNT XIII: PUNITIVE DAMAGES**  
**(CCH AND MHM DEFENDANTS)**

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

392. 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 DEFENDANTS and MHM 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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