

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

EUGENIO S. MATHIS, as personal representative
of the ESTATE OF CRYSTAL ERICKSEN,

Plaintiff,

Case assigned to Biedscheid, Bryan

v.

No. D-101-CV-2021-02338

NEW MEXICO CORRECTIONS DEPARTMENT;
WEXFORD HEALTH SOURCES, INC.
CORECIVIC OF TENNESSEE, LLC and John Doe
Defendants 1-10 in their individual and official
capacities (employees, staff, agents of New Mexico
Correctional Department, Wexford Health Sources,
LLC and CoreCivic of Tennessee, LLC,
respectively).

Defendants.

**COMPLAINT FOR WRONGFUL DEATH, MEDICAL MALPRACTICE AND
RELATED CLAIMS**

COMES NOW, the PLAINTIFF, EUGENIO S. MATHIS, as personal representative of
the ESTATE OF CRYSTAL ERICKSEN, 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 her cause of action states as follows:

I. PARTIES

1. Plaintiff, Eugenio S. Mathis, was appointed Personal Representative of the Estate
of Crystal Ericksen, deceased, (hereinafter "Ms. Ericksen") on April 15, 2020 and is a resident of
San Miguel County, New Mexico (hereinafter "Plaintiff").

2. Plaintiff brings this action as the Personal Representative of the Estate of Ms.
Ericksen, deceased.

3. CRYSTAL ERICKSEN (“Decedent”) was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.

4. Ms. Ericksen or Decedent, at the time of the original incident as set forth below, was an inmate at the Western New Mexico Correctional Facility (“WNMCF”), a NMCD facility.

A. NEW MEXICO CORRECTIONS DEPARTMENT

5. DEFENDANT NEW MEXICO CORRECTIONS DEPARTMENT (NMCD) and is an entity of the State of New Mexico.

6. WNMCF is operated by NMCD.

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

8. NMCD is responsible for the contracting of medical services for all NMCD facilities including WNMCF.

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

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

11. NMCD governs WNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

B. WEXFORD HEALTH SOURCES, INC.

12. 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.

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

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

15. Wexford is not entitled to protections under the New Mexico Tort Claims Act.

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

C. CORECIVIC OF TENNESSEE, LLC

17. CoreCivic of Tennessee, LLC (“CCT”) is under contract to manage and operate WNMCF.

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

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

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

21. CCT, is individually named and John Doe named employees, staff and agents will be collectively referred to as CCT DEFENDANTS.

II. JURISDICTION AND VENUE

22. All acts complained of herein occurred in CIBOLA COUNTY, New Mexico.

23. A Tort Claims Notice was timely sent on March 11, 2020. **PEX 1**

24. 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11 do not apply due to the death of Crystal Ericksen.

25. 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.

26. Jurisdiction and venue are proper over Wexford' 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.

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

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

29. This Court has jurisdiction over the subject matter of Ms. Ericksen'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), NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

30. 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

31. Decedent Crystal Ericksen was at all times relevant to this complaint, a 36-year-old woman.

32. On 1/7/2020, Ms. Ericksen presented to medical at WNMCF with complaints of trouble swallowing for 3 days as well as chest pain that increased with breathing, coughing, and activity.

33. She rated her pain as a 10 and it was reported that her tonsils were reddened and inflamed. Decedent reported the presence of a dry cough and sore throat over 3 days.

34. These symptoms, especially unexplained pleuritic chest pain, should have prompted further evaluation with chest radiography (chest X-ray).

35. On 1/7/2020, medical providers failed to conduct a chest X-ray despite Ms. Ericksen's deteriorating health.

36. Instead, medical providers at WNMCF gave Ms. Ericksen 200 mg Ibuprofen.

37. On 1/8/2020, Ms. Ericksen was transported to Cibola General Hospital after her respiratory symptoms worsened to the point where she was placed on BiPAP (Bilevel Positive Airway Pressure), a type of ventilator that helps with breathing.

38. On 1/8/2020, Ms. Ericksen was admitted to the ICU where she became tachypneic (having abnormally rapid and shallow breathing) and had to be intubated.

39. On 1/9/2020, Ms. Ericksen was pronounced dead at 1103 hours.

40. The failure to screen Ms. Ericksen using appropriate diagnostic tools resulted in a delay in diagnosis of pneumonia.

41. The actions and inactions of the medical providers resulted in Ms. Ericksen suffering acute hypoxemic respiratory failure requiring veno-venous extracorporeal membrane oxygenation, hypokalemia, sepsis, refractory shock with refractory acidemia requiring CRRT.

42. The actions and inactions of the medical providers resulted in subsequent death of Ms. Ericksen.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

43. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within WNMCF.

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

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

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

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

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

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

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

51. NMCD routinely ignores medical grievances.

52. NMCD routinely destroys medical grievances.

53. NMCD routinely fails to process medical grievances correctly.

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

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

56. From 2009 through 2019, there were 704 medical grievance appeals filed by male NMCD inmates according to American Correctional Association audits for those years. Of the 704 medical grievance appeals, 0 (zero) were found in favor of an inmate.

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

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

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

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

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

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

63. NMCD DEFENDANTS, by and through its employees, staff, and agents, knew of Ms. Ericksen's emergent influenza and pneumonia, yet with wanton, willful and deliberate indifference ignored Ms. Ericksen's medical grievances, ignored National Commission on Correctional Health Care ("NCCHC") standards regarding emergent medical conditions and failed to take action within its authority to protect the health of Ms. Ericksen.

64. NMCD understands and recognizes that failure to treat influenza and pneumonia constitutes recklessness under New Mexico law.

65. NMCD understands and recognizes that failure to treat influenza and pneumonia constitutes deliberate indifference under federal law.

66. NMCD had full authority to enforce the PSC.

67. NMCD had, at all times relevant to this COMPLAINT, the authority to compel Wexford to treat influenza and pneumonia .

68. NMCD has obtained substantial budgets for treatment of influenza and pneumonia .

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

70. NMCD through the grievance process can control the manner in which Wexford can perform their duties.

71. NMCD through the terms of the PSC can control the manner in which Wexford can perform their duties.

72. NMCD through NMCD policies and regulations can control the manner in which Wexford can perform their duties.

73. NMCD had the authority to terminate the PSC at will as indicated by the PSC:

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

74. NMCD has the authority to terminate at will the Professional Services Contract # 20-770-1200-0043 (PSC) with Wexford as indicated by the terms of the PSC:

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

75. NMCD recklessly chose not to exercise any control over the manner in which Wexford employees, staff and agents performed their duties, including but not limited to treatment or failure to treat influenza and pneumonia .

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

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

78. NMCD recklessly chose not to exercise any control over the manner in which Wexford performed their duties, including treatment or failure to treat influenza and pneumonia

79. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Ms. Ericksen's emergent influenza and pneumonia and failed to provide necessary and proper medical care to protect Ms. Ericksen's health and safety.

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

80. The facts above illustrate gross medical neglect and a reckless disregard for the health and safety of Ms. Ericksen.

81. Wexford's, acting through its employees, staff and agents, gross medical neglect and a reckless disregard for the health and safety of Ms. Ericksen led to the death of Ms. Ericksen.

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

83. Wexford TechProp was over 830 pages long.

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

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

86. Wexford TechProp did not mention punitive damages.

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

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

89. The PSC was 65 pages in length.

90. The PSC did not mention the Tort Claims Act.

91. The PSC did not mention the word “tort.”
92. The PSC did not mention punitive damages.
93. The PSC did not provide for Tort Claims Act protection for Wexford, MHM or their respective employees, staff and agents.
94. Tort Claims Act protection for Wexford and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
95. Protection from punitive damages for Wexford, and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
96. The PSC was entered freely by Wexford on or about October 18, 2019.
97. The PSC was in effect at times relevant to this Complaint.
98. Wexford had the legal capacity to enter the PSC.
99. Wexford was legally competent to enter the PSC.
100. There was mutual assent on the part of Wexford and NMCD in the negotiation and execution of the PSC.
101. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.
102. The PSC was not vague.
103. The PSC was not oppressive to Wexford.
104. The PSC was not void as a matter of public policy.
105. Wexford is and was at all relevant times bound by the terms of the PSC.
106. The PSC is fully enforceable against Wexford as written and executed.
107. By the terms of the PSC, Wexford is an independent contractor performing professional services for the Agency.

108. 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.

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

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

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

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

113. 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.

114. 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.

115. 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.

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

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

118. 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.

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

120. 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.

121. Wexford DEFENDANTS, by and through its employees, staff and agents, knew of Ms. Ericksen's emergent influenza and pneumonia and failed to provide necessary and proper medical care to protect Ms. Ericksen's health and safety.

D. FACTS COMMON TO CORECIVIC DEFENDANTS

122. The facts above illustrate gross medical neglect and a reckless disregard for the health and safety of Ms. Ericksen.

123. The actions of CoreCivic employees, staff and agents was callous exhibiting extreme and intentional cruelty meant to inflict severe physical, emotional and psychological pain on Ms. Ericksen.

124. The actions of CoreCivic employees, staff and agents had the intended effect of causing severe physical, emotional and psychological pain on Ms. Ericksen.

125. The actions of CoreCivic employees, staff and agents led to the death of Ms. Ericksen.

E. FACTS COMMON TO ALL DEFENDANTS

126. ALL DEFENDANTS knew of Ms. Ericksen's emergent influenza and pneumonia and with wanton, willful and deliberate indifference ignored Ms. Ericksen's medical grievances and deliberately refused to provide necessary and proper medical care.

127. ALL DEFENDANTS collectively knew of Ms. Ericksen's emergent influenza and pneumonia and with wanton, willful and deliberate indifference ignored Ms. Ericksen's medical complaints, and the complaints of other inmates attempting to gain medical attention for Ms. Ericksen and deliberately refused to provide necessary and proper medical care.

128. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of Ms. Ericksen's emergent influenza and pneumonia and with wanton, willful and deliberate indifference ignored Ms. Ericksen's medical complaints and the complaints of other inmates attempting to gain medical care for Ms. Ericksen and deliberately refused to provide necessary and proper medical care.

129. ALL DEFENDANTS knew that Ms. Ericksen's was in need of immediate treatment to control Ms. Ericksen's emergent influenza and pneumonia .

130. ALL DEFENDANTS knew that Ms. Ericksen's emergent influenza and pneumonia was worsening.

131. ALL DEFENDANTS knew that the failure to treat emergent influenza and pneumonia constitutes recklessness under New Mexico law.

132. ALL DEFENDANTS knew that the failure to treat emergent influenza and pneumonia constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

133. ALL DEFENDANTS knew that the failure to treat emergent influenza and pneumonia constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

134. ALL DEFENDANTS were complicit and acquiesced in the denial of proper medical care to Ms. Ericksen.

135. ALL DEFENDANTS conspired together to deny Ms. Ericksen 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 emergent influenza and pneumonia.

**COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE
(Wexford)**

136. Ms. Ericksen, on behalf of Decedent Crystal Ericksen incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

137. In undertaking the diagnosis, care and treatment of Ms. Ericksen, Wexford, 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.

138. Wexford, its employees, staff and agents breached their duties and were negligent in the management of Ms. Ericksen's health and well-being.

139. The negligence, errors, 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 Ms. Ericksen's medical condition;
- c. Failure to take the reasonable steps to acquire proper treatment for Ms. Ericksen;
- d. Failure to refer Ms. Ericksen to appropriate specialists;
- e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of influenza and pneumonia ;
- f. Failure to provide Ms. Ericksen with necessary and proper pain management; and
- g. Failure to protect and preserve the health of Ms. Ericksen.

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

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

COUNT II: NEGLIGENCE (NMCD DEFENDANTS)

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

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

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

145. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to Crystal Ericksen.

146. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to Ms. Ericksen.

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

148. 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 Ms. Ericksen.

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

150. NMCD determined not to enforce the NCCHC standards.

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

152. NMCD determined not to enforce the American Correctional Association (“ACA”) standards.

153. 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 Ms. Ericksen.

154. 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.

155. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates, including Ms. Ericksen.

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

157. 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.

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

159. NMCD’s action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Ms. Ericksen.

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

COUNT III: NEGLIGENCE (ALL DEFENDANTS)

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

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

163. NMCD DEFENDANTS negligently failed to oversee Wexford in the provision of medical care to NMCD inmates, which contributed to Ms. Ericksen's injuries.

164. NMCD DEFENDANTS failed to take corrective action against Wexford in clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates, which contributed to Ms. Ericksen's injuries.

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

166. Wexford's medical staff at WNMCF lacked sufficient expertise to assess, treat and manage Ms. Ericksen's health conditions.

167. Wexford has a duty under the PSC, ACA and NCCHC to properly refer Ms. Ericksen to be seen by a physician who could effectively treat Ms. Ericksen.

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

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

170. NMCD DEFENDANTS negligently and recklessly failed to ensure that inmates, including Ms. Ericksen, were receiving proper medical care, including proper referral to specialists.

171. NMCD knew, and knows, that all referrals for specialist care are made by Wexford administrators outside of NMCD medical facilities.

172. NMCD knew, and knows, that referrals for specialist care are not made by inmates, including Ms. Ericksen's on-site medical providers, but by corporate administrative personnel.

173. NMCD knew and knows that referrals for specialist care are routinely denied by Wexford non-medical administrative personnel on the basis of costs to Wexford for said referrals.

174. 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 Ms. Ericksen's injuries and death.

175. NMCD DEFENDANTS negligently, recklessly, and deliberately failed to hold Wexford to standards and guidelines of the ACA or NCCHC.

176. NMCD DEFENDANTS negligently, recklessly, and deliberately failed to hold Wexford to the medical standard of care established under New Mexico law, which contributed to Ms. Ericksen's injuries and death.

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

178. NMCD has a duty to operate CNMCF, GCCF and WNMCF in a safe and reasonably prudent manner.

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

180. Due to the epidemic of MRSA, osteomyelitis and other infection disease in NMCD facilities state-wide, including WNMCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of Ms. Ericksen.

181. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including Ms. Ericksen.

182. 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.

183. As such, NMCD has negligently operated WNMCF, a public facility in which it incarcerated Ms. Ericksen.

184. NMCD has created a risk to all inmates including Ms. Ericksen at WNMCF, as all inmates are owed adequate healthcare.

185. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Ms. Ericksen.

186. As a result of the foregoing, Ms. Ericksen has suffered serious and permanent physical injuries, pain and suffering, severe psychological and emotional distress, and death for which Ms. Ericksen's estate is entitled to damages.

**COUNT IV: NEGLIGENT OPERATION OF A MEDICAL FACILITY
(WEXFORD DEFENDANTS)**

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

188. Wexford 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.

189. Wexford employees, staff and agents were unqualified to care for Ms. Ericksen, and yet refused to refer Ms. Ericksen to specialists.

190. Wexford employees, staff and agents were unqualified and delayed proper treatment for Ms. Ericksen from September 5, 2018 to March 19, 2019 when she was finally sent to UNMH for treatment.

191. Wexford DEFENDANTS' actions and inactions in failing to properly assess, treat and manage Ms. Ericksen's influenza and pneumonia and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of Ms. Ericksen.

192. Wexford DEFENDANTS' actions and inactions in failing to properly refer Ms. Ericksen to be seen by a physician who could effectively treat Ms. Ericksen were negligent, reckless, wanton and in deliberate disregard for the health of Ms. Ericksen.

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

194. Decisions for referral of inmates to specialists are made by Wexford corporate administrators rather than inmate medical providers.

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

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

197. 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.

198. Wexford DEFENDANTS failed to properly address Ms. Ericksen's medical condition.

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

200. Such conduct amounts to negligence in the treatment of Ms. Ericksen.

201. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding Ms. Ericksen and inmates with similar health conditions within the facility.

202. Wexford had a duty to allow Ms. Ericksen's on-site medical providers make referrals to specialists.

203. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering influenza and pneumonia .

204. 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 Ms. Ericksen's multiple medical conditions, including influenza and pneumonia and related health conditions.

205. Wexford is bound by the PSC to obtain and maintain ACA and NCCHC accreditation under the terms of the PSC.

206. Wexford do not comply with ACA, NCCHC or New Mexico standards of healthcare.

207. As a result of the foregoing, Ms. Ericksen has suffered damages and injuries including, but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress, and death for which her estate is entitled to damages.

208. The actions and inactions of Wexford DEFENDANTS were negligent, willful, wanton, and in gross and reckless disregard for Ms. Ericksen's well-being, entitling Ms. Ericksen to punitive damages thereon.

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

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

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

211. NMCD has authority over all NMCD correctional facilities, including WNMCF.

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

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

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

215. NMCD has allowed numerous serious breaches and violations of the PSC, ACA and NCCHC that led to the medical neglect of Ms. Ericksen.

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

217. Wexford's medical staff at WNMCF lacked sufficient expertise to assess, treat and manage Ms. Ericksen's health conditions.

218. Wexford has a duty under the PSC, ACA and NCCHC to properly refer Ms. Ericksen to be seen by a physician who could effectively treat her.

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

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

221. NMCD DEFENDANTS knew that Wexford was not properly and adequately treating Ms. Ericksen's medical condition.

222. NMCD DEFENDANTS knew that Wexford was not referring Ms. Ericksen to outside medical healthcare providers who could effectively and prudently treat Ms. Ericksen.

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

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

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

226. Such conduct amounts to negligence in the treatment of Ms. Ericksen.

227. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of Ms. Ericksen.

228. NMCD DEFENDANTS have knowingly allowed, aided and abetted in Wexford's failure to obtain and maintain NCCHC accreditation.

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

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

231. NMCD DEFENDANTS have been complicit in the failure to adhere to the basic constitutional correctional healthcare set forth by the NCCHC through NMCD's decision to cease accreditation and compliance with the NCCHC standards.

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

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

234. 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 required under federal law:

b. All provisions related to ACA accreditation and compliance; and

c. Referral of inmates to specialists, when necessary, for inmate health.

235. 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.

236. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including Ms. Ericksen.

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

238. 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.

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

240. The failures of NMCD DEFENDANTS led to the unnecessary and easily avoidable death of Ms. Ericksen.

241. As a result of the foregoing, Ms. Ericksen suffered serious and permanent physical injuries, pain and suffering, severe psychological and emotional distress, and death for which Decedent's estate is entitled to damages.

**COUNT VI: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(WEXFORD)**

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

243. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering influenza and pneumonia.

244. 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 Ms. Ericksen's influenza and pneumonia .

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

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

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

248. Wexford's negligent hiring, training and supervision were the proximate cause of Ms. Ericksen's injuries and damages for which Ms. Ericksen's estate is entitled damages

including, but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress, and death.

249. Wexford's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of Ms. Ericksen.

250. Wexford had a duty to allow Ms. Ericksen's medical providers to make referrals to specialist.

251. Upon information and belief, Wexford breached this duty with decisions for referral of inmates made by Wexford corporate administrators rather than inmate medical providers.

252. Upon information and belief, no referral to a specialist may be made without first gaining approval from Wexford corporate administrators.

253. Upon information and belief, , on-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of Wexford corporate administrators.

254. Upon information and belief, approval of referrals by Wexford corporate administrators are made on costs rather than medical grounds.

255. 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.

256. Ms. Ericksen's estate is entitled to recovery for Ms. Ericksen's injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

257. Ms. Ericksen's estate is entitled to punitive damages against Wexford.

**COUNT VII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(WEXFORD)**

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

259. Wexford DEFENDANTS intentionally denied Ms. Ericksen proper and necessary medical care for Ms. Ericksen's influenza and pneumonia .

260. Wexford DEFENDANTS failed to take action to provide proper medical care despite numerous requests for medical care from both Ms. Ericksen and other inmates on her behalf.

261. The conduct of Wexford DEFENDANTS was extreme, outrageous, and intentional and in deliberate disregard for Ms. Ericksen's physical and mental health.

262. Ms. Ericksen suffered severe emotional distress as a result of the conduct of DEFENDANTS.

263. As a result of the foregoing, Ms. Ericksen has suffered serious and permanent physical injuries, pain and suffering, severe psychological and emotional distress, and death, for which Ms. Ericksen's estate is entitled to damages, including punitive damages.

**COUNT VIII: CIVIL CONSPIRACY TO DENY MEDICAL CARE
(WEXFORD and CORECIVIC)**

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

265. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS, Wexford and CoreCivic to deny Ms. Ericksen necessary, proper and constitutionally necessary medical care.

266. As a result of said conspiracy, Ms. Ericksen suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD, Wexford and CoreCivic.

267. Ms. Ericksen's Estate is entitled to recovery for Ms. Ericksen's injuries and damages, including but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress, and death.

268. Ms. Ericksen's estate is entitled to damages, including punitive damages, against Wexford.

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

270. Ms. Ericksen's estate is entitled to punitive damages against Wexford and CoreCivic DEFENDANTS.

COUNT IX: RESPONDEAT SUPERIOR AND AGENCY (WEXFORD)

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

272. Wexford are responsible to Ms. Ericksen's estate under the doctrine of *respondeat superior* for the conduct of its employees, staff, and agents.

273. Wexford are responsible to Ms. Ericksen's estate under the doctrine of agency for the conduct of its employees, staff, and agents.

COUNT X: RESPONDEAT SUPERIOR AND AGENCY (CORECIVIC)

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

275. CoreCivic is responsible to Ms. Ericksen's estate under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

276. CoreCivic is responsible to Ms. Ericksen's estate under the doctrine of agency for the conduct of its employees, staff and agents.

COUNT XI: RES IPSA LOQUITUR (ALL DEFENDANTS)

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

278. The injuries and damages suffered by Ms. Ericksen were proximately caused by wanton, willful and reckless actions, and inactions of ALL DEFENDANTS.

279. It was the responsibility of Wexford to manage and control their medical staff and the care and treatment of Ms. Ericksen.

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

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

282. Ms. Ericksen's estate is entitled to recover for Ms. Ericksen's injuries and damages, including but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress, and death.

283. Ms. Ericksen's estate is entitled to punitive damages against Wexford DEFENDANTS.

COUNT XII: PUNITIVE DAMAGES (WEXFORD and CORECIVIC)

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

285. 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 Crystal Ericksen, 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, are appropriate.

WHEREFORE, Ms. Ericksen 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, injuries, and death to Crystal Ericksen;

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

C. Punitive damages in an undetermined amount against Wexford and CoreCivic:

D. Costs incurred by Ms. Ericksen, 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*
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Albuquerque, NM 87103
505-242-5958
parrish@collinsattorneys.com

-and-

GUEBERT GENTILE & PIAZZA, P.C.

/s/ *Elizabeth Piazza*

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Attorneys for Plaintiff

Collins & Collins, P.C.

Attorneys at Law
PO Box 506
Albuquerque, NM 87103-0506

March 11, 2020

NOTICE OF TORT CLAIM

Vincent Vigil, Warden
Western New Mexico Correctional Facility
P.O. Drawer 250
Grants, New Mexico 87020
Via Fax to (505) 827-8533 & USPS

New Mexico Corrections Department
P. O. Box 27116
Santa Fe, NM 87502-0116
Via Fax to (505) 827-8533 & USPS

Risk Management Claims Bureau
P.O. Box 6850
Santa Fe, NM 87502
Via Fax to (505) 827-2969 & USPS

RE: Crystal Ericksen Estate v. Western New Mexico Correctional Facility, New Mexico Corrections Department, the State of New Mexico, Centurion Correctional Healthcare of New Mexico, LLC, Wexford Health Services, et. al.,
Date of Incident: January 9, 2020

Gentlemen:

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 inaction of New Mexico Corrections Department (and their employees, staff contractors and other agents) in their negligence related to their failure to provide proper supervision and medical care to Ms. Crystal Ericksen. Said negligence resulted in the death of Ms. Ericksen on January 9, 2020 at the Western New Mexico Correctional Facility located in Grants, New Mexico.

Specifically, Ms. Ericksen had been complaining for weeks and reported a variety of symptoms. Her requests for medical care were ignored. During the month of January 2020, the pain and discomfort had reached unbearable levels and many other inmates also asked that she be given appropriate care. Again, all such requests were ignored. Ms. Ericksen finally collapsed and was taken by emergency transport to the hospital where she subsequently died on or about January 9, 2020.

Under the laws prohibiting spoliation of evidence, please take all necessary steps to preserve the following evidence associated with the subject incident:

Preservation of Evidence:

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Ms. Ericksen 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 Ms. Ericksen related to the #1 above and his medical care generally to include mail, emails, text, electronic messaging, voicemails, memorandum or other communications related to the medical care of Ms. Ericksen.

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.

Please contact us should you have any questions. Thank you for your consideration of this matter.

Sincerely,

COLLINS & COLLINS, P.C.

/s/Parrish Collins

Parrish Collins

PC/gtg

cc: Ramona Bootes
David Ketai
Robert Gentile
Terry Guebert

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, March 11, 2020 4:09 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 009374
Result: OK
End Time: Wed 11 Mar 2020 16:08:32
File Name: 3.11.20 TCN and spoliation to NMCD & WNMCF.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, March 11, 2020 4:10 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 009376
Result: OK
End Time: Wed 11 Mar 2020 16:09:59
File Name: 3.11.20 TCN and spoliation to NMCD & WNMCF.pdf
Category: Sending Jobs

Result Job Type Address

OK FAX 5058272969

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>
Sent: Wednesday, March 11, 2020 4:13 PM
To: Guy Gambill <guy@collinsattorneys.com>
Subject: TASKalfa 3212i Job end report mail

Job No.: 009375

Result: OK

End Time: Wed 11 Mar 2020 16:12:54

File Name: 3.11.20 TCN and spoliation to NMCD & WNMCF.pdf

Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,